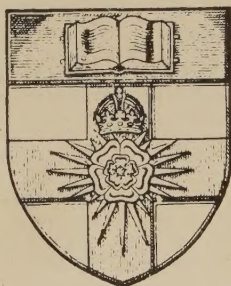


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Introduction

The purpose of the subject index is to enable the reader to obtain the names and references of cases on a particular topic. The arrangement of the index follows the conventional pattern of legal indexes, being based on an alphabetical sequence of main headings each of which is subdivided into further sub-headings, also arranged in alphabetical sequence, covering topics which fall within the generality of the main heading. For every entry, other than cross-reference entries, the process of sub-division has been taken two stages further. Thus each entry has been classified under a main index heading and three further subheadings in descending order of generality. If superior headings have not already done so, the third level of sub-heading should identify with sufficient particularity the entries relevant to the particular topic on which the reader is seeking authority.

For example, a reader who is searching for cases on mistake as to the ownership of goods in relation to a change of theft under the modern law, should refer to the general heading 'CRIMINAL LAW'. He will there find some 1400 entries listed under that heading. Almost all of those cases will clearly be irrelevant to the point on which the reader is seeking authority. The next step, therefore, is to turn to the sub-heading 'Theft' under the general heading 'CRIMINAL LAW'. He will there find some 20 entries listed under that sub-heading; again most of these entries are likely to be irrelevant. The search may however be taken two stages further by turning to the 'sub-sub-heading', 'Property belonging to another', which covers seven entries and the further sub-heading 'Mistake' under the sub-sub-heading 'Property belonging to another' which will reveal two entries expressly on the topic on which authority is being sought.

The different levels of heading and sub-heading are indicated typographically thus:

CRIMINAL LAW

Theft—

Property belonging to another—

Mistake—

The main heading and first two levels of sub-headings are not repeated for every entry to which they relate but only for the first relevant entry and, for convenience, at the top of each new page.

It will not usually be necessary to proceed to the third level of sub-heading to identify relevant cases with sufficient particularity. Thus, a reference to the sub-heading 'Treason' under the main heading 'CRIMINAL LAW' will reveal that there is only one case on that topic.

In most cases main entries, ie entries other than cross-reference entries, do not conclude with the third level of sub-heading but continue with sufficient 'catchphrases' to indicate the salient facts of the case referred to and the point of law on which the case is authority. Main entries conclude with the name of the case which is being referred to and its citation.

In searching for entries on a particular topic, the reader will not always choose the same words or phrase, or start with the same generality of heading, as that used in the index. For this reason the index has been fully cross-referenced. Thus a reader searching for cases on theft who looks up the main entry 'THEFT' will find a cross-reference stating: 'See **Criminal law** (Theft)' indicating that

he should refer to the sub-heading 'Theft' under the main entry 'CRIMINAL LAW'.

Cross-reference entries fall into two categories: (i) cross-references from one main heading to another main heading ('external cross-references'), and (ii) cross-references within the limits of a particular main heading ('internal cross-references'). All cross-references of either variety begin with the word 'See' in italic type.

(i) In external cross-reference the word 'See' is followed by a word or phrase in bold type followed, where appropriate, by further words or phrases within brackets. The word or phrase in bold type denotes the main heading which is being referred to and the words in brackets the sub-headings under that main heading to which reference should be made in order to locate the entries on the topic in question. The following are examples: '*See Auctioneer*' means that the reader should refer to all the entries under the main heading 'AUCTIONEER'; '*See Landlord and tenant* (Forfeiture of lease—Arrears of rent)' means that the reader should refer to the sub-sub-heading 'Arrears of rent' under the sub-heading 'Forfeiture of lease' under the main heading 'LANDLORD AND TENANT'.

(ii) In internal cross-references there are no words in bold type or brackets. The word 'See' is followed by words or phrases in ordinary Roman type which are in turn followed by the word '*ante*' or '*post*' in italic type. These indicate the sub-heading and, where appropriate, further sub-headings, which appear under the same main heading as the cross-reference itself. Thus under the main entry 'ARREST' there is a sub-heading 'Constable' followed by a sub-sub-heading 'Arrest without warrant'. This is followed by the cross-reference: '*See Arrest without warrant—Constable, ante*'. This indicates that, to locate the relevant entries, the reader should refer to the sub-sub-heading 'Constable' under the sub-heading 'Arrest without warrant' under the same main heading 'ARREST'. Internal cross-references always start with the principal sub-heading under the relevant main heading, even though the cross-reference entry itself also appears under that sub-heading. Thus following the entry:

BANKRUPTCY

Appeal—

Costs—

Security for costs

there is a cross-reference: '*See Appeal—Security for costs, post*'. This refers to the entry under the sub-sub-heading 'Security for costs' under the same principal sub-heading 'Appeal'.

February 1977

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SUBJECT INDEX

ABANDONMENT

Appeal—

Abandonment in criminal proceedings. *See* **Criminal law** (Appeal—Abandonment of appeal).

Child—

Abandonment in manner likely to cause suffering or injury. *See* **Criminal law** (Child—Cruelty—

Abandonment in manner likely to cause unnecessary suffering or injury to health).

Common rights. *See* **Commons** (Right of common—Abandonment).

Compulsory purchase order. *See* **Compulsory purchase** (Compulsory purchase order—Abandonment).

ABATEMENT

Appeal. *See* **Appeal** (Abatement).

Devise. *See* **Administration of estates** (Devise—Abatement).

Legacy. *See* **Administration of estates** (Legacy—Abatement).

Purchase price—

Sale of land—

Damages in addition. *See* **Sale of land** (Damages for breach of contract—Damages in addition to specific performance and abatement of purchase price).

ABATEMENT NOTICE

Amenity. *See* **Town and country planning** (Amenity—Notice to abate injury to amenity by condition of vacant site or other open land).

Statutory nuisance. *See* **Nuisance** (Statutory nuisance—Abatement notice).

ABDUCTION

See **Criminal law** (Abduction).

ABNORMAL PROPENSITY

Evidence in criminal proceedings. *See* **Criminal evidence** (Improper conduct of accused on other occasions—Similar offences—Abnormal propensity).

ABNORMALITY OF MIND

Diminished responsibility—

Murder charge. *See* **Criminal law** (Murder—Diminished responsibility).

ABODE

Right of abode in United Kingdom. *See* **Immigration** (Patrial—Right of abode).

ABORTION

See **Criminal law** (Abortion).

ABRIDGEMENT

Time for appeal. *See* **Court of Appeal** (Time for appeal—Abridgement of time).

ABROAD

Transfer of assets abroad—

Income tax avoidance. *See* **Income tax** (Avoidance—Transfer of assets abroad).

Interlocutory injunction. *See* **Injunction** (Interlocutory—Danger that defendant may transfer assets out of jurisdiction).

ABSOLUTE LIABILITY

Offence. *See* **Criminal law** (Absolute liability).

ABSTRACT OF TITLE

Imperfect—

Requisitions on title. *See* **Sale of land** (Requisitions on title—Time limit—Abstract of title imperfect).

ABUSE OF PROCESS

- Dismissal of action. *See* **Action** (Dismissal—Abuse of process of court).
Striking out statement of claim. *See* **Statement of claim** (Striking out—Abuse of process).

ACCELERATION

- Variation of trusts. *See* **Variation of trusts** (Acceleration).

ACCEPTANCE

- Acceptance of child as one of the family. *See* **Minor** (Acceptance of child as one of the family).
Bill of exchange. *See* **Bill of exchange** (Acceptance).
Contract. *See* **Contract** (Offer and acceptance—Acceptance).
Gift. *See* **Gift** (Acceptance).
Payment into court. *See* **Practice** (Payment into court—Acceptance).
Sale of goods. *See* **Sale of goods** (Acceptance).
Tender—
Sale of land. *See* **Sale of land** (Acceptance of tender).

ACCESS

- Child—
Access to child—
Divorce. *See* **Divorce** (Custody—Access).
Custody. *See* **Minor** (Custody—Access).
Highway—
Generally. *See* **Highway** (Access).
Planning control. *See* **Town and country planning** (Access to highway).
Place of work—
Means of access—
Safe access to place of work. *See* **Building** (Working places—Safe means of access).
Ward of court—
Official Solicitor as guardian ad litem seeking control of question of access. *See* **Ward of court** (Care and control—Interim care and control—Access—Official Solicitor as guardian ad litem seeking control of question of access).

ACCESSORY

- Assisting offender. *See* **Criminal law** (Assisting offender).

ACCESSORY AFTER THE FACT

- See* **Criminal law** (Accessory after the fact).

ACCESSORY BEFORE THE FACT

- See* **Criminal law** (Accessory before the fact).

ACCIDENT

- Arising out of and in the course of employment—
Disablement benefit. *See* **Industrial injury** (Disablement benefit—Entitlement—Accident arising out of and in course of employment).
Workmen's compensation. *See* **Workmen's compensation** (Injury by accident arising out of and in the course of employment).
Contributory negligence—
Road accident. *See* **Negligence** (Contributory negligence—Road accident).
Employment—
Industrial injury. *See* **Industrial injury** (Disablement benefit—Entitlement—Accident arising out of and in the course of employment).
Fatal. *See* **Fatal accident**.
Insurance. *See* **Insurance** (Accident insurance).
Negligence—
Presumption—
Res ipsa loquitur. *See* **Negligence** (Res ipsa loquitur—Accident raising presumption of negligence).
Report—
Production—
Privilege—Legal professional privilege. *See* **Discovery** (Legal professional privilege—Accident report).
Traffic. *See* **Road traffic** (Accident).

ACCOMMODATION

- Alternative accommodation—
Rent restriction—
Offer of alternative accommodation. *See* **Rent restriction** (Alternative accommodation).
Employee—
Provision of accommodation to employee by body corporate—
Income tax. *See* **Income tax** (Emoluments from office or employment—Benefits in kind—Expense incurred by body corporate—Accommodation).
False statement as to accommodation. *See* **Trade description** (False or misleading statement as to services etc—Statement made recklessly—Hotel accommodation).
Local authority—
Duty to provide—
Enforcement of duty. *See* **Local authority** (Statutory duty—Enforcement—Accommodation).
Minister of religion—
Empty accommodation held available to provide residence for minister—
Rates. *See* **Rates** (Rateable occupation—Premises left empty—Intention to occupy—Charity—Ecclesiastical corporation).

ACCOMMODATION (cont)

Occupation—

Income tax—

Emoluments from office or employment. *See* **Income tax** (Emoluments from office or employment—Benefits in kind—Premises available to occupy by reason of holding an office or employment—Beneficial or representative occupation).

Registration. *See* **Housing** (Registration of living accommodation).

ACCOMMODATION WORKS

Railway. *See* **Railway** (Accommodation works).

ACCOMPLICE

Accessory after the fact. *See* **Criminal law** (Accessory after the fact).

Accessory before the fact. *See* **Criminal law** (Accessory before the fact).

Aiding and abetting offence. *See* **Criminal law** (Aiding and abetting).

Assisting offender. *See* **Criminal law** (Assisting offender).

Corroboration—

Evidence in criminal proceedings. *See* **Criminal evidence** (Corroboration—Accomplice).

Generally. *See* **Criminal law** (Accomplices).

ACCORD AND SATISFACTION

Acceptance of lesser sum—

Intention of payee—

Cheque—Words written on back of cheque by payee—Sum due under contract—Payment of smaller sum by cheque—Words 'In full and final settlement of account' typed by payor on back of cheque—Endorsement by payee—Whether endorsement constituting acceptance of lesser sum. **Neuchatel Asphalte Co Ltd v Barnett** [1957] 1 362, CA.

Duress—

Absence of true accord—

Acceptance of debtor's cheque for smaller sum in settlement—Acceptance under threat of non-payment—Creditor in financial difficulties—No true accord—Balance of debt recoverable by creditor. **D & C Builders Ltd v Rees** [1965] 3 837, CA.

Royalties—

Deduction of tax—

Acceptance of deduction under mistake of law—Royalties paid to landowner by company for right to take sand, stone etc—Company paying royalties subject to deduction of tax—Landowner accepting deduction under mistake of law—Whether landowner entitled to claim amount underpaid. **Gwyther v Boslymon Quarries Ltd** [1950] 1 384, KBD.

ACCOUNT

Action for—

Defence—

Account agreed and settled—Oral agreement as to final figure. **Phillips-Higgins v Harper** [1954] 2 51, CA.

Limitation of action. *See* **Limitation of action** (Action for an account).

Particulars—

Particulars sought by defendant of sums paid to him by plaintiff. **Sharer v Wallace** [1950] 2 463, ChD.

Service—

Jurisdiction—Service of writ out of jurisdiction. **International Corpn Ltd v Besser Manufacturing Co** [1950] 1 355, CA.

Agent—

Duty to account. *See* **Agent** (Account—Duty to account).

Profit from trust. *See* **Trust and trustee** (Profit from trust—Account of profits—Agents for trust).

Bank account. *See* **Bank** (Account).

Current account—

Part payment—

Limitation of action. *See* **Limitation of action** (Part payment—Current account).

Falsification. *See* **Criminal law** (Falsification of accounts).

Friendly society officers' accounts. *See* **Friendly society** (Accounts of officers).

Indebtedness—

Liability of debtor in single sum—

Current account between debtor and creditor for goods supplied—Payments made by debtor on account generally—Nature of indebtedness—Whether for entire balance as one debt or for items in respect of goods supplied. **Re Footman Bower & Co Ltd** [1961] 2 161, ChD.

Inspection—

Scope of obligation—

Licence agreement—Agreement in relation to patents and trade marks—Royalty payable calculated on price of goods—Licensee to keep accounts and to permit licensor to examine and take copies of books, etc—Scope of obligation to permit examination of books and documents. **Peter Pan Manufacturing Corpn v Corsets Silhouette Ltd** [1963] 3 402, ChD.

Joint account—

Husband and wife—

Account operated solely by husband. Whether balances credited to joint account belonged to wife on husband's death. *See* **Husband and wife** (Presumption of advancement—Joint bank account—Current and deposit accounts—Each spouse having authority to draw on the account, but account operated in fact solely by husband).

Investments purchased in name of husband with money from joint account—

Moneys in account contributed solely by wife. *See* **Husband and wife** (Property—

Investments purchased in name of one or other spouse with money from joint account—Moneys in account contributed solely by wife).

ACCOUNT (cont)

Purchaser of goods—

Proceeds of sub-sales—

Duty of purchaser to account to vendor. *See* **Sale of goods** (Passing of property—Vendor retaining property in goods—Duty of purchaser to account for proceeds of sub-sales).

Share premium account. *See* **Company** (Share premium account).

Solicitor's account—

Client's account. *See* **Solicitor** (Clients' account).

Telephone. *See* **Telegraphs and telephones** (Telephone account).

Wilful default—

Liability to account on footing of wilful default—

Executor. *See* **Executor and administrator** (Account—Account on footing of wilful default).

ACCOUNTANCY

Principles of accountancy—

Income tax—

Computation of profits. *See* **Income tax** (Computation of profits—Accountancy principles).

ACCOUNTANT

Lien—

Unpaid fees—

Particular lien—Books and papers of client coming into possession of accountant during course of ordinary professional work—Whether accountant entitled to exercise lien over books and papers for unpaid fees. **Woodworth v Conroy** [1976] 1 107, CA.

Negligence—

Information or advice—

Knowledge third party might rely on advice. *See* **Negligence** (Information or advice—Knowledge third party might rely on advice—Accountant).

Professional indemnity insurance. *See* **Insurance** (Liability insurance—Professional indemnity insurance—Accountant).

ACCOUNTING PERIOD

Income tax. *See* **Income tax**.

ACCOUNTS

Licensing agreement—

Inspection of accounts by licensor. *See* **Licence** (Accounts—Inspection by licensor).

Local authority—

Inspection. *See* **Local government** (Documents—Inspection—Accounts of local authority).

ACCRUER

Settlement—

Accruer clause. *See* **Settlement** (Accruer clause).

Will. *See* **Will** (Accruer).

ACCUMULATION

Accumulation of income—

Statutory power of maintenance. *See* **Trust and trustee** (Maintenance—Statutory power).

Accumulation of surplus income—

Exhaustive discretionary trust—

Whether any determination of interest rendering estate duty leviable on trust fund. *See* **Estate duty** (Determination of life interest—Discretionary trust—Accumulation of surplus income—Exhaustive discretionary trust).

Discretionary trust. *See* **Trust and trustee** (Discretionary trust—Accumulation).

Excessive period—

Charitable trust—

General charitable intent—Rights of next of kin—Law of Property Act 1925, s 164(1). **Re Bradwell's Will Trusts** [1952] 2 286, ChD.

Destination of income accruing after statutory period—

Accumulation directed for the benefit of a class—Interests of members of class contingent—Cesser of statutory period—Entitlement to surplus income—Rights on attainment of twenty-one of person having contingent interest—Direction to accumulate excluding statutory power of maintenance—Law of Property Act 1925, s 164(1)(b).—Trustee Act 1925, s 31(1)(ii). s 69(2). **Re Ransome's Will Trust** [1957] 1 690, ChD.

Direction to accumulate excess income during life of annuitant—Residue to be given to charities—Charities to be selected after death of annuitant by then trustees—Destination of excess income accruing after twenty-one years from testator's death—Accumulations Act 1800.—Law of Property Act 1925, s 164. **Re Jefferies** [1936] 2 626, ChD.

Duration of minorities—

Direction to accumulate during minority of testator's grandchildren—Validity—Period of accumulation—Law of Property Act 1925, s 164(1)(c). **Re Watt's Will Trusts** [1936] 2 1555, ChD.

Exception—

Provision for raising portions—Provision creating fund available for portions—Settlement—Fund for benefit of settlor's grandchildren already living at date of settlement—Annual sum to be paid to each grandchild on attaining 18—Remainder of income to be accumulated, in separate fund, from date of settlement until youngest grandchild attained 23—Donees of both funds to be chosen by trustees from among grandchildren and their children—Whether provision for raising portions—Whether life of settlor only period available—Trustee Act 1925, s 31.—Law of Property Act 1925, s 164(1)(a), (d), (2)(ii)(a). **Re Bourne's Settlement Trusts** [1946] 1 411, CA.

ACCUMULATION (cont)

Excessive period (cont)—

Power to accumulate—

Application of statutory restriction—Implied trust—Will containing power as distinct from direction, to accumulate—Annuities continuing charge on income—Title to income unlawfully accumulated—Law of Property Act 1925, s 164(1)(b). **Re Robb's Will Trusts** [1953] 1 920, ChD.

Unit trust—

Application of statutory restriction on accumulation—Law of Property Act 1925, s 164(1). **Re AEG Unit Trust (Managers), Ltd's Deed** [1957] 2 506, ChD.

Implied provision—

Income shares—

Estate duty on passing of income share on death of beneficiary directed by settlement to be borne by income not capital—Whether implied trust for accumulation of income—Whether within exception for provision for payment of debts—Law of Property Act 1925, s 164(1)(a), (2)(i). **Re Rochford's Settlement Trusts** [1964] 2 177, ChD.

Settlement—

Income tax. *See* **Income tax** (Settlement—Accumulation of income).

Surplus income—

Accumulation during minority—

Application of accumulations on beneficiary attaining majority—Beneficiary having vested but defeasible interest—Income arising from trust fund—Trust fund consisting of personality—Trust fund subject to power of appointment—Beneficiary entitled to interest in fund in default of appointment—Interest contingent on beneficiary attaining 21—Direction that contingent gifts to carry intermediate income—Whether beneficiary 'entitled to the property from which such income arose...absolutely'—Whether beneficiary entitled on attaining 21 to accumulations absolutely or subject to power of appointments—Trustee Act 1925, s 31(2)(i). **Re Sharp's Settlement Trusts** [1972] 3 151, ChD.

Destination of accumulations—Income of fund held on trust for grandchildren at 21—Statutory power of maintenance—Trustee Act 1925, s 31(2). **Re Joel's Will Trusts** [1966] 2 482, ChD.

Destination—

Will—Residue or undisposed of—Direction to accumulate and invest surplus income for 21 years from testator's death—One third part to be held for residuary legatees—Income of two third parts to be paid to widow during her lifetime—Residuary trust fund to be divided on widow's death—Whether accumulations of two third parts undisposed of or included in residuary trust fund. **Re Oliver** [1947] 2 162, ChD.

Determination of trust for accumulation—

Will—Annuities payable out of residue—Residuary legacy after death of last annuitant—Determination of trust for accumulation of surplus—Right of residuary legatee to call for accumulation of surplus—Right of residuary legatee to call for transfer of residue—Possibility of accumulation ceasing should annuitant survive more than 21 years—Right of next-of-kin on intestacy—Law of Property Act 1925, s 164. **Re Blake** [1938] 2 362, HL.

Trust income—

Total income for tax purposes. *See* **Income tax** (Total income—Trust income—Accumulation).

ACCUSED

Character—

Evidence of character in criminal proceedings. *See* **Criminal evidence** (Character of accused).

Competence as witness. *See* **Criminal evidence** (Competence as witness—Accused).

ACKNOWLEDGMENT

Limitation of action. *See* **Limitation of action** (Acknowledgment).

AQUIESCENCE

Equitable defence—

Knowledge—

Imputed knowledge—Rescission of sale sought by plaintiff beneficiary on ground that purchaser's renunciation of executorship was invalidated by prior acts of administration—Plaintiff received payment on account of his share of proceeds of sale—Whether knowledge of right to avoid sale should in the circumstances be imputed to plaintiff. **Holder v Holder** [1968] 1 665, CA.

Estoppel—

Acquiescence in expenditure being made in reliance on right over land of another—

Effect on successors in title—Garage erected by owner of land in reliance on right of access over adjoining owner's land—Approved by adjoining owner—Successors in title bound although no land charge Registered—Land Charges Act 1925, s 10(1), s 13(2).—Law of Property Act 1925, s 199(1)(i). **E R Ives Investments Ltd v High** [1967] 1 504, CA.

Conduct. *See* **Estoppel** (Conduct).

ACQUITTAL

Certiorari to quash. *See* **Certiorari** (Acquittal).

Criminal proceedings—

Costs. *See* **Costs** (Acquittal).

ACT OF GOD

Frustration of contract. *See* **Contract** (Frustration—Act of God).

ACT OF PARLIAMENT

See **Statute**.

ACT OF STATE

Generally. *See* **Constitutional law** (Act of state).

India. *See* **India** (Public authorities—Acts of state).

ACTION

- Account. *See* **Account** (Action for).
- Administration action. *See* **Administration of estates** (Administration action).
- Admiralty—
 - Action in personam. *See* **Admiralty** (Jurisdiction—Action in personam).
 - Action in rem. *See* **Admiralty** (Jurisdiction—Action in rem).
- Alternative claims—
 - Joinder of several defendants—
 - Costs. *See* **Costs** (Apportionment—Action—Several defendants—Alternative claims against one defendant or against the others).
- Authority to bring—
 - Board of Trade bringing action in name of company. *See* **Company** (Investigation by Board of Trade—Action begun by Board of Trade in plaintiff company's name consequent on inspector's report).
- Cause of action—
 - Declaration of ultra vires—
 - Need to show injuria. *See* **Town and country planning** (Development—Permission for development—Ultra vires).
 - Indorsement on writ. *See* **Writ** (Indorsement—Cause of action).
 - Not disclosed on indorsement on writ. *See* **Writ** (Indorsement—Defect in indorsement—Cause of action not disclosed).
 - Statute-barred—
 - Extension of validity of writ. *See* **Writ** (Extension of validity—Cause of action statute-barred).
 - Subsisting—
 - Financial provision—Application in divorce proceedings—Survival for benefit of applicant's estate. *See* **Divorce** (Financial provision—Application practice and procedure—Death of applicant).
 - Order for damages and costs against co-respondent—Survival against his estate. *See* **Divorce** (Damages—Co-respondent—Costs—Death of co-respondent after order for payment of damages and costs made against him—Whether cause of action that survived against his estate by virtue of Law Reform (Miscellaneous Provisions) Act 1934 s1(1)).
- Civil action—
 - Competence of civil action at suit of person aggrieved by breach of statutory duty. *See* **Statutory duty** (Breach of duty imposed under sanction of penalty).
 - Perjury—
 - Right of injured party. *See* **Perjury** (Civil action).
- Compromise—
 - Fatal accident claim. *See* **Fatal accident** (Compromise).
 - Generally. *See* **Practice** (Compromise of action).
 - Infant—
 - Entitlement of infant plaintiff on majority to moneys recovered in action for damages. *See* **Damages** (Infant—Claim by infant plaintiff—Entitlement of infant on majority to moneys recovered—Compromise of action).
- Consolidation of actions. *See* **Practice** (Consolidation of actions).
- Contract—
 - Service out of the jurisdiction. *See* **Practice** (Service out of the jurisdiction—Action on contract governed by English law).
- County court. *See* **County court** (Action).
- Criminal offence—
 - Duty to prosecute before bringing civil action—
 - Prosecution abandoned—Effect—Police having been informed, decided, after investigation, not to prosecute—Plaintiffs in civil action for damages arising from theft were persons of limited means—Whether civil action barred because prosecution for theft not first instituted. **Oloro v Ali** [1965] 3 829, QBD.
- Damages—
 - Exclusion of right of action—
 - War injury. *See* **War injury** (Exclusion of right of action for damages).
- Deconsolidation of actions. *See* **Practice** (Deconsolidation of actions).
- Discontinuance. *See* **Practice** (Discontinuance of action).
- Dismissal—
 - Abuse of process of court—
 - Second action relating to same subject-matter and parties as earlier action—Purpose of second action to make use of pleadings in first action to defeat defence available in first action—Action for specific performance of agreement for sale of land—Defence that no sufficient memorandum in writing of agreement—Particulars of defence setting forth further terms of agreement—Second action brought by plaintiff in order to rely on particulars in first action as constituting or contributing to a sufficient memorandum—Second action having different cause of action—Whether second action an abuse of process of court—RSC Ord 18, r 19. **Hardy v Elphick** [1973] 2 914, CA.
 - Want of prosecution—
 - Jurisdiction of county court. *See* **County court** (Jurisdiction—Dismissal of action for want of prosecution).
 - Practice. *See* **Practice** (Dismissal of action for want of prosecution).
- Fatal accident. *See* **Fatal accident** (Action).
- Foreign defendant—
 - Stay of proceedings. *See* **Practice** (Stay of proceedings—Foreign defendant).
- Immunity from civil action—
 - Judge. *See* **Judge** (Immunity from suit).

ACTION (cont)

Immunity from civil action (cont)—

Witness—

Privilege of witness in court of justice—Conspiracy—Alleged conspiracy to injure by false statements—Report to Director of Public Prosecutions—Evidence at inquiry by Benchers of Inn of Court—Evidence at criminal trial—No civil cause of action. **Marrinan v Vibart** [1962] 1 869, QBD, [1962] 3 380, CA.

Privilege of witness in court of justice—No immunity where gist of action malicious abuse of process of court—Action not defeated merely because alleged abuse included giving of false evidence—Evidence given by solicitor to support application for bench warrant against solicitor—Claim including allegation of perjury by solicitor—Refusal to strike out statement of claim. **Roy v Prior** [1970] 2 729, HL.

In rem—

Admiralty. *See* **Admiralty** (Jurisdiction—Action in rem).

Joinder of causes of action. *See* **Practice** (Joinder of causes of action).Limitation of action. *See* **Limitation of action**.

Local authority—

Right of action. *See* **Local authority** (Right of action).

Magistrates—

Acts of justices for which action may be maintained. *See* **Magistrates** (Acts of justices for which action may be maintained).

Maintenance of action. *See* **Maintenance of action**.

Member of Parliament—

Action against member of Parliament. *See* **Parliament** (Privilege—Action against member of Parliament).

Minor—

Proceeding by next friend—

Adoption of action on attaining full age. *See* **Practice** (Persons under disability—Minor—

Adoption of action on attaining majority).

Money had and recieved. *See* **Money** (Money had and received).

Mortgage—

Action by mortgagee for possession. *See* **Mortgage** (Action by mortgagee for possession).

New trial—

County court. *See* **County court** (New trial).

Parties. *See* **Practice** (Parties).

Pending action—

Registration as land charge. *See* **Land charge** (Pending action).

Probate. *See* **Probate** (Action).

Proof—

Burden of proof. *See* **Burden of proof**.

Quasi-contract—

Cause of action. *See* **Money** (Money had and received).

Receiver—

Action against receiver. *See* **Receiver** (Action against receiver).

Relator action—

Attorney-General. *See* **Attorney-General** (Relator action).

Injunction—

Public right. *See* **Injunction** (Relator action—Public right).

Removal—

Certiorari—

Liverpool Court of Passage. *See* **Liverpool Court of Passage** (Certiorari—Removal of action).

Representative action—

Generally. *See* **Practice** (Parties—Representative proceedings).

Minority shareholder. *See* **Company** (Minority shareholder—Representative action).

Representation of deceased party—

Grant of administration—

Intestacy. *See* **Intestacy** (Grant of administration—Grant for purpose of representation of deceased in action).

Right of action—

Assignment. *See* **Chose in action** (Assignment—Right of action).

Settlement—

Generally. *See* **Practice** (Compromise of action).

Leave—

War time. *See* **Emergency legislation** (Settlement of action).

Taxation of costs—

Legal aid. *See* **Legal aid** (Taxation of costs—Settlement by parties during the trial).

Severance of causes of action—

Defamation. *See* **Libel and slander** (Severance of causes of action—Actions for libel and slander).

Stay of proceedings—

Arbitration clause. *See* **Arbitration** (Stay of court proceedings).

Generally. *See* **Practice** (Stay of proceedings).

Third party procedure. *See* **Practice** (Third party procedure).

Tort—

Cause of action. *See* **Tort** (Cause of action).

Trade union—

Member. *See* **Trade Union** (Action by member against union).

Transfer—

Chancery Division to Court of Chancery of Lancaster. *See* **Practice** (Transfer of action—Action assigned to Chancery Division—Whether action should be transferred to Court of Chancery of Lancaster).

ACTION (cont)

Transfer (cont)—

Commercial Court—

Transfer to Commercial Court. *See* **Commercial Court** (Practice—Summons for transfer of action).County court to High Court. *See* **County court** (Transfer of action—Transfer to High Court).District registry to London. *See* **Practice** (Transfer of action—Transfer of action commenced in district registry to London).High Court to county court. *See* **County court** (Transfer of action—Transfer from High Court).Transfer between Divisions of High Court. *See* **Practice** (Transfer of proceedings between Divisions of High Court).

Trial—

Practice. *See* **Practice** (Trial).Trover. *See* **Trover**.Trustee Savings Bank. *See* **Trustee Savings Bank** (Action).

Undertaking to court—

Effect of undertaking given to court in maintenance proceedings—

Whether undertaking gives rise to cause of action. *See* **Divorce** (Maintenance—Arrears—Consent order for maintenance suspended and undertaking given to court by husband to pay one-third of income to plaintiff—Whether plaintiff had cause of action against her deceased husband's estate for arrears of payments).

Vexatious—

Restraining. *See* **Vexatious proceedings**.

Want of prosecution—

Dismissal. *See* **Practice** (Dismissal of action for want of prosecution).

Writ—

Generally. *See* **Writ**

Mortgage—

Judgment entered in default of appearance. *See* **Mortgage** (Action by mortgagee for possession—Action commenced by writ).**ACTUARY**

Valuation—

Damages—

Personal injury. *See* **Damages** (Personal injury—Amount of damages—Actuarial calculations).**ADDITION OF COUNTS**

Indictment—

Copy of indictment to accused. *See* **Indictment** (Copy of indictment—Supply to accused—Addition of counts).**ADDITIONAL ASSESSMENT**Income tax. *See* **Income tax** (Additional assessment).**ADDRESS**

Deputy circuit judge—

Mode of address. *See* **Judge** (Circuit judge—Deputy circuit judge—Mode of address).

Licensing—

Club—

Registration certificate. *See* **Licensing** (Club—Registration certificate).Moneylender. *See* **Moneylender****ADEMPTION**Administration of estates. *See* **Administration of estates** (Ademption).Will. *See* **Will** (Ademption).**ADJOURNMENT**Affiliation proceedings. *See* **Affiliation** (Application for order—Adjournment).

Appeal—

Criminal appeal. *See* **Criminal law** (Court of Appeal—Adjournment).Income tax appeal. *See* **Income tax** (Appeal—Hearing—Adjournment).

Chambers—

Chancery Division. *See* **Practice** (Chambers proceedings—Adjournment to judge).County court. *See* **County court** (Adjournment).Generally. *See* **Practice** (Adjournment of proceedings).

Magistrates—

Refusal—

Certiorari. *See* **Certiorari** (Ground of complaint—Failure to grant adjournment—Magistrates' court).Magistrates' court. *See* **Magistrates** (Adjournment).Motion. *See* **Practice** (Motion—Adjournment).

Tribunal—

Failure—

Review of discretion by appellate court. *See* **Tribunal** (Appeal to Divisional court on point of law—Point of law—Exercise of a judicial discretion).**ADJUSTMENT ORDER**

Property—

Divorce. *See* **Divorce** (Property—Adjustment order).**ADMINISTRATION**Expenses. *See* **Administration of estates** (Order of application of assets—Expenses).Trust. *See* **Trust and trustee** (Administration of trust).

ADMINISTRATION OF ESTATES

Abatement of devise. *See* Devise—Abatement, *ante*.

Abatement of legacy. *See* Legacy—Abatement, *oost*.

Action—

Personal representatives refusing to sue—

Action by beneficiary—Adding personal representatives as defendants. *See* Practice (Parties—Adding defendants—Personal representatives).

Ademption—

Double portions—

Share of residue adeemed by gifts inter vivos—Residue bequeathed as net fund remaining after payment of testamentary expenses, etc.—Whether gifts should be brought into account against net residue after deducting estate duty or against gross residue *Re Turner's Will Trusts* [1968] 1 321, ChD.

Ademption. *See* Will (Ademption).

Administrator. *See* Executor and administrator (Administrator).

Administration action—

Administration by court—

Order for general administration—Sanction of court—Representatives cannot exercise powers without sanction of court. *Re Viscount Furness (decd)* [1944] 1 66, ChD.

Appeal—

Fresh evidence—Evidence obtainable at time of trial—Incapacity of father—Children's failure to make enquiries—Reasonableness. *Re Herwin (decd)* [1953] 2 782, CA.

Claim based on foreign judgment—

Right of successful plaintiff in foreign action to make claim in administration action. *Re Flynn (decd)* (No 2) [1969] 2 557, ChD.

Creditor—

No personal representative in existence—Commencement by originating summons—Appointment of receiver pending grant—Directions to be made in such cases—RSC Ord 55, rr 3, 4. *Jackman v Sutcliffe, Houghton v Same* [1942] 2 296, ChD.

Unwilling defendant—Whether action maintainable by personal representative against creditor unwilling to be defendant—RSC Ord 55, r 4. *Re Bradley (decd)* [1956] 3 113, ChD.

Right to bring—

Debt due from estate—Arrears of alimony due to plaintiff—Whether a debt due from the estate—RSC Ord 42, r 24—Matrimonial Causes Rules 1937 (SR & O 1937 No 1113), rr 62, 81. *Re Woolgar* [1942] 1 583, ChD.

Transfer of action—

Notice of transfer—Action commenced in Queen's Bench Division—Plaintiff in transferred action not served with notice of administration order or of order transferring his action—Whether plaintiff entitled to apply for order of transfer to be discharged—RSC Ord 49, r 5. *Re Capelovitch's Estate and Will Trusts* [1957] 1 33, ChD.

Administration bond—

Assignment—

Breach of condition—Assignment of bond for breach of condition—Discretion of court—Supreme Court of Judicature (Consolidation) Act 1925, s 167(4). *In the Estate of Weiss (decd)* [1962] 1 308, Prob.

Sureties—

Liability—Liability of sureties on bond after estate wound-up. *Hawell v Foster* [1954] 2 736, CA. CA.

Administration expenses. *See* Order of application of assets—Expenses, *post*.

Adopted person—

Administration of adopted person's estate—

Foreign adoption—Change of domicile to English domicile—Whether adoptive mother entitled to administration *Re Wilby (decd)* [1956] 1 27, Prob.

Advertisement for claims—

No claims by beneficiaries—

Estate wound-up—Balance of estate transferred to Crown as bona vacantia—Grant of administration de bonis non to next of kin—Effect of grant—Form of advertisement—Trustee Act 1925, s 27. *Re Aldhous (decd)* [1955] 2 80, ChD.

Allhusen v Whittell—

Exclusion of rule in. *See* Fund for payment of legacies—

Annuity—

Estate insufficient—

Annuity in nature of settled legacy—Rights of annuitant—Abatement. *Re Carew* [1939] 3 200, ChD.

Charge on capital or income—Annuity to daughter payable during widow's lifetime and subject to income of residuary trust fund being first applied to payment of widow's annuity—Widow's annuity charged on capital if income of residuary trust fund insufficient to pay it—Whether daughter's annuity charged on capital or continuing charge. *Re Griffiths* [1945] 1 610, CA.

Direction to appropriate fund—Annuity charged on income and capital of appropriated fund—Rights of annuitant and those entitled to fund on cesser of annuity—Value of annuity fund to enter into abatement computation—Annuitant not entitled to be paid capital sum in respect of annuity. *Re Thomas* [1945] 2 586, ChD.

Annuity

Estate insufficient—

Direction to appropriate fund—Gift of so much of appropriate fund as may not be required for annuity—Rights of annuitant. *Re Nicholson* [1938] 3 270, ChD.

Annuity—

Estate insufficient—

Direction to appropriate fund—Gift over of fund subject to annuity—Rights of annuitant. *Re Farmer* [1939] 1 319, ChD, *Re Wilson* [1940] 4 57, ChD.

ADMINISTRATION OF ESTATES (cont)

Annuity (cont)—

Estate insufficient (cont)—

Power to resort to capital—Annuity payable out of residue—Will giving trustees power to resort to capital—Rule as to abatement excluded—Rights of annuitants and residuary legatees. **Re De Chassiron** [1939] 3 321, ChD.

Retention of income to meet annuity should estate's income prove insufficient—Subsequent surplus of income—Accumulation period expired—Entitlement thereafter—Whether capital used to pay annuity in early years can be recouped from surplus income of subsequent years—Law of Property Act 1925, s 164(1). **Re Berkeley (decd)** [1968] 3 364, CA.

Valuation of annuity—Annuities charged on income and capital—Payment in full possible if capital resorted to—Whether rule that annuities be valued is of universal application. **Re Hill** [1944] 1 502, CA.

Valuation of annuity—Annuity free of income tax—Death of covenantor—Estate actuarially insolvent—Bankruptcy Act 1914, s 30(3), (4).—Administration of Estates Act 1925, Sch 1, Part 1, para 2.—Trustee Act 1925, s 33(1)(i).—Finance Act 1941, ss 25, 26. **Re Viscount Rothermere** [1944] 2 593, ChD.

Valuation of annuity—Annuities to several persons free of tax—Rights of survivorship on death of any person—Death of one annuitant—Rate of income tax and allowances. **Re Ball** [1940] 4 245, ChD.

Valuation of annuity—Annuities to several persons free of tax—Rights of survivorship on death of any person—Deferred annuities to infants—Rate of income tax and allowances. **Re Twiss** [1941] 1 93, ChD.

Valuation of annuity—Annuity to widow—Residue going on intestacy—Adjustment of widow's rights—Payment of capital value of annuity. **Re Vardon** [1938] 4 306, ChD.

Valuation of annuity—Death of annuitant before date of valuation. **Re Bradberry, Re Fry** [1942] 2 629, ChD.

Application for grant of administration—

Practice. *See* Grant of administration—Practice—Application, *post*.

Apportionment—

Capital or income. *See* Capital or income—Apportionment, *post*.

Dividends—

Sale of shares pursuant to option in will—Private sale—Whether purchaser entitled to whole of dividends declared in respect of year in which sale carried out—Apportionment Act 1870. **Re Wimbush** [1940] 1 229, ChD.

Appropriation by personal representatives—

Intestacy. *See* Intestacy (Appropriation by personal representatives).

Assent—

Legal estate in land—

Assent by person in one capacity to himself in another capacity—Writing necessary if legal estate to pass—Whether deed of appointment of new trustee could operate, by virtue of implied vesting declaration, as assent in writing signed by personal representative—Administration of Estates Act 1925, s 36(4).—Trustee Act 1925, s 40(1). **Re King's Will Trusts** [1964] 1 833, ChD.

Mortgaged property—

Assent subject to mortgage—Power not mandatory obligation. **Williams v Holland** [1965] 2 157, CA.

Assets—

Dealings with assets. *See* Executor and administrator (Dealings with assets of estate).

Order of application. *See* Order of application of assets, *post*.

Bankruptcy. *See* Bankruptcy (Administration in bankruptcy of estate of person dying insolvent).

Beneficial interest—

Unadministered estate—

Next-of-kin—Whether next-of-kin have proprietary interest in assets of estate. **Eastbourne Mutual Building Society v Hastings Corpn** [1965] 1 779, ChD.

Sole beneficiary—Nature of sole beneficiary's interest in property—Chose in action. **Re Leigh's Will Trusts** [1969] 3 432, ChD.

Capital or income—

Apportionment—

Settlement by will of residuary estate—Power to postpone conversion—Tenants for life entitled to retain income of wasting or hazardous assets—Residue including absolute interest in income-producing fund subject to annual charge on income. **Re Holliday's Will Trusts** [1947] 1 695, ChD.

Compensation for damage to requisitioned property—

Leasehold property of estate requisitioned for war purposes—Compensation paid for cost of repairs after property derequisitioning—Whether compensation capital or income—Compensation (Defence) Act 1939, s 2(1)(b), (2), (3). **Re Thompson (decd)** [1948] 2 223, ChD.

Determination of trustees—

Apportionment between capital and income—Power to trustees to determine in 'cases of doubt'. **Re Fenwick** [1936] 2 1096, ChD.

National savings certificates—

Additions to sum invested—Certificates encashed after death of holder—Whether additions constituting interest in nature of income. **Re Holder's Will Trusts** [1953] 2 1, ChD.

ADMINISTRATION OF ESTATES (cont)**Capital or income (cont)—****Payments under insurance policy—**

Annual sums payable after intestate's death—Whether capital or income—Whether subject to conversion and investment—Administration of Estates Act 1925, s 33. **Re Fisher** [1943] 2 615, ChD.

Rent—

Quarterly rent—Death of testator on the morning of a quarter day—Whether rents should be treated as capital or income of residuary estate—Apportionment. **Re Aspinall (decd)** [1961] 2 751, ChD.

Settled fund—

Resulting trust to testator's estate of income of fund—Whether capital or income of estate. **Re Hey's Settlement Trust and Will Trust** [1945] 1 618, ChD.

Settled leaseholds—

War damage—Value payments—War Damage Act 1943, ss 7(1), 10(2). **Re Scholfield (decd)** [1949] 1 490, ChD.

Commorientes—**Grant of representation—**

Practice—Evidence to be submitted at earliest opportunity. **Practice Direction** [1964] 2 771, Prob.

Statutory presumption—

Presumption—Evidence in rebuttal of presumption—Sufficiency of evidence—Law of Property Act 1925, s 184. **Re Lindop** [1942] 2 46, ChD.

Survival—

Presumption—Applicability—Persons killed by bombs falling outside premises which were set on fire—Presumption applicable—Law of Property Act 1925, s 184. **Re Mercer** [1944] 1 759, ChD.

Presumption—Contemporaneous deaths—Five persons killed in same house by bomb—No evidence as to moment of deaths—Presumption inapplicable—Law of Property Act 1925, s 184. **Hickman v Peacey** [1945] 2 215, HL.

Presumption—Death in order of seniority—'Uncertainty' of survival—Degree of evidence needed to remove—Law of Property Act 1925, s 184. **Re Bate (decd)** [1947] 2 418, ChD.

Completion of administration—**New trustees—**

Appointment—Administrative duties ended—Power of administrator with will annexed to appoint new trustees. **Re Cockburn (decd)** [1957] 2 522, ChD.

Valuation—

Residuary estate—Date for valuing estate for purpose of final distribution. **Re Gunther's Will Trusts** [1939] 3 291, ChD. **Re Oram** [1940] 4 161, ChD.

Residuary estate—Trust for sale with power to postpone conversion—Estate including unauthorised investments—Rights of tenant for life and remainder-man—Basis of valuation of unauthorised investments—Rate of interest to be allowed to tenant for life. **Re Parry** [1946] 2 412, ChD.

Contract—**Obligations of deceased—**

Liability of administrator. *See* **Executor and administrator** (Contract—Liability of administrator).

Contract entered into by testator—**Disclaimer of contract—**

Right of devisee to performance of contract at expense of personal estate—Property damaged by fire before testator's death—Insurance moneys paid in respect of damage—Contract for repairs accepted by testator. **Re Rushbrook's Will Trusts** [1948] 1 932, ChD.

Control of administration—**Jurisdiction of court—**

Trustee authorised to determine all questions—Determination to be conclusive and binding on all beneficiaries. **Re Wynn's Will Trusts** [1952] 1 341, ChD.

Costs—**Inquiry as to persons entitled—**

Direction by testator that testamentary expenses to be paid out of residue—Whether sufficient to throw costs of inquiry on residue—RSC Ord 65, r 14B. **Re Phillips** [1938] 4 483, CA.

Deficiency—**Priorities—**

Relative priorities of jointurees and portioners. **Re Keele Estates, Re Sneyd's Settlements, Re Sneyd (Walter) Will Trusts** [1952] 1 44, ChD.

Devise—**Abatement—**

Liability of specific devisees—Sale of certain properties specifically devised to meet liabilities of estate—Whether liabilities should be borne rateably by all specific devisees—Value for purposes of abatement. **Re Cohen (decd)** [1959] 3 740, ChD.

Benefit of contract—

Incidence or benefit of contract for work to be done on devised property before testatrix's death—Whether testatrix's residuary estate liable to meet cost of doing work not yet done at her death—Contractual obligation on part of testatrix towards contractor for work essential if devisee to be entitled to have work done after her death at expense of residue. **Re Day's Will Trusts** [1962] 3 699, ChD.

Future specific devise—

Intermediate income—Residuary gift—Whether devise carried intermediate income—Devise subject to defeasance—Accumulation of income until destination ascertained—Law of Property Act 1925, s 175.—Trustee Act 1925, s 31(1). **Re McGeorge (decd)** [1963] 1 519, ChD.

Gift cum onere. *See* **Gift—Gift cum onere, post.**

ADMINISTRATION OF ESTATES (cont)

Devise (cont)—

Liability on obligation annexed to property—

Incidence of liability—Whether testatrix' residuary estate liable to bear cost of putting into repair premises demised by testatrix with lessor's covenant to keep in repair—Covenant in lease to keep exterior of house in good and tenantable repair—Exterior of house in disrepair at testatrix' death. **Re Day's Will Trusts** [1962] 3 699, ChD.

Marshalling—

Compensation—Devise of property in Australia—Sale and application of proceeds partly in paying Australian death duty not ultimately payable out of proceeds of sale—Remittance of moneys forming part of estate to England—Balance of proceeds of sale not set aside and separately invested nor appropriated—Devisee's right to compensation in a fixed sum (being amount of balance) notwithstanding depreciation of remitted assets—No notional appropriation for want of consents required by Land Transfer Act 1897, s 4(1). **Re Matthew's Will Trusts** [1961] 3 869, ChD.

Disclaimer of contract. *See* Contract entered into by testator—Disclaimer of contract, *ante*.

Distribution—

Attorney—

Administrator 1—1 Powers—Intestate domiciled abroad—Appointment of trustees of infant's share—Powers of attorney administrator—Trustees' powers to maintain infant—Administration of Estates Act 1925, s 42(1).—Trustee Act 1925, s 31(1). **Re Kehr (decd)** [1951] 2 812, ChD.

Attorney- administrator—

Powers—Transfer of net estate after payment of debts to attorney of foreign administrator—Whether attorney-administrator justified in handing over assets to his principal or to third person on principal's instructions. **In the Estate of Weiss (decd)** [1962] 1 308, Prob.

Domicile—

Two wills—Later will valid by law of English domicile of origin—Earlier will valid by law of Cyprus, the testatrix's domicile at date of her death—Probate of earlier will granted in Cyprus—Letters of administration with both wills annexed granted in England to attorney-administrators—Whether administrators should hand over assets to Cypriot administrator—Wills Act 1861, s 1. **Re Manifold (decd)** [1961] 1 710, ChD.

Retention of assets to meet future liabilities—

Annuities covenant to be paid—Only contingency survivorship of annuitants. **Re Arnold** [1942] 1 501, ChD.

Domicile—

Deceased domiciled abroad—

Intestacy. *See* Intestacy (Grant of administration—Grant where deceased domiciled abroad).

Estate duty—

Direction for payment in testator's will—

Direction in testator's will for payment of estate duty out of residue—Duty on any 'gifts' made by testator in his lifetime to be so paid—Current and deposit bank accounts in joint names of testator and his wife—Whether credit balances on these accounts at his death were 'gifts' to wife within the direction for payment of duty. **Re Figgis (decd)** [1968] 1 999, ChD.

Direction to pay funeral and testamentary expenses...and all death duties' out of residue—Estate consisting of personality only—Duty payable on pecuniary gifts *inter vivos* prior to death—Duty payable on nomination in respect of post office savings bank account—Nomination taking effect on testator's death—Reference to estate duty *otiose* unless referring to gifts outside ambit of will—Application outside the ambit of will limited to gift taking effect on testator's death—Duty on *inter vivos* gifts to be borne by donees—Duty on nomination payable out of estate. **Re Walley (decd)** [1972] 1 222, ChD.

Incidence. *See* Estate duty (Incidence).

Payment of legacies before testamentary exoenses. *See* Order of application of assets—Statutory order—Variation—Pecuniary legacies to be paid before testamentary expenses—Incidence of estate duty, *post*.

Expenses—

Foreign chattels—

Carriage to England—Payment by specific legatee **Re Fitzpatrick (decd)** [1951] 2 949, ChD.

Order of application of assets. *See* Order of application of assets—Expenses, *post*.

Recovery as costs—

Fatal accident—Action by administrator under Law Reform (Miscellaneous Provisions) Act 1934—Grant of administration obtained solely for purpose of action—Expenses, incidental to increased value of estate, incurred after judgment. **Thomas v Cunard White Star Ltd, The Queen Mary** [1950] 2 1157, Adm.

Family provision. *See* Family provision.

Fund for payment of legacies—

No express direction as to payment—

Liability of realty—Administration of Estates Act 1925, s 34(3) Sch 1, Pt II, para 2. **Re Ridley (decd)** [1950] 2 1, ChD.

Share of converted residue undisposed of—Administration of Estates Act 1925, s 33 and s 34(3), Sch 1, Pt 2. **Re Eleanor Taylor's Estate and Will Trusts** [1969] 1 113, Durham Ch Ct.

Share of residue undisposed of—Administration of Estates Act 1925, s 34(3), Sch 1, Pt II, para 1. **Re Midgley (decd)** [1955] 2 625, ChD.

Share of residue undisposed of—Administration of Estates Act 1925, s 33(2). **Re Berrey's Will Trusts** [1959] 1 15, ChD.

Respective liability of capital and income—

Exclusion of rule in *Allhusen v Whittell*—**Re Ullswater (decd)** [1951] 2 989, ChD.

ADMINISTRATION OF ESTATES

Garnishee order—

Judgment creditor obtaining garnishee order—

Insolvent estate. *See* Order of application of assets—Judgment debt—Priority, *post*.

Gift—

Gift cum onere—

Paramount lien for debts due to company—Equitable charge—Administration of Estates Act 1925, s 35(1). *Re Turner* [1938] 2 560, ChD.Real estate contracted to be purchased—Cheque appropriated to purchase money—Vendor's lien—Liability of devisee—Contrary or other intention—Administration of Estates Act 1925, s 35. *Re Wakefield* [1943] 2 29, CA.Real estate contracted to be purchased—Death of testator before completion—Unpaid balance of purchase money—Costs of completion—Whether charged on real estate specifically devised—Contrary intention—Administration of Estates Act 1925, s 35(1). *Re Birmingham (decd)* [1958] 2 397, ChD.Real property mortgaged—Specific devise of part—Rest forming part of residuary estate—Order of application of real property towards discharge of mortgage debt—Administration of Estates Act 1925, s 34(3), s 35(1), Sch 1, Pt II. *Re Biss (decd)* [1956] 1 89, ChD.Real property mortgaged—Specific devise of part—Rest forming part of residuary estate—Liability of devised property to bear proportionate part of mortgage debt—Whether contrary intention shown within Administration of Estates Act 1925, s 35(1). *Re Neeld (decd)* [1962] 2 335, CA.Real property mortgaged—Specific devise of part—Rest of mortgaged property forming part of residuary estate—Liability of devisee or residuary estate for mortgage moneys—Administration of Estates Act 1925, s 35. *Re Cohen (decd)* [1959] 3 740, ChD.Real property subject to mortgages by deposit—Specific devise of part of realty so subject—Whether contrary intention within Administration of Estates Act 1925, s 35(1). *Re Cole (decd)* [1958] 3 102, CA.

Lapsed share of residue—

From what source payable—Whether payable out of residue or primarily out of lapsed share of residue. *Re Beaumont's Will Trusts* [1950] 1 802, ChD.

Grant of administration—

Application—

Special circumstances—Discretion of court—Widow of deceased having claim against husband's estate and under policy of insurance—Possibility of administrator having to take steps which might render policy of insurance void—Whether grant should be made, passing over widow, to deceased's step-father—Supreme Court of Judicature (Consolidation) Act 1925, s 162(1)(b), as amended by Administration of Justice Act 1928, s 9. *Re Newsham (decd)* [1966] 3 681, Prob.

Death—

Grant as evidence of death. *See* Evidence (Death—Evidence of procedural matters—Grant of probate or letters of administration).

Executor intermeddled—

Refused to take grant. *See* Executor and administrator (Executor—Intermeddling with estate—Refusal to apply for grant of probate).Intestacy. *See* Intestacy (Grant of administration).

Jurisdiction—

Registrar. *Practice Note* [1954] 2 112, Prob.

Practice—

Application—Attorney—Further grant to attorney administrator. *Practice Direction* [1957] 1 602, Prob.Application—Legitimation—Applicants right dependent on a person's legitimation. *Practice Direction* [1965] 2 560, Prob.Deceased domiciled abroad—Non-Contentious Probate Rules 1954 (SI 1954 No 796), r 29. *Practice Direction* [1957] 1 576, Prob.Deceased domiciled abroad. *Practice Direction* [1953] 2 1154, Prob.Domicile of deceased—Statement of domicile in grant—Non-Contentious Probate Rules 1954 (SI 1954 No 796), r 6(5)—Non-Contentious Probate (Amendment) Rules 1961 (SI 1961 No 72), r 2. *Practice Direction* [1961] 1 465, Prob.Grant to nominee of non-trust corporation—Non-contentious Probate Rules 1954 (SI 1954 No 796), r 34(3). *Practice Direction* [1956] 1 305, Prob.Solicitor's office reference. *Practice Direction* [1970] 3 176, Prob, [1972] 1 1056, FamD.

Standing search—

Facility for persons wishing to be informed of grant of representation—Application—Procedure *Practice Direction* [1975] 3 403, FamD.

Grant of representation—

Generally. *See* Probate (Grant).Practice. *See* Probate (Practice—Non-contentious probate—Grant of representation).

Hotchpot—

Intestacy—

Nomination by deceased—Nominations by deceased in favour of son of middle age—Relevance of size of payments in deciding whether advancement intended—Administration of Estates Act 1925, s 47(1)(iii)—Statute of Distribution (1670), s 3. *Re Hayward (decd)* [1957] 2 474, CA.Partial intestacy. *See* Partial intestacy—Hotchpot, *post*.

ADMINISTRATION OF ESTATES (cont)

Hotchpot (cont)—

Will—

Advances—Income between date of testatrix's death and date of distribution—Valuation date for capital—Three funds—Two settled funds bearing their own estate duty, the third fund being the testatrix's net residuary estate—Method of adjustment of beneficiaries' shares. **Re Slee (decd)** [1962] 1 542, ChD.

Interest—

Abatement of legacy. *See* Legacy—Abatement, *post*.

Creditor's right to interest—

Business of testator carried on—Creditor's right to interest—Rate of interest—Time from which interest runs—RSC, Ord 55, rr 62, 63. **Re Bracey** [1936] 2 767, ChD.

Rate of interest—

Unauthorised investments—Rate of interest on retention of unauthorised investments under power to postpone conversion. **Re Parry** [1946] 2 412, ChD.

Interest of Crown—

Order for sale—

Power of court—Application of Attorney-General—Power to order sale in any proceedings in High Court when it appears to court that Crown entitled to estate or interest in hereditament—Scope of power—Escheat to Crown—Freehold estate devised by testator in 1851—Estate subject to lease—Rents collected by solicitors—Solicitors unable to trace any person claiming to be beneficially entitled to freehold reversion—Solicitors seeking directions of High Court as to disposal of accumulated rents—Crown appearing to have interest by escheat—Title of Crown not established for purpose of proceedings—Whether court having power to order sale—Intestates Estates Act 1884, s 5. **Re Lowe's Will Trusts** [1973] 2 1136, CA.

Intestacy—

Generally. *See* Intestacy.Partial intestacy. *See* Partial intestacy, *post*.Judgment debt. *See* Order of application of assets—Judgment debt, *post*.

Legacy—

Abatement—

Interest—Whether interest payable out of legacy subject to abatement before other legacies. **Re Wyles** [1938] 1 347, ChD.

Conditional bequest—

Right to bequest—Bequest conditional on solicitor's proving will and acting in trusts—Appointment as solicitor to will—Charging clause entitling solicitor to payment for professional services—Will proved—Another solicitor appointed to administer estate—Whether solicitor entitled to conditional bequest. **Re Parry (decd)** [1969] 2 512, ChD.

Demonstrative legacy—

Partnership—Legacy payable out of share of partnership. **Re Webster** [1937] 1 602, CA.

Fund for payment. *See* Fund for payment of legacies, *ante*.

General legacy—

Bequest of shares—Shares forming part of testator's estate—Right of legatee to dividends declared before satisfaction of legacy. **Re Hall (decd)** [1951] 1 1073, ChD.

Payment to infant—

Discretion—Infant's share of residuary estate—Direction to pay at twenty-one or marriage—Whether married infant entitled to call for payment of share. **Re Somech (decd)** [1956] 3 523, ChD.

Real estate—

Liability for payment of legacies—Administration of Estates Act 1925, s 34(3), Sch 1, Part II, paras 1, 2. **Re Thompson** [1936] 2 141, ChD. **Re Rowe** [1941] 2 330, ChD.

Liability for payment of legacies—Intention of testatrix—Gifts by will of pecuniary legacies and their gift to daughter of real estate and residue of personal estate after 'payment thereof' of debts, funeral and testamentary expenses, and death and legacy duties—Substituted gift, by codicil, to daughter's sons in event of daughter predeceasing testatrix—Real and personal estate treated in codicil as single entity—Daughter surviving testatrix—Administration of Estates Act 1925, s 34(3), Sch 1, Part II, para 2. **Re Timson (decd)** [1953] 2 1252, ChD.

Settled legacies—

Payment by instalments—Apportionment of instalments between principal and interest. **Re Morley's Estate** [1937] 3 204, ChD.

Legacy to hospital—

Gift of share of residue—

Right to require transfer of funds. *See* National health service (Legacy to hospital—Gift of share of residue—Estate fully administered—Right to require transfer of funds).

Malaysia. *See* Malaysia (Administration of estates).

Mortgage—

Assent subject to mortgage. *See* Assent—Mortgaged property—Assent subject to mortgage, *ante*.

Oath of administrator—

Grant of administration on intestacy. *See* Intestacy (Grant of administration—Practice—Oath of administrator).

Order of application of assets—

Expenses—

Solvent estate—Administration expenses—Debts—Pecuniary legacies—Solvent estate—Will—Estate insufficient to meet pecuniary legacies—Gift of 'all my real estate' was residuary gift, although testatrix had only one property, her dwelling-house, which was real estate—Pecuniary legacies to be paid out of personal estate—Debts and administration expenses to be paid out of real estate—Administration of Estates Act 1925, s 34(3), Sch 1 Pt 2, para 2. **Re Wilson (decd)** [1966] 2 867, ChD.

ADMINISTRATION OF ESTATES (cont)**Order of application of assets (cont)—****Judgment debt—**

- Priority—Insolvent estate—Judgment creditor obtaining garnishee order against executors—Application of law of bankruptcy—Payment of creditors *pari passu*—Administration of Estates Act 1925, s 34(1), Sch 1, Pt 1.—Bankruptcy Act 1914, s 33(5), (7). **Pritchard v Westminster Bank Ltd (Westminster Bank Ltd Garnishee)** [1969] 1 999, CA.
- Priority—Judgment creditor obtaining garnishee order nisi against solicitors of executrix—Doubt whether estate solvent—Danger of preferring judgment creditor to other creditors of estate—Procedure—Payment of amount of judgment debt into court—Garnishee order not to be made absolute pending outcome of enquiry to determine whether estate solvent. **Lee (George) & Sons (Builders) Ltd v Olink** [1972] 1 359, CA.

Shares—

- Option to purchase—Bequest of option to purchase shares under market value—Whether specific bequest—Application of assets the subject of the option—Administration of Estates Act 1925, s 34(3), Sch 1, Pt II, para 6. **Re Eve (decd)** [1956] 2 321, ChD.

Statutory order—

- Variation—Agreement for debt to be first charge 194310307 estate—Effect of agreement—Inoperative where estate insolvent. **Re Rothermere** [1943] 1 307, ChD.
- Variation—Duties to be paid out of estate—Whether direction sufficient to displace statutory order—Administration of Estates Act 1925, ss 32, 34(3), Sch 1, Pt II. **Re Harland-Peck** [1940] 4 347, CA.
- Variation—Indication in will of intention to vary—Bequest of 'residue of my deposit account... after all...debts...have been liquidated'—Separate gift of residuary estate—Administration of Estates Act 1925, Sch 1, Part II, para 8(a). **Re Meldrum's Will Trusts** [1952] 1 274, ChD.
- Variation—Lapsed share of residue—Duties to be discharged out of testator's estate—Whether direction sufficient to displace statutory order—Administration of Estates Act 1925, s 34(3), Sch 1, Part II. **Re Sanger** [1938] 4 417, ChD.
- Variation—Pecuniary legacies to be paid before testamentary expenses—Incidence of estate duty—Administration of Estates Act 1925, ss 34(3), 53(3), Sch 1, Part II. **Re Anstead** [1943] 1 522, ChD.
- Variation—'Property specifically appropriated for payment of debts'—Property specifically given 'after payment of debts'—Exoneration of residue—Administration of Estates Act 1925, s 34(3), Sch 1, Pt II. **Re James** [1947] 1 402, ChD.
- Variation—Solvent estate—Provision in will excluding Administration of Estates Act 1925, Sch 1, Pt 2, para 1.—Direction in will to pay debts and testamentary expenses out of residuary estate—Will revoked as respects testatrix' foreign estate—Whether debts, etc payable out of foreign estate—Administration of Estates Act 1925, s 34(3), Sch 1, Pt 2, para 1. **Re Feis (decd)** [1963] 3 303, ChD.
- Variation—Sum given to executors in trust to pay debts, etc—Whether variation of order prescribed in Act—Administration of Estates Act 1925, s 34(3), Sch 1, Part II, paras 3,4,8. **Re Gordon** [1940] 3 205, ChD.

Partial intestacy—**Gift of annuity out of income of residue to testator's widow—**

- Trust for accumulation of surplus income for 21 years or her life—Gift of capital and accumulated income at expiration of that period to testator's children—Testator dying without issue—Trust for accumulation inoperative—Administration of Estates Act 1925, s 49. **Re Thornber** [1936] 2 1594, CA.

Grant of administration. See Intestacy (Grant of administration—Partial intestacy).**Hotchpot—**

- Any beneficial interest acquired by any issue of the deceased under the will of the deceased—Accruer of share of residue—Trusts of accrued share void after successive life interests to testator's son and son's son—At what value successive life interests brought into hotchpot—Administration of Estates Act 1925, s 49(a), s 47(1)(iii). **Re Morton (decd)** [1956] 3 259, ChD.
- Any beneficial interests acquired by any issue of the deceased—Intestacy as to one moiety of residue—Other moiety settled by will on trust to pay income to testator's daughter during her life and after her death for her children—Daughter's life interest subject to protective trust under which income might be applicable for benefit of daughter's husband—Whether interests to be brought into account in determining daughter's interest under partial intestacy included interest of daughter's children as well as daughter's own interest—Administration of Estates Act 1925, s 49(1). **Re Grover's Will Trusts** [1970] 1 1185, ChD.
- Any beneficial interest acquired by any issue of the deceased—Share of residue settled, subject to widow's life interest therein, on discretionary trusts for benefit of testator's son, C, or C's children during C's lifetime, and for C's children absolutely after his death—C surviving testator, but predeceasing widow—Distribution of residue as to which partial intestacy—Need of C's personal representative to bring into account share settled by will—Administration of Estates Act 1925, s 49(a). **Re Young's Will Trusts** [1950] 2 1040, ChD.

Testamentary life interest to widow—

- No issue—Whether income wholly payable to widow—Administration of Estates Act 1925, ss 33, 46, 49. **Re Plowman (decd)** [1943] 2 532, ChD.
- Right of widow to immediate payment of statutory legacy—Administration of Estates Act 1925, ss 46, 49, as amended by the Intestates Estates Act 1952 and Family Provision Act 1966. **Re Bowen-Buscarlet's Will Trusts** [1971] 3 636, ChD.
- Right to receive immediately her absolute interests in property undisposed of. **Re Douglas's Will Trusts** [1959] 3 785, CA.

Payment—**Order under Inheritance (Family Provision) Act 1938 for payment out of estate—**

- Whether enforceable by four day order. *See Family provision (Order—Order for payment to dependant of sum out of capital of testator's estate—Enforcement).*

ADMINISTRATION OF ESTATES (cont)

- Pendente lite—
 - Intestacy. *See* **Intestacy** (Administration pendente lite).
- Portions—
 - Double portions. *See* **Ademption**—Double portions, *ante*.
- Practice—
 - Parties—
 - Action by beneficiary—Adding personal representatives as defendants. *See* **Practice** (Parties—Adding defendants—Personal representatives).
 - Sale by court—
 - Commission—Auctioneer's commission—Sale at more than £25,000 *Re Wolfe (decd)* [1952] 2 545, ChD.
 - Service—
 - Notice to quit—Estate vested in President of Probate, Divorce and Admiralty Division—Service—Administration of Estates Act 1925, s 9. **Practice Direction** [1965] 3 230, Prob.
- Probate. *See* **Probate**.
- Retention of income to meet annuity. *See* **Annuity**—Estate insufficient—Retention of income to meet an annuity should estate prove insufficient, *ante*
- Revocation of grant of administration—
 - Intestacy. *See* **Intestacy** (Grant of administration—Revocation of grant).
- Sale by court. *See* **Practice**—Sale by court, *ante*.
- Sale for purposes of administration—
 - Recovery of possession for purposes of sale—
 - Recovery of mesne profits—Mortgaged house devised to four children of testator in equal shares—Daughter in occupation of one room—Request to executor to vest house in beneficiaries subject to mortgage instead of selling it—No assent by executor—Notice to quit given by executor—Action by executor for recovery of possession for purposes of sale in course of administration—Mesne profits—Whether mesne profits recoverable for period from testator's death or from expiry of notice to quit—Administration of Estates Act 1925, s 36(10). *Williams v Holland* [1965] 2 157, CA.
- Settled property—
 - Upkeep of mansion—
 - Insufficiency of income. *See* **Settlement** (Mansion house—Maintenance and repair—Income of settled estate insufficient).
- Trustee—
 - Determination of questions—
 - Jurisdiction of court. court—Trustee authorised to determine all questions, *ante*.
- Unadministered estate—
 - Beneficial interest. *See* **Beneficial interest**—Unadministered estate, *ante*.
- Valuation—
 - Completion of administration. *See* **Completion of administration**—Valuation, *ante*.
 - Direction to transfer land 'at valuation agreed for probate'. *See* **Will** (Valuation of effects—Probate valuation—Direction to executors to transfer land at 'valuation agreed for probate').

ADMINISTRATION OF JUSTICE

- Criticism of—
 - Contempt of court. *See* **Contempt of Court** (Publications concerning legal proceedings—Criticism of administration of justice).

ADMINISTRATIVE LAW

- Administrative acts—
 - Validity—
 - Procedural requirements—Mandatory or directory requirements—Notice—Manner of giving notice—Notice of proposals for establishment of school. *See* **Education** (School—Establishment or discontinuance of school—Proposals—Public notice—Manner of giving notice—Procedural requirements).
- Excessive punishment—
 - Administrative act constituting excessive punishment—
 - Certiorari. *See* **Certiorari** (Jurisdiction—Excessive punishment).
- Judicial remedies—
 - Certiorari. *See* **Certiorari**.
- Natural justice. *See* **Natural justice**
- Public authority—
 - Misuse of power. *See* **Public authority**—
 - Misuse of power. *See* **Public authority** (Statutory powers—Misuse of power).
- Unreasonable exercise of functions—
 - Local education authority—
 - Power of Secretary of State to intervene. *See* **Education** (Local education authority—Power of Secretary of State to prevent unreasonable exercise of function).

ADMINISTRATOR

- See* **Executor and administrator**.

ADMINISTRATOR AND EXECUTOR

- Solicitor administrator—
 - Costs. *See* **Solicitor** (Costs—Solicitor administrator).

ADMINISTRATOR AND EXECUTOR (cont)**Tort—**

Dead joint tortfeasor—

Contribution—Representation of estate. *See Tort* (Contribution between joint tortfeasors—No representative of dead joint tortfeasor's estate).**ADMIRALTY****Action in personam—**Practice. *See Practice—Action in personam, post.***Action in rem—**Jurisdiction. *See Jurisdiction—Action in rem, post.*Practice. *See Practice, post.***Appeal—****Practice—**Court of Appeal. *See Court of Appeal* (Practice—Admiralty appeals).**Time for appeal—**Date from which time runs. *See Court of Appeal* (Time for appeal—Date from which time runs—Admiralty action).**Appraisal and sale—****Application for order—**Application by owners—Application unopposed by claimants—Order for appraisal and sale of vessel on motion of defendant shipowners. **The Westport** [1965] 2 167, Adm.**Currency of sale—**Jurisdiction of Admiralty marshal—Commission to cause ship to be sold for the highest price obtainable—Sale in foreign currency—Whether marshal having jurisdiction to sell ship for sum expressed in foreign currency—RSC Ord 75, r 23(2), Appendix B, Form 13. **The Halcyon the Great** [1975] 1 882, QBD.**Execution of repairs prior to sale—**Application for order for execution of repairs prior to sale—Circumstances in which appropriate to make order—Repairs to vessel necessary for ship to be sold as going concern. **The Westport (No 2)** [1965] 2 447, Adm.**Payment out of proceeds of sale—**Priorities—Costs—Plaintiffs' claim compromised and paid by owner of vessel except for costs payable by him—Arrest of vessel maintained—Plaintiffs notified of registered mortgage—Vessel appraised and sold at instance of plaintiffs—Plaintiffs given priority in respect of their costs second only to those of the Admiralty marshal. **The Conet** [1965] 1 946, Adm.Priorities—Harbour authority's claims for rates incurred by ship—Authority given to Admiralty marshal to pay rates and include expenditure in his expenses of sale—Procedure in future cases—Port of London (Consolidation) Act 1920, s 75—RSC Ord 75, r 12(1). **The Queen of the South** [1968] 1 1163, Adm.Priorities—Harbour dues—Whether harbour authority can claim priority if it does not avail itself of special powers of arrest, distraint and sale under Harbour, Docks, and Piers Clauses Act 1847, s 44. **The Charger** [1966] 3 117, Adm.**Winding-up order made in Companies Court in relation to company owning ships—**Writ in rem issued and ships arrested—Whether Companies Court should give leave for actions in Admiralty Court to proceed—Companies Act 1948, s 228(1), s 231. **The Constellation** [1965] 3 873, Adm.**Arrest of vessel—****Breach of arrest—**Contempt of court—Attachment or committal of master—Fine—Whether court bound to attach or commit—RSC Ord 44, r 2(1). **The Jarlinn** [1965] 3 36, Adm.Insurance. *See Practice—Insurance—Arrested property, post.*Jurisdiction. *See Jurisdiction—Action in rem—Arrest of ship, post.*Practice. *See Practice—Arrest, post.***Release—**Order for release—Form of order—Contempt of court during period of arrest—RSC Ord 29, r 1. **Spanish Republican Government v Abodi Mendi** [1939] 1 701, CA.Release following provision of security—Order of foreign court limiting liability and for payment into court—Proceedings in foreign court in respect of wreck-raising expenses not yet commenced—Whether claim for wreck-raising expenses subject to limitation—Whether court would exercise discretion and release security—Merchant Shipping Act 1894, s 503(1), as amended—Merchant Shipping (Liability of Shipowners and Others) Act 1958, s 5(2), (4)(c). **The Putbus** [1969] 2 676, CA.Release on bail—Discretion of court—Considerations in exercise of discretion. **The Gay Tucan** [1968] 3 819, Adm.Stay of proceedings. *See Jurisdiction—Action in rem—Arrest of ship—Stay of proceedings, post.*Removal to safe berth. *See Practice—Action in rem—Ship under arrest—Removal of ship to safe berth in another place, post.***Arrested property—**Applications in respect of. *See Practice—Directions—Applications of Admiralty Registrar's practice direction, post.***Cargo—**

Discharge of cargo under arrest from vessel not under arrest—

Practice. *See Practice—Directions—Application of Admiralty registrar's practice directions, post.***Contempt of court—**Breach of arrest of vessel. *See Arrest of vessel—Breach of arrest—Contempt of court, ante.*Generally. *See Contempt of court* (Admiralty).

ADMIRALTY (cont)

Costs—

Jurisdiction—

County court—Salvage action—Plaintiffs' claim for more than 1,000—Payment into court of 500 taken out by plaintiffs—Plaintiffs' entitlement to costs—County Courts Act 1959, s 60(2), (5). **The Katcher I** [No 2] [1968] 3 350, Adm.

Taxation—

Review of taxation—Application to review Admiralty Registrar's decision—Procedure—RSC Ord 62, r 35. **Practice Direction** [1973] 3 896, QBD.

Counterclaim. *See Practice—Counterclaim, post.*

Evidence—

Expert evidence. *See Evidence* (Expert witness—Admiralty action).

Insurance—

Practice. *See Practice—Insurance, post.*

Insurance. *See Practice—Insurance, post.*

Interest. *See Practice—Interest, post.*

Jurisdiction—

Action in personam—

Collision—Owners of vessel outside jurisdiction—Place of business in England—Issue of writ in England on same day as issue of writ in United States arising out of same incident—Proceedings, brought subsequently in Greece, still pending—Whether jurisdiction to entertain action in England—Whether proceedings should be stayed—Administration of Justice Act 1956, s 4(1)(a), (c), (2). **The World Harmony** [1965] 2 139, Adm.

Action in rem—

Aircraft—Glider—Application for warrant of arrest of glider—Whether Admiralty court has power to entertain application—Administration of Justice Act 1956, s 1(1)(f), (k), (l), (4). **The Glider Standard Austria S H 1964** [1965] 2 1022, Adm.

Arrest of ship—Generally. *See Arrest of vessel, ante.*

Arrest of ship—Stay of proceedings—Arbitration agreement—Protocol agreement—Court bound to grant stay—Whether court bound to order release of ship from arrest—Arbitration Act 1950, ss 4(2)28 Sch 1. **The Golden Trader** [1974] 2 686, QBD.

Arrest of ship—That ship...or any other ship—Whether arrest of more than one ship lawful—Administration of Justice Act 1956, s 3(4) (b). **The Banco** [1971] 1 524, CA.

Beneficial ownership—Ship chartered on demise—Whether beneficially owned as respects all the shares therein by demise charterers—Administration of Justice Act 1956, s 3(4). **The Andrea Ursula** [1971] 1 821, Adm.

Claim arising out of agreement relating to use or hire of ship—Claim in contract arising out of agreement to render services to ship by use of motor boats—Arrest of ship—Whether plaintiffs entitled to proceed in rem—Interpretation Act 1889, s 1(1)—Administration of Justice Act 1956, s 1(1)(h), s 8(1). **The Queen of the South** [1968] 1 1163, Adm.

Claim arising out of agreement relating to use or hire of ship—Claim in respect of damage to tug supplied under a towage contract—Whether jurisdiction limited to claims in respect of agreements relating to the use or hire of a ship for the carriage of goods—Administration of Justice Act 1956, ss 1(1)(h), 3(4). **The Conoco Britannia** [1972] 2 238, QBD.

Claim arising out of agreement relating to carriage of goods—Claim in tort arising out of agreement relating to carriage of goods—Arrest of ship—Whether plaintiffs entitled to proceed in rem without first establishing a cause of action sustainable in law—Administration of Justice Act 1956, s 1(1)(h), s 3(4). **The St. Eleferio** [1957] 2 374, Adm.

Claim arising out of agreement relating to use or hire of ship—Salvage agreement—Agreement not specifically providing for use of a particular salvage vessel—Use of salvage vessel only possible means of carrying out agreement—Agreement signed on board salvage vessel at sea—Agreement providing for disabled ship to be towed to place of safety—Whether an agreement 'relating to the use or hire of ship'—Administration of Justice Act 1956, s 1(1)(h). **The Jade, The Eschersheim** [1976] 1 920, HL.

Claim for damage done by ship—Damage by British ship to pier in Nigerian harbour—Exercise of Admiralty jurisdiction over British ship for damage in any waters—Admiralty Court Act 1840, s 6—Admiralty Court Act 1861, ss 7, 35—Supreme Court of Judicature (Consolidation) Act 1925, ss 22(1)(a)(iv), 33(2). **United Africa Co Ltd v Owners of M V Tolten, The Tolten** [1946] 2 372, CA.

Claim for damage done by ship—Damage done by a ship—Causation—Indirect damage—Ship instrument by which damage caused—Salvage vessel beaching disabled vessel for temporary repairs in pursuance of salvage agreement—Beaching not itself causing damage to disabled vessel—Vessel subsequently becoming total loss in consequence of action of weather—Action against salvors for negligence and breach of contract—Whether a claim for 'damage done by a ship'—Administration of Justice Act 1956, s 1(1)(g). **The Jade, The Eschersheim** [1976] 1 920, HL.

Claim for damage received by a ship—Claim arising in connection with a ship—Action in rem against 'that ship'—Claim by shipowners against salvage vessel for damage caused to owners' ship in course of salvage operation—Whether a claim 'arising in connection with' salvage vessel or 'in connection with' owners' ship—Whether owners entitled to pursue claim for damage received by their ship by action in rem against salvage vessel—Administration of Justice Act 1956, ss 1(1)(e), 3(4). **The Jade, The Eschersheim** [1976] 1 920, HL.

Claim for damaged received by ship—Persons entitled to claim—Scope of claim—Claim by ship and cargo owners for damage caused by negligence of salvors in salvage operations—Ship lost—Cargo swept overboard—Cargo polluting water—Liability of owners for pollution—Claim by owners against salvors for damages in respect of that liability—Whether court having jurisdiction to entertain claim in respect of consequential loss—Administration of Justice Act 1956, s 1(1)(e). **The Eschersheim** [1974] 3 307, QBD.

ADMIRALTY (cont)

Jurisdiction (cont)—

Action in rem (cont)—

Claim for equitable relief—Specific performance—Claim in respect of damage sustained by tug supplied under towage contract—Claim by suppliers of tug for specific performance of contract to indemnify tugowners in respect of loss and damage—Whether court having jurisdiction to entertain claim for equitable remedy in action in rem—Effect of failure of defendant to appear to action in rem claiming equitable relief. **The Conoco Britannia** [1972] 2 238, QBD.

Claim for forfeiture or condemnation of ship—Customs duty—Court order that ship be appraised and sold—Claim by Commissioners of Customs and Excise for payment of import duty on ship—Condition on temporary importation of ship broken—Administration of Justice Act 1956, s 1(1)(s). **The Skylark** [1965] 3 380, Adm.

Claim for loss of or damage done to goods carried in ship—Damage to cargo—Contract providing for disputes to be judged by foreign court—Discretion to allow proceedings in England—Administration of Justice Act 1956, s 1(1)(g). **The Fehmarn** [1958] 1 333, CA.

Claim for loss of or damage done to goods carried in ship—'Goods' including baggage—Claim by master and crew for loss of personal effects carried on ship—Whether 'baggage' including belongings of master and crew—Administration of Justice Act 1956, ss 1(1)(g), 8(1). **The Eschersheim** [1974] 3 307, QBD.

Claim for loss or damage to goods carried in a ship—Claim arising in connection with a ship—Action in rem against 'that ship'—Claim by cargo owners against salvage vessel for loss or damage to cargo in course of salvage operation—Whether a claim 'arising in connection with' salvage vessel or 'in connection with' ship on which cargo being carried—Whether cargo owners entitled to pursue claim for loss or damage to cargo by action in rem against salvage vessel—Administration of Justice Act 1956, ss 1(1)(g), 3(4). **The Jade, The Eschersheim** [1976] 1 920, HL.

Claim for wages—Pension fund contributions—Seaman employed on ship—Contract providing for payment of contributions to pension fund by employer and seaman—Employer deducting seaman's contributions from wages—Employers not paying contributions to fund—Action by seaman for amount of contributions—Whether a 'claim for wages'—Administration of Justice Act 1956, s 1(1)(o). **The Halcyon Skies** [1976] 1 856, QBD.

Claim in respect of social insurance contributions—Ship registered under Italian flag sold in England and proceeds of sale in Admiralty court—Interveners as mortgagees obtained judgment in respect of proceeds of sale—Claim by Italian company for unpaid Italian social insurance contributions in respect of officers and crew of ship—Whether court had jurisdiction to entertain claim—Administration of Justice Act 1956, s 1(1)(c), (o). **The Acrux** [1965] 2 323, Adm.

Claim in the nature of salvage—Claim by owners of salvaged property for negligence in salvage operations—Claim against salvors—Whether a claim 'in the nature of salvage'—Administration of Justice Act 1956, s 1(1)(j). **The Jade, The Eschersheim** [1976] 1 441, CA.

Maritime lien or other charge on ship—'Other charge'—Ship chartered on demise—Owners' repairs done without any order from the owners—Possessory lien by repairers—Whether lien constituted 'other charge' within Administration of Justice Act 1956, s 3(3), (4). **The St Merriel** [1963] 1 537, Adm.

Stay of proceedings—Collision action—No jurisdiction to stay all further proceedings in any other action or any arbitration arising out of collision **The Annie Hay** [1968] 1 657, Adm.

Claim for equipping a ship—

Claim for supply of fuel oil to oil burning ship—Whether 'equipping' a ship—Supreme Court of Judicature (Consolidation) Act 1925, s 22(1)(a), (x). **The D'Vora** [1952] 2 1127, Adm.

Claim to ownership of ship—

Sale of yacht to third party by unpaid seller—Whether third party or original buyer had better title—Sale of Goods Act 1893, s 48—Administration of Justice Act 1956, s 1(1)(a). **The Bineta** [1966] 3 1007, Adm.

Collision—

Collision of rowing-boats on tidal river. **Edwards v Quickenden** [1939] 1 759, CA.

Practice—

Action in personam—

Writ—Renewal—Plaintiffs dilatory—Whether renewal of writ should be set aside—Maritime Conventions Act 1911, s 8. **The World Harmony** [1965] 2 139, Adm.

Writ—Service—General shipping agents in England—Whether agents of particular foreign shipping company. **The Holstein** [1936] 2 1660, Adm.

Action in rem—

Intervention—Party not having interest in property under arrest—Jurisdiction to give party leave to intervene—Circumstances in which leave should be given—Effect of arrest causing party serious hardship, difficulty or danger—RSC Ord 75, r 17(1). **The Mardina Merchant** [1974] 3 749, QBD.

Priorities—Caveat payment entered by second mortgagees—Second mortgagees had issued writ, folio 117, in April, 1966—Caveat lapsed in May, 1966—Order regarding priorities made in July, 1966, in present action, folio 62, in absence of second mortgagees—Funds, representing proceeds of sale of vessel, still in court—Whether court would vary its order at the instance of interveners, the second mortgagees, so as to allow adjudication on priority as between them and necessary men and all other persons interested in the proceeds of sale. **The Fairport (No 4)** [1967] 2 914, Adm.

Ship under arrest—Removal of ship to safe berth in another place—Direction to Admiralty registrar—Insurance—Expenses of removal. **The Mardina Merchant** [1974] 3 749, QBD.

ADMIRALTY (cont)

Practice (cont)—

Action in rem (cont)—

Wages—Wages of foreign master and crew accruing after issue of writ—Whether to be included in judgment and allowed as such out of proceeds of sale of ship. **The Fairport** [1966] 2 1026, Adm.

Writ—Amendment—Application to amend statement of claim to plead further salvage services rendered to same ship—Whether amendments raised new cause of action—RSC Ord 20, r 5(5). **The Katcher I** (No 1) [1968] 3 344, Adm.

Writ—Amendment—Change of ownership of ship after issue of writ—Amendment of writ without leave—Description of ship varied to altered name and description of owners similarly altered—Whether amendments should be disallowed—RSC Ord 20, r 1(1), (3). **The Monica S** [1967] 3 740, Adm.

Writ—Amendment—More than one ship named in writ on issue—Service of writ—Amendment by striking out names of ships not served—Administration of Justice Act 1956, s 3(4). **The Banco** [1971] 1 524, CA.

Writ—Change of ownership of ship after issue of writ—Ownership of ship changed after issue of writ but before service or arrest—Whether action can continue against ship—Administration of Justice Act 1956, s 1(1)(g), (h), s 3(4)—RSC Ord 75, r 5(7), (8). **The Monica S** [1967] 3 740, Adm.

Writ—Form—Form of writ where sister ship is arrested. **Practice Direction** [1965] 3 586, Adm, [1969] 1 721, Adm.

Writ—Renewal—Extension of time—Reason for not serving writ—Ship within jurisdiction during 12 months following issue of writ but service not effected because negotiations proceeding between the parties—Whether good reason for extending time—RSC Ord 8, r 1. **The Prins Bernhard** [1963] 3 735, Adm.

Writ—Service—Writ served on master of ship personally—Whether service effective—RSC Ord 9, r 12. **The Prins Bernhard** [1963] 3 735, Adm.

Agreed statement of facts—

Contents. **The Annie Hay** [1968] 1 657, Adm.

Appeal—

Court of Appeal. *See* **Court of Appeal** (Practice—Admiralty appeals).

Appearance—

Time—Writ in rem not served on defendants—Notice of counterclaim filed by defendants—Writ time-expired when appearance entered—Whether appearance effective—Whether notice of counterclaim effective to raise a counterclaim—RSC Ord 2, r 1, Ord 6, r 8, Ord 10, r 1(3) Ord 12, r 1. **The Gniezno** [1967] 2 738, Adm.

Arrest—

Affidavit to lead warrant—Additional matter when Administration of Justice Act 1956, s 3(4) is invoked—RSC Ord 75, r 5(8). **Practice Direction** [1969] 1 721, Adm.

Affidavit to lead warrant—Additional matter when Administration of Justice Act 1956, s 3(4) is invoked—RSC Ord 75, r 5(8). **Practice Direction** [1965] 3 586, Adm.

Arrested property—

Discharge. *See* Practice—Directions—Application of Admiralty Registrar's practice directions, *ante*.

Insurance. *See* Practice—Insurance—Arrested property, *post*.

Assessors—

Elder Brethren—Advice of Elder Brethren on questions of seamanship. **The Guildford** [1956] 2 915, Adm.

Trial—Assistance of assessor should be available at, not after, trial **Esso Petroleum Co Ltd v Southport Corp** [1955] 3 864, HL.

Compromise or settlement by person under disability. *See* Practice—Directions—Application of Admiralty Registrar's practice directions, *ante*.

Costs. *See* Costs, *ante*.

Counterclaim—

Notice of counterclaim—Time. *See* Practice—Appearance—Time—Writ in rem not served on defendants—Notice of counterclaim filed by defendants, *ante*.

Notice of counterclaim—Whether effective to raise counterclaim in action in rem when writ was unserved and time expired—How a counterclaim may be raised in an action. **The Gniezno** [1967] 2 738, Adm.

Directions—

Application of Admiralty Registrar's practice directions—Application of masters' practice directions—Directions—Applications with respect to property under arrest—Summons for directions—Summons for approval of compromise or settlement by person under disability—References to registrar—Form of schedule to Registrar's decision—Effect of filing of agreement of terms of settlement—Applications to invest funds paid into court—RSC, Ord 75, rr 12, 25, 41, 42, Ord 80, rr 10, 11. **Practice Direction** [1973] 3 446, QBD.

Evidence—

Expert evidence. *See* Evidence (Expert witness—Admiralty action).

New trial—Retirement of trial judge during original trial—Order for trial de novo—Admissibility of evidence already given. **The Forest Lake** [1966] 3 833, Adm.

Insurance—

Arrested property. **Practice Note** [1970] 2 55, Adm.

Interest—

Rate of interest on limitation fund. **The Funabashi** [1972] 2 181, QBD.

Investment of funds in court. *See* Practice—Directions—Application of Admiralty Registrar's practice directions, *ante*.

Lis alibi pendens—

Delay—No good cause of action—Time charterer's claim for pecuniary loss caused by damage to vessel by third party. **The World Harmony** [1965] 2 139, Adm.

ADMIRALTY (cont)

Practice (cont)—

Lis alibi pendens (cont)—

Discretion to stay proceedings in England—Cargo on board Swedish ship alleged damaged on voyage to Italy—By charterparty contract to be governed by law of flag but any dispute to be settled in London—Proceedings in personam initiated by charterers in Italy against shipowners—Arbitration proceedings by charterers in England—Action in rem subsequently brought by charterers in England against another ship of same owner to obtain security—Motion by shipowners to set aside or stay the action in England—Election—Administration of Justice Act 1956, s 3(4)(b). **The Soya Margareta** [1960] 2 756, Adm.

Stay of proceedings in England—Admiralty action and arrest of ship in England—Previous action in rem proceeding abroad—Arrest abroad of another ship belonging to defendants—Guarantee accepted by plaintiffs in foreign action—Second guarantee in English proceedings—Whether proceedings in England should be stayed. **The Marinero** [1955] 1 676, Adm.

Stay of proceedings in England—Proceedings pending abroad between same parties in respect of same subject matter—Whether bar to proceedings in England. **The Madrid** [1937] 1 216, Adm.

Payment out of court—

Part II orders—Part II order to be delivered to Court Funds Office before perfection of judgment or order—Application for postponement of drawing up of Part II order—RSC Ord 75, rr 24, 45. **Practice Direction** [1976] 3 223, QBD.

Post—

Affidavit of service—Service. *See Practice*—Post—First and second class mail—Affidavit of service, *ante*.

First and second class mail—Affidavit of service—Endorsement of service on writ—Entry of appearance—Interpretation Act 1889, s 26—RSC Order 10, r 1(4), Ord 12, r 4. **Practice Direction** [1968] 3 320.

Use of postal facilities. *See Practice* (Post—Use of postal facilities—Proceedings in Queen's Bench vision—Admiralty Registry).

Preliminary acts—

Filing—Alleged collision—Defendants denying collision and contending that they should not be required to file preliminary act—Discretion—Practice of filing preliminary acts not to be departed from except in very exceptional circumstances—RSC Ord 75, r 18(1). **The Graingers No 4** [1964] 3 705, Adm.

Filing—Port authority allegedly engaged in directing movement of vessels—Whether port authority should file preliminary act—RSC Ord 19, r 28(1). **The Beaverford** [1960] 3 612, Adm.

Rules—

Abrogation—Short Cause Rules, 1908 (amended 1930 and 1931). **Practice Direction** [1966] 3 240, Adm.

Sale—

Priority over proceeds of sale. *See Appraisement and sale*—Payment out of proceeds of sale—Priorities, *ante*.

Summons for directions. *See Practice*—Directions—Application of Admiralty Registrar's practice directions, *ante*.

Writ in rem—

Entry of appearance to. *See Practice*—Appearance, *ante*.

Prize law. *See Prize law*.

Release of vessel under arrest. *See Arrest of vessel*—Release, *ante*.

Stay of proceedings—

Agreement to refer to foreign court. *See Conflict of laws* (Stay of proceedings—Agreement to refer to foreign court—Action commenced in England—Admiralty action).

Writ—

Action in personam. *See Practice*—Action in personam—Writ, *ante*.

Action in rem. *See Practice*—Action in rem—Writ, *ante*.

ADMISSION

Adultery—

Divorce. *See Divorce* (Adultery—Admission).

Commonwealth immigrant—

Admission to United Kingdom. *See Commonwealth immigrant* (Admission).

Counsel—

Admission by counsel made in error—

Whether binding on client. *See Counsel* (Authority—Admission—Authority to bind client by admission).

Criminal proceedings—

Admissibility. *See Criminal evidence* (Admissions and confessions).

Hospital—

Mental patient. *See Mental health* (Admission of patient to hospital).

Judgment on admission of facts. *See Judgment* (Judgment—Judgment on admission of facts).

Liability—

Without prejudice correspondence—

Admissibility. *See Evidence* (Without prejudice correspondence—Agreement on liability for accident at work).

Non-patrial—

Admission to United Kingdom. *See Immigration* (Leave—Non-patrial).

Pleadings—

Admission of consent—

Whether admission vitiated by illegality. *See Pleading* (Admission—Illegality—Admission of consent).

ADMISSION (cont)

Pleadings (cont)—

Defence containing admission of facts alleged in statement of claim—

Whether evidence adducible by plaintiff. *See Evidence* (Point of law in issue on pleadings—Defence containing admission of facts alleged in statement of claim but raising objection in point of law).

Wife—

Adultery—

Whether evidence against co-respondent. *See Divorce* (Adultery—Admission—Admission by wife of adultery with co-respondent).

ADOPTED CHILD

Custody—

Access. *See Minor* (Custody—Access—Adopted child).

Will. *See Will* (Children—Adopted child).

ADOPTION

Appeal—

Court of Appeal—

Right of appeal—Party to county court proceedings—'Party'—Prospective adopter applying to county court for adoption order—Notice of application not served on mother and her consent dispensed with—Right of mother to appeal from county court—Adoption Act 1950, s 3(1).—Adoption of Children (County Court) Rules 1952 (SI 1952 No 1258), r 9. **Re B (an infant)** [1957] 3 193, CA.

Practice. *See Practice*—Appeal, *post*.

Review of decision of justices—

Circumstances in which appellate court entitled to review decision of justices—Factors to be considered—Welfare of infant—Severance of adopted child from natural parents—Appeal by local authority against adoption order—Infant's mother living some 20 miles away from adoptive parents with whom she had lived for some years—Male adopter had conviction for indecent assault, many years previously, on female child—Whether court should interfere with decision of justices to make adoption order—Adoption Act 1958, s 7(1)(b). **Re G (DM) (an infant)** [1962] 2 546, ChD.

Application—

Joint application by spouses—

Spouses—Order made on application of two 'spouses' jointly—'Spouses' bigamously married—Liability of husband for maintenance of child—Guardianship of Infants Act 1925, s 3(2).—Adoption of Children Act 1926, s 1(3)—Adoption of Children (County Court) Rules 1926 (SR & O 1926 No 1602), rr 8, 9, 12. **Re Skinner (an infant)** [1948] 1 917, CA.

Order. *See Order*—Application for adoption order, *post*.

Restrictions on applications. *See Restrictions*, *post*.

Appointment of guardian ad litem. *See Guardian ad litem*—Appointment, *post*.

Arrangements—

Discussion relating to—

Disclosure of information in course of discussion—Admissibility of information in affiliation proceedings. *See Affiliation* (Evidence—Admissibility—Evidence of welfare worker—Conversations with respondent and solicitor—Conversations exploring possibilities of adoption of unborn child).

Care and possession before adoption—

Care and possession outside Great Britain—

Jurisdiction—Applicants for adoption order resident in Republic of Ireland—Infant in their care and possession there during prescribed period—Whether court had jurisdiction to make adoption order—Adoption Act 1958, s 3(1), s 12(3). **Re W (an infant)** [1962] 2 875, ChD.

Continuous care and possession for three months immediately preceding application—

Circumstances constituting care and possession—Application to adopt—alien infant aged 20—Object of application to enable infant to acquire British nationality—'Accommodation' adoption—Whether infant in care and possession of applicants—Adoption Act 1950, s 3(1). **Re A (an infant)** [1963] 1 531, ChD.

Circumstances constituting continuous care and possession—Infant allowed to spend two consecutive nights and another night with mother during three months preceding date of adoption order—Whether infant continuously in care and possession of adopters during prescribed period—Adoption Act 1958, s 3(1). **Re CSC (an infant)** [1960] 1 711, ChD.

Circumstances constituting continuous care and possession—Infant stayed, on an average, five nights and four days a week with paid married couple acting under adopter's directions while adopter was on night duty at hospital—Whether infant continuously in care and possession of adopter during three months preceding date of adoption order—Adoption Act 1958, s 3(1). **Re B (GA) (an infant)** [1963] 3 125, ChD.

Provisional adoption by person resident outside Great Britain—

Restriction on removal of child outside British Islands—Prohibition on removal of child out of Great Britain with a view to adoption—Prospective adopters making child ward of court—Adopters domiciled and resident in Denmark—Adopters applying for leave to remove child to Denmark in order to establish requisite period of care and possession—Whether court having jurisdiction to give leave—Adoption Act 1958, ss 3(1), 52(1), 53(5). **Re M (a minor) (adoption : removal from jurisdiction)** [1973] 1 852, FamD.

Consent—

Parent or guardian—

Dispensing with consent. *See Dispensing with consent of parent or guardian*, *post*.

Evidence—Practice—Adoption Act 1958, s 5. **Practice Direction** [1967] 3 992, ChD.

Parent—Parent of illegitimate child—Whether natural father a 'parent'—Adoption Act 1950, s 2(4)(a). **Re M (an infant)** [1955] 2 911, CA.

ADOPTION (cont)

Consent (cont)—

Parent or guardian (cont)—

Time of consent—Consent to be operative when adoption order made—Adoption of Children Act 1926, ss 2(3), 3.—Adoption of Children (County Court) Rules 1926 (SR & O 1926 No 1602), rr 4(a), 5, 7, 9.—Adoption of Children (Summary Jurisdiction) Rules 1936 (SR & O 1936 No 19), r 8(1). **Re Hollyman** [1945] 1 290, CA.

Ward of court—

Leave to institute adoption proceedings—Leave of court required—Question to be determined by court on application for leave—Whether application for adoption having reasonable likelihood of success. **F v S (adoption : ward)** [1973] 1 722, CA.

Custody—

Illegitimate child—

Conflicting applications—Application to High Court for adoption order—Putative father's application to High Court for custody—Concurrent hearings—Welfare of infant the guiding consideration on both applications—Legitimacy Act 1959, s 3—Adoption Act 1958, s 7(1)(b). **Re Adoption Application No 41/61 (No 2)** [1963] 2 1082, ChD.

Conflicting applications—Procedure—Hearing—Both applications to be heard before either decided. **Re O (an infant)** [1964] 1 786, CA.

Conflicting applications—Procedure—Putative father applying to justices for custody—Prospective adopters applying—Application for adoption order of High Court—Putative father's application to magistrates for custody of infant adjourned—Putative father attending adoption proceedings—Whether adoption proceedings should be adjourned to permit application in High Court for custody—Adoption Act 1958, s 4(1)(a).—Legitimacy Act 1959, s 3(1). **Re Adoption Application No 41/61** [1962] 3 553, CA.

Discretion—

Making of order. *See* Order—Discretion. *post*.

Dispensing with consent of parent or guardian—

Abandoning, neglecting or persistently ill-treating child—

Abandoning—Child living with mother's friends and supported by them—Mother not visiting child—Adoption conducing to child's welfare—Consent given and later withdrawn—Whether infant 'abandoned' by parent—Adoption Act 1950, s 3(1)(a), (c). **Watson v Nikolaisen** [1955] 2 427, QBD.

Wishes of parent—Father in secure hospital having killed mother—Weight to be given to father's wishes—Adoption Act 1958, s 5(1)(a). **Re F (an infant)** [1970] 1 344, CA.

Application—

County court—Guardian ad litem's confidential report—Disclosure of contents to parties—Discretion of judge. **Re G (TJ) (An infant)** [1963] 1 20.

County court—Guardian ad litem's confidential report—Disclosure of contents to parties—Discretion of judge—Factors governing exercise of discretion—Adoption (County Court) Rules 1959 (SI 1959 No 480), r 9(2). **Re M (an infant) (adoption : parental consent)** [1972] 3 321, CA.

County court—Hearing—Procedure—Serial number cases—Non-disclosure of proposed adopters—Hearing to conform as nearly as possible with normal rules of procedure—Notice in advance to parent of allegations to be made against him at hearing—Allegations contained in guardian ad litem's confidential report—Desirability of parent being legally represented—Adoption (County Court) Rules 1959 (SI 1959 No 480), rr 9(2), 14. **Re M (an infant) (adoption : parental consent)** [1972] 3 321, CA.

Practice—Adoption Act 1958, s 5. **Practice Direction** [1961] 2 256, ChD.

Consent unreasonably withheld—

Deceit—Father of two children applied after his wife's death to adoption society for children to be adopted—Father remarried but concealed remarriage from adoption society—Children received by proposing adopters—Father withdrew consent within three months and wanted children back—Application for adoption order by adopters more than three years after they had received children—Children happy with applicants and with them for more than four years before hearing—Medical evidence that it would be bad for infants to return to father—Whether father had unreasonably withheld consent to adoption by applicants—Adoption Act 1958, s 5. **Re W (infants)** [1965] 3 231, ChD.

Divorced parents—Application by parent and new spouse for adoption—Other parent refusing consent—Circumstances in which refusal may be considered unreasonable—Mother granted custody care and control after divorce—Father granted reasonable access—Remarriage of mother—Application by mother and stepfather for adoption order—Father refusing consent—Whether consent unreasonably withheld—Adoption Act 1958, s 5(1)(b). **Re B (a minor) (adoption : jurisdiction)** [1975] 2 449, FamD.

Evidence—Adoption conducing to child's welfare—Child having been placed in care of foster-parents—Consent originally given, but later withdrawn—Adoption Act 1950, s 3(1)(c). **Re K (an infant)** [1952] 2 877, CA.

Factors to be considered—Attitude and wishes of dissenting parent—Relevancy of child's welfare—Adoption Act 1950, s 3(1)(c). **Hitchcock v WB** [1952] 2 119, QBD Divl Ct.

Factors to be considered—Refusal of consent in respect of illegitimate child—Refusal by putative father—Child's welfare paramount consideration—Adoption Act 1950, s 2(4)(a), s 3(1). **Re D (an infant)** [1958] 1 427, CA.

Factors to be considered—Refusal of consent in respect of illegitimate child—Refusal by mother—Child living with proposed adopters for over two years—Mother's attitude towards probable effect on child of change of parentage—Weight of medical evidence—Adoption Act 1958, s 5. **Re C (an infant)** [1964] 3 483, CA.

Parents divorced—Application by parent and new spouse for adoption—Other parent refusing consent—Circumstances in which refusal may be considered unreasonable—Mother granted custody care and control after divorce—Father granted reasonable access—Remarriage of mother—Application by mother and stepfather for adoption order—Father refusing consent—Father an admitted homosexual—Whether consent unreasonably withheld—Adoption Act 1958, s 5(1)(b). **Re D (an infant) (parent's consent)** [1976] 2 342, CA.

ADOPTION (cont)

Dispensing with consent of parent or guardian (cont)—

Consent unreasonably withheld (cont)—

Practice—Grounds on which consent unreasonably withheld to be furnished in advance—Adoption Act 1958, s 5(1)(b). **Re W (an infant)** [1970] 3 990, CA.

Relevant date for purpose of determining reasonableness—Appeal—Facts established by fresh evidence at hearing of appeal—Date of original hearing or date of hearing appeal. **Re S (an infant) (adoption : parental consent)** [1973] 3 88, CA.

Test of unreasonableness—Culpable or reprehensible conduct—Welfare of child—Relevance—Adoption Act 1958, s 5(1)(b). **Re W (an infant)** [1971] 2 49, HL.

Test of unreasonableness—Refusal involving serious risk of affecting future happiness of child—Adoption Act 1958, s 5(1)(b). **Re B (an infant)** [1970] 3 1008, CA.

Test of unreasonableness—Welfare of child—Claim of natural parents—Natural parents married and wishing to bring up child in wedlock—Adoption Act 1958, s 5(1)(b). **O'Connor v A and B** [1971] 2 1230, HL.

Test of unreasonableness—Welfare of child—Objective assessment of unreasonableness—Welfare of child taken to be parent's first consideration—Child's welfare not paramount—Adoption Act 1958, s 5(1)(b)—Children Act 1975, s 3. **Re B (an infant) (adoption : parental consent)** [1976] 3 124, FamD.

Withdrawal of consent—Consent given and then withdrawn—Parents' consent given by deed in 1954—Withdrawn after application for order—Infant in care of adopters for six years—Whether consent unreasonably withheld—Adoption Act 1950, s 3(1)(c). **Re F (an infant)** [1957] 1 819, ChD.

Failure to discharge obligations of parent or guardian—

Nature of obligations—Obligations including both moral and financial obligations—Adoption Act 1958, s 5(2). **Re P (infants)** [1962] 3 789, ChD.

Persistently failing to discharge obligations—Degree of failure to be established—Failure so grave and complete that children would derive no advantage from contact with parent—Divorce of mother and father—Mother having custody—Father failing to provide for mother or children—Mother remarrying and moving to new district—Father eventually tracing children—Application by mother and new husband to adopt children—Whether father having persistently failed to discharge obligations of a parent—Adoption Act 1958, s 5(2). **Re D (minors) (adoption by parent)** [1973] 3 1001, FamD.

Foreign element—

Recognition of English order by court of parents' domicile—Father a Spaniard domiciled in Spain, mother English—Parents married, matrimonial home in Spain—Wife left husband and returned to England shortly before infant was born—Infant placed with adopters soon after birth—Father did not come to England, nor seek to obtain access to infant nor provide for her—English court's order would be recognised in Spain—Factor of recognition of English order—Adoption Act 1958, s 5(2). **Re B (an infant)** [1967] 3 629, ChD.

Form of order. *See* Order—Form of order—Consent of parent or guardian, *post*.

Hearing—

Representative of guardian ad litem. *See* Practice—Guardian ad litem—Juvenile court—Adoption proceedings—Application to dispense with parent's consent on ground unreasonably withheld, *post*.

Inability to find parent—

Order made without notice to parent—Notice of application not served on mother because she was not traceable and consent dispensed with—Mother later learning of adoption order—Power of Court of Appeal to order rehearing. **Re F (R) (an infant)** [1969] 3 1101, CA.

Persons whose consent should be dispensed with—

Persons liable to contribute to support of child—Whether persons whose consent ought to be dispensed with limited to persons liable to contribute to support of child—Adoption of Children Act 1926, s 2(3). **Harris v Hawkins** [1947] 1 312, KBD.

Female infant—

Order in favour of sole male applicant—

Special circumstances—Order not mentioning special circumstances—Duty of justices to consider whether making of order justified by special circumstances—Child's maternal grandmother anxious to have custody—Full facts not stated in guardian ad litem's report to court—Grandmother not made respondent to application—Adoption Act 1950, s 2(2)—Adoption of Children (Summary Jurisdiction) Rules 1949, (S I 1949 No 2397) r 7, r 9(d), as substituted by the Adoption of Children (Summary Jurisdiction) Rules 1952, (S I 1952 No 554) r 3. **R v City of Liverpool Justices, ex parte W** [1959] 1 337, QBD.

Foreign adoption—

Death—

Devolution of property—English will—Gift to child or issue—Testator domiciled in England—Child adopted abroad—Adopter and adopted child domiciled in foreign country—Rights of child under will—Whether 'child' or 'issue' of adoptive parent **Re Marshall (decd)** [1957] 3 172, CA.

Devolution of property—Intestacy—Intestacy of adopter—Adopter domiciled in England—Rights of adopted child—Adoption Act 1950, s 13(1). **Re Wilson (decd)** [1954] 1 997, ChD.

Devolution of property—Intestacy—Intestacy of adopted person—Administration of estate—Adoption in accordance with law of country of domicile of all parties—Subsequent change of domicile of adoptive parents and adopted person—Adopted person dying intestate domiciled in England—Whether adoptive mother entitled to administration—Adoption Act 1950, s 13(1). **Re Wilby (decd)** [1956] 1 27, Prob.

Settlement—

Beneficial succession—Adopting parents not domiciled in foreign country making adoption order—Settlement according to English law—Trust for children—Adopted child not entitled to benefit under trust. **Re Valentine's Settlement** [1965] 2 226, CA.

ADOPTION (cont)

Grandchild—

Special circumstances—

Illegitimate child of daughter aged 16—Adoption of Children Act 1926, s 1(1). **Re A B (an infant)** [1949] 1 709, ChD.

Guardian—

Consent to adoption. *See* Consent—Parent or guardian, *ante*.

Guardian ad litem—

Appointment—

Appointment for purposes of appeal—Appointment by justices under Adoption Act 1958—Appeal to High Court—Whether guardian ad litem for purposes of High Court proceedings—Leave to appeal out of time—Service of notice of motion on guardian ad litem. **Re S (an infant)** [1959] 2 675, ChD.

Appointment in respect of infant parent—County Court Rules 1936, Ord 5, rr 13, 14.—Adoption of Children (County Court) Rules 1949 (SI 1949 No 2396), rr 1, 9. **Re K (an infant)** [1952] 2 877, CA.

Appointment of person other than Official Solicitor—'Special reasons'—Adoption of Children Act 1926, s 8(3)—Practice Direction (see Annual Practice 1941, pp 2619, 2620). **Re A B (an infant)** [1948] 2 727, ChD.

Duty—

Duty in respect of illegitimate child—Duty to inform court if putative father intimates to guardian a wish to be heard on question whether adoption order should be made—Whether any duty on guardian to seek out putative father—Adoption (High Court) Rules 1959 (SI 1959 No 479), r 16(f), Sch 2, para 9. **Re Adoption Application No 41/61 (No 2)** [1963] 2 1082, ChD.

Illegitimate child—

Adoption by mother—

Power to make order in favour of unmarried mother—Adoption Act 1950, s 1(3). **Re D (an infant)** [1958] 3 716, CA.

Grandchild. *See* Grandchild—Special circumstances—Illegitimate child of daughter aged 16, *ante*.

Legitimation—

Relevant considerations—*See* Order—Discretion—Factors to be considered—Legitimation of illegitimate child, *post*.

Putative father's application. *See* Minor (Custody—Illegitimate child—Putative father's application).

Interim order—

Award of custody to applicant for probationary period—

Probationary period—Investigation of all circumstances relevant to adoption—Order made to test suitability of natural parent to have child back—Whether interim order limited to testing suitability of applicant to adopt child—Adoption Act 1958, s 8(1). **S v Huddersfield Borough Council** [1974] 3 296, CA.

Jurisdiction—

Local authority—Child in care—Authority having assumed parental rights in respect of child—Order restricting statutory rights of local authority—Order committing custody of child to applicants for adoption—Whether court having jurisdiction to make order—Children Act 1948, s 2(1)—Adoption Act 1958, s 8(1). **S v Huddersfield Borough Council** [1974] 3 296, CA.

Jurisdiction—

Practice—

Preliminary examination of jurisdiction—Application automatically referred to judge for directions—Power to apply *ex parte* to registrar—Adoption (High Court) Rules 1976 (SI 1976 No 1645), r 11. **Practice Direction** [1976] 3 864, FamD.

Jurisdiction of juvenile court. *See* Magistrates (Juvenile court—Jurisdiction—Adoption).

Order—

Amendment—

Jurisdiction—Correction of particulars—Adoption Act 1950, s 21(1). **R v Chelsea Juvenile Court Justices (Re an infant)** [1955] 1 38, QBD.

Application for adoption order—

Child subject of custody order—Effect of adoption on custody order—Duty of county court and justices—Adoption Act 1950, s 10(1), (2). **Crossley v Crossley** [1953] 1 891, Div.

Considerations to be regarded—Religion—Adoption of Protestant child by Jewish adoptive parents—Religion sole basis of decision to reject application—Welfare of child paramount consideration—Adoption Act 1958, s 53. **Re G (an infant)** [1962] 2 173, CA.

Considerations to be regarded—Welfare of infant. *See* Welfare of infant, *post*.

Discretion—

Factors to be considered—Legitimation of illegitimate child—Relevancy of choice between legitimation and adoption to exercise of discretion to make adoption order—Legitimacy Act 1959, s 1(1). **Re CSC (an infant)** [1960] 1 711, ChD.

Nationality—Change of nationality—Alien infant aged 20—Aim of application to enable infant to acquire British nationality—Adoption order would, in circumstances, be for welfare of infant—Welfare equivalent to benefit—Applicants not intending to stand genuinely in relation of parents to infant—Doubtful whether infant in care and possession of applicants—'Accommodation' adoption—Adoption order refused in exercise of court's discretion—Adoption Act 1958, s 1(1), s 3(1), s 7(1). **Re A (an infant)** [1963] 1 531, ChD.

Nationality—Change of nationality—Alien infant aged 20—Applicant in loco parentis to infant—Impracticability of obtaining parents' consent or of serving notice of hearing—Parents' consent and service of notice of hearing dispensed with—Adoption order made in exercise of court's discretion—Adoption Act 1958, s 4, s 5(1)(b). **Re R (adoption)** [1966] 3 613, ChD.

ADOPTION (cont)

Order (cont)—

Form of order—

Consent of parent or guardian—Dispensing with consent—Need for order to contain express statement that consent given or dispensed with. **S v Huddersfield Borough Council** [1974] 3 296, CA.

Interim order. *See* Interim order, *ante*.

Jurisdiction—

Applicant's domicile outside Great Britain—Temporary residence in England—Jurisdiction to make full adoption order—Adoption Act 1958, s 12(1), s 53(1). **Re R (an infant)** [1962] 3 238, CA.

Nature of order—

Contract with order for custody. **J v C** [1969] 1 788, HL.

Provisional order. *See* Provisional adoption order, *post*.

Terms and conditions which may be imposed—

Access by natural parent—Jurisdiction to impose condition as to access—Condition not to detract from rights and duties of adoptive parents—Exceptional circumstances justifying condition—Regulation of access—Adoption Act 1958, ss 7(3), 13(1). **Re S (a minor) (adoption order : access)** [1975] 1 109, CA.

Enforcement—Method of enforcement—Adoption Act 1958, s 7(3). **Re J (a minor) (adoption order : conditions)** [1973] 2 410, FamD.

Practicability of terms and conditions. **Re G (TJ) (an infant)** [1963] 1 20, CA.

Parent—

Severance of child from parent. *See* Welfare of child—Severance of adopted child from natural parents, *post*.

Parent or guardian—

Consent to adoption. *See* Consent—Parent or guardian, *ante*.

Practice—

Appeal—

Appeal from juvenile court—Material to be supplied to appellate court—Adoption Act 1958, s 10—Adoption (Juvenile Court) Rules 1959 (SI 1959 No 504), r 9(2). **Re J S (an infant)** [1959] 3 856, ChD.

Appeal from magistrates' court to Divisional Court of Family Division—Procedure—Adoption Act 1958, s 10—RSC, Ord 90, rr 9(2), 16. **Practice Direction** [1973] 1 64, FamD.

Application for removal or return of child—

Length of hearing—Date of hearing not to be fixed before estimate of length endorsed on summons and two copied lodged in Divorce Registry—Adoption (High Court) Rules 1976 (SI 1976 No 1645), r 23. **Practice Direction** [1976] 3 864, FamD.

Application for adoption order—

Filing and service of affidavit in support—Appointment for hearing—Duty of guardian ad litem to apply for directions if appointment not taken within fourteen days—Adoption (High Court) Rules 1959 (SI 1959 No 479), r 11, r 15. **Practice Direction** [1966] 1 960, ChD.

Generally. *See* Order—Application for adoption order, *ante*.

Chancery Division—

Adjournment to judge within stated time. **Practice Direction** [1966] 3 84, ChD.

County court—

Application to dispense with parent's consent. *See* Dispensing with consent of parent or guardian—Application—County court, *ante*.

Evidence—

Affidavit evidence insufficient—Need for court to see prospective adoptive parents and objecting natural parent. **Re F (R) (an infant)** [1969] 3 1101, CA.

Consent of parent or guardian. *See* Consent—Parent or guardian—Evidence, *ante*.

Guardian ad litem—

Juvenile court—Adoption proceedings—Application to dispense with parent's consent on ground unreasonably withheld—Hearing—Representative of guardian ad litem—Report by representative recommending adoption if consent dispensed with—Representative present at hearing—Representative retiring with magistrates—Propriety—Adoption order made—Representative having no right to private hearing—Ground for ordering rehearing. **Re B (a minor) (adoption : jurisdiction)** [1975] 2 449, FamD.

Order. *See* Order, *ante*.

Proceedings in private—

Publication of information—Contempt of court. *See* Contempt of court (Publications concerning legal proceedings—Court sitting in private—Wardship or adoption proceedings).

Transcripts. *See* Child (Practice—Court proceedings in relation to children—Proceedings in private—Publication of information—Transcripts).

Production of records and giving of evidence by adoption society or local authority—

Contested applications—Adoption Agencies Regulations 1959 (SI 1959 No 639), reg 7, as amended by Adoption Agencies Regulations 1965 (SI 1965 No 2054). **Practice Direction** [1968] 1 762, ChD.

Reports—

Disclosure—Confidential reports—County court—Parties not entitled to see reports as of right—Judge's duty where report contains allegations against a party relevant to an adoption order—Adoption (County Court) Rules 1959 (SI 1959 No 480), r 9. **Re G (TJ) (an infant)** [1963] 1 20, CA.

Disclosure—Confidential reports—Parties not entitled to see reports save so far as court allowed—Adoption (Juvenile Courts) Rules 1959 (SI 1959 No 504), r 9(2). **Re JS (an infant)** [1959] 3 856, ChD.

Disclosure—Confidential reports—Report of guardian ad litem—Whether interested parties entitled as of right to see report. **Re PA (an infant)** [1971] 3 522, CA.

ADOPTION (cont)

Provisional adoption order—

Joint application—

Applicants not ordinarily resident in Great Britain—Living together in Great Britain for prescribed period—Relevant period—Infant received into joint care of husband and wife domiciled and ordinarily resident in South Africa—Wife had care and possession of infant for six months immediately preceding date of hearing of joint application by husband and wife—Husband being with wife and infant for some five months before then—Whether applicants 'Living together' while apart for business reasons—Adoption Act 1958, s 12(3), s 3(1), s 53(5). **Re M (an infant)** [1964] 2 1017, ChD 2 1017, ChD.

Removal of child outside Great Britain—

Provisional adoption. *See* Care and possession before adoption—Provisional adoption by person resident outside Great Britain, *ante*.

Restriction—

Applicant not resident and domiciled in England or Wales—

Resident—Application by wife of colonial civil servant—Applicant living with husband in Nigeria and returning to England for periods of leave—Intention to rejoin husband in Nigeria, with adopted infant, after obtaining order—Whether applicant resident in England—Adoption Act 1950, s 2(5). **Re Adoption Application No 52/1951** [1951] 2 931, ChD.

No order to be made where applicant less than 21 years older than infant—

Exception—Applicant and infant within prohibited degrees of consanguinity—Application by husband and wife to adopt illegitimate daughter of wife—No blood relationship with husband—Husband and wife each less than 21 years older than infant—Whether within the prohibited degrees of consanguinity—Adoption of Children Act 1926, s 2(1)(b). **Re C (an infant)** [1937] 3 783, ChD.

Rules—

Procedure—

Validity of—Adoption (County Court) Rules 1959 (SI 1959 No 480), r 9(2).—Whether ultra vires Adoption Act 1958, s 9. **Re PA (an infant)** [1971] 3 522, CA.

Society—

Production of records and giving of evidence. *See* Practice—Production of records and giving of evidence by adoption society or local authority, *ante*.

Variation of settlement—

Adopted child. *See* **Variation of settlement** (Adopted child).

Adoption of child after marriage—

Subsequent birth of child of marriage. *See* **Variation of settlement** (Ante-nuptial settlement—Adoption of child after marriage—Subsequent birth of child of marriage).

Ward of court—

Leave to institute proceedings. *See* Consent—Ward of court, *ante*.

Wardship proceedings pending adoption—

Effect—

Child in care of local authority—**Re L (an infant)** [1963] 1 176, ChD.

Welfare of infant—

Severance of adopted child from natural parents—

Circumstances in which adoption may be made even though child may see natural parent thereafter. **Re S (a minor) (adoption order: access)** [1975] 1 109, CA.

Desirability—Circumstances in which adoption order may be made even though child may see natural parent thereafter. **Re J (a minor) (adoption order: conditions)** [1973] 2 410, FamD.

Desirability—Circumstances in which adoption order may be made even though child will continue to see natural parents. **Re B (MF) (an infant)** [1972] 1 898, CA.

Wishes of infant—

Ascertainment by judge—Judge ascertaining wishes from report of guardian ad litem—Whether judge under statutory obligation to see infant—Adoption Act 1958, s 7(2). **Re G (TJ) (an infant)** [1963] 1 20, CA.

Will—

Condition—

Adoption of testator's daughter. *See* **Will** (Condition—Adoption of testator's daughter).

Exercise of special power of appointment—

Whether benefiting adopted grandchildren. *See* **Power of appointment** (Exercise by will—Special power—Objects).

ADOPTION SOCIETY

Evidence—

Production of documents. *See* **Minor** (Guardianship—Evidence—Production of records and giving of evidence by adoption society or local authority).

Wardship proceedings—

Production of records and giving of evidence—

Practice. *See* **Ward of court** (Practice—Production of records and giving of evidence by adoption society or local authority).

ADULTERATION OF MILK

See **Food and drugs** (Milk—Adulteration of milk).

ADULTERY

Admission—

Effect on husband's duty to maintain wife. *See* **Husband and wife** (Maintenance—Wilful neglect to maintain—Husband's duty to provide reasonable maintenance—Wife in default—Adultery).

Complaint. *See* **Husband and wife** (Summary proceedings—Adultery).

Divorce. *See* **Divorce** (Adultery).

ADULTERY (cont)

Finding of adultery—

Effect on order for alimony pendente lite. *See* **Divorce** (Alimony—Pendente lite—Adultery of wife).

Variation of settlement—

Divorce on grounds of wife's adultery—

House purchased by spouses on trust for sale. *See* **Variation of settlement** (Post-nuptial settlement—House purchased by spouses on trust for sale—Divorce on grounds of wife's adultery).**ADVANCE CORPORATION TAX***See* **Income tax** (Corporation tax—Advance corporation tax).**ADVANCE PAYMENTS CODE**Private street works. *See* **Highway** (Private street works—Advance payments code).**ADVANCEMENT**

Intestacy—

Statutory trusts. *See* **Intestacy** (Statutory trusts—Advancement).Power. *See* **Trust and trustee** (Powers of trustee—Advancement).

Presumption—

Father and children. *See* **Gift** (Presumption of advancement—Father and children).

Husband and wife—

Generally. *See* **Husband and wife** (Presumption of advancement).Matrimonial home. *See* **Husband and wife** (Matrimonial home—Presumption of advancement).Settlement. *See* **Settlement** (Advancement).**ADVANCES**Bank. *See* **Bank** (Advances).Building society. *See* **Building society** (Advances).

Will—

Hotchpot clauses. *See* **Will** (Hotchpot clauses—Advances).**ADVANTAGE**Tax. *See* **Income tax** (Tax advantage).**ADVENTURE**

Trade for income tax purposes—

Adventure in the nature of trade. *See* **Income tax** (Trade—Adventure in the nature of trade).**ADVERSE POSSESSION**

Land—

Limitation of action. *See* **Limitation of action** (Land—Adverse possession).**ADVERTISEMENT**

Administration of estate—

Advertisement for claims. *See* **Administration of estates** (Advertisement for claims).

Company—

Advertisement of winding-up petition. *See* **Company** (Compulsory winding-up—Advertisement of petition).

Divorce—

Notice relating to divorce proceedings. *See* **Divorce** (Practice—Advertisement—Newspaper notice relating to divorce proceedings).

Gaming—

Notice of application for gaming licence. *See* **Gaming** (Licensing of premises—Application for licence—Notice advertising making of application).Licensed betting office. *See* **Gaming** (Betting—Licensed betting office—Advertisement).Lottery. *See* **Gaming** (Lottery—Advertisement).

Offer for sale or invitation to treat—

Advertisement of Bramblefinch hens at 25s each in periodical under classified advertisements. *See* **Animal** (Protection—Bird—Restriction on sale or offer for sale of live wild bird—Offer for sale).Planning control. *See* **Town and country planning** (Advertisement).

Publications illustrating sexual techniques—

Advertising material for publications. *See* **Criminal law** (Unsolicited publications—Publications describing or illustrating human sexual techniques—Advertising material for such publications).

Sign—

Air space—

Trespass to land. *See* **Trespass to land** (Air space).

Trespass—

Injunction. *See* **Injunction** (Mandatory injunction—Trespass—Advertising sign projecting eight inches into air space above shop premises).

Sunday entertainment—

Restrictions on Sunday entertainment. *See* **Sunday observance** (Restrictions on Sunday entertainment—Advertising public entertainment for Sunday to which persons admitted by payment of money an offence).

Trade or business—

Use of loudspeaker for advertising purposes—

Prohibition against loudspeaker being operated in street for purpose of advertising any trade or business—Instrument, producing sound of chimes, operated from ice cream van in street to attract attention of potential customers—Whether instrument a 'loudspeaker'—Glamorgan County Council Act 1952, s 115(1), (5). **Reynolds v John** [1956] 1 306, QBD.

ADVERTISING

Contract—

Frustration—

Performance in manner that brings other party into disrepute. *See* **Contract** (Frustration—Performance in manner that brings other party into disrepute—Advertising—Agreement for aerial advertising).

War. *See* **Contract** (Frustration—War—Display of advertisement).

Medical practitioner. *See* **Medical practitioner** (Professional misconduct—Infamous conduct in professional respect—Shareholder in company advertising medical services).

ADVICE

Expert—

Safe system of working. *See* **Safe system of working** (Reasonable care not to expose employee to unnecessary risk—Expert advice).

Legal—

Mitigation of contempt. *See* **Contempt of court** (Mitigation—Legal advice that a course of conduct would not amount to breach of undertaking).

Negligence. *See* **Negligence** (Information or advice).

ADVICE AND ASSISTANCE

Legal aid scheme. *See* **Legal aid** (Advice and assistance).

ADVOCATE

Industrial tribunal—

Calling of witnesses. *See* **Industrial tribunal** (Procedure—Advocate).

Solicitor—

Liability in negligence. *See* **Solicitor** (Practice—Advocate—Liability in negligence).

AERODROME

Licence—

Condition—

Breach of condition—Obstructions in vicinity of aerodrome—Aeroplane accident due to unlighted obstruction—Obstruction present in contravention of condition—Liability of licensee—Contributory negligence of pilot—Air Navigation (Consolidation) Order 1923 (SR & O 1923 No 1508), reg 5(2), Sch IV, Sect II, r 16(2)(a)(ii). **Hesketh v Liverpool Corp** [1940] 4 429, Assizes.

AEROPLANE

Fatal injury by aeroplane—

War injury—

Exclusion of right of action for damages. *See* **War injury** (Exclusion of right of action for damages—Exclusion of right where injury war injury—Fatal injury by aeroplane).

AFFIDAVIT

Binding in book form—

Chancery Division. *See* **Practice** (Chancery Division—Affidavit—Binding in book form).

Chancery Division. *See* **Practice** (Chancery Division—Affidavit).

Evidence by affidavit—

Adoption proceedings. *See* **Adoption** (Practice—Evidence—Affidavit evidence insufficient).

Certiorari—

Application for. *See* **Certiorari** (Evidence—Affidavit evidence).

Compulsory winding-up of company—

Affidavit verifying petition. *See* **Company** (Compulsory winding-up—Affidavit verifying petition).

Cross-examination of deponent—

Chancery Division. *See* **Practice** (Chancery Division—Affidavit—Cross-examination of deponent).

Committal proceedings for contempt—Affidavit of defendant. *See* **Contempt of court** (Committal—Proceedings for committal—Breach of interim injunction—Cross-examination of defendant—Affidavit of defendant read to court—Cross-examination on affidavit).

Interlocutory proceedings. *See* **Practice** (Interlocutory proceedings—Cross-examination on affidavit).

Divorce. *See* **Divorce** (Evidence—Affidavit).

Extradition proceedings. *See* **Extradition** (Fugitive offender—Evidence given on oath—Affidavit).

Practice in Chancery Chambers. *See* **Practice** (Chancery proceedings—Affidavit evidence).

Wardship proceedings. *See* **Ward of court** (Evidence—Affidavit).

Family provision—

Application—

Affidavit in support. *See* **Family provision** (Application—Form—Affidavit in support).

Filing—

Practice—

Title of affidavit. **Practice Note** [1966] 2 943.

Office copies—

Chancery Division. *See* **Practice** (Chancery Division—Affidavit—Office copies).

Statement exhibited to affidavit—

Application under Inheritance (Family Provision) Act 1938. *See* **Family provision** (Evidence—Practice—Evidence by way of statements exhibited to affidavits).

AFFIDAVIT (cont)

Striking out—

Hearsay—

Exception—Interlocutory proceedings—Application to suspend access to child—Whether 'interlocutory' so as to make statements of information and belief admissible—Affidavit containing large proportion of inadmissible material—Whether whole affidavit should be removed from the file—RSC Ord 38, r 3. **Rossage v Rossage** [1960] 1 600, CA.

Exception—Interlocutory proceedings—Proceedings not interlocutory—Discretion. **Re J (an infant)** [1960] 1 603, ChD.

Supporting—

Certificate of birth, marriage or death. *See Practice* (Chancery Division—Affidavit—Affidavit supporting—Certificate of birth, marriage or death).

Rescission of winding-up order—

Application. *See Company* (Compulsory winding-up—Winding-up order—Rescission—Application for rescission).

Sworn before proceedings commenced—

Acceptance—

Chancery Division. *See Practice* (Chancery Division—Affidavit—Affidavit sworn before proceedings commenced).

Verification—

Affidavit verifying Secretary of State's petition to wind up company. *See Company* (Compulsory winding-up—Petition by Secretary of State—Just and equitable—Evidence—Affidavit verifying petition).

Warrant—

Arrest of vessel. *See Admiralty* (Practice—Arrest—Affidavit to lead warrant).

AFFILIATION

Affiliation order—

Enforcement—

Natural justice—Mother resident abroad—Enforcement of order by mother—Father precluded from applying for variation or revocation of order by mother's residence abroad—Whether enforcement contrary to principle of natural justice—Whether submission to jurisdiction by mother in respect of proceedings for variation condition precedent to her own right to bring proceedings for enforcement. **R v Gravesend Justices, ex parte Doodney** [1971] 2 364, QBD.

Warrant of commitment—Putative father American soldier—Jurisdiction to issue warrant—Magistrates' Courts Act 1952, s 64(2)(b).—United States of America (Visiting Forces) Order 1942 (SR & O 1942 No 966), Sch para 2(3)(b).—Army Act, s 145(1). **R v Birkenhead Borough Justices, Ex parte Smith** [1954] 1 503, QBD.

Nature of order—

Order not an affiliation order unless it contains direction for payment of money—National Assistance Act 1948, s 44(2).—Affiliation Proceedings Act 1957, s 4. **Oldfield v National Assistance Board** [1960] 1 524, QBD.

Variation—

Termination of national assistance—Effect—Original order made on application of National Assistance Board—Order varied—Payments for mother in place of the board—National Assistance no longer payable to mother—Whether order ceases when National Assistance ceases—National Assistance Act 1948, s 44(1)(a), (6). **Payne v Critchley** [1962] 1 619, QBD.

Application for order—

Adjournment—

Procedure. Poor Law Amendment Act 1844, s 4—Summary Jurisdiction Act 1848, s 16. **Barnsley v Marsh** [1947] 1 874, KBD.

Jurisdiction—

Child born abroad—Child born abroad of British mother domiciled abroad—Putative father British subject domiciled in England—Jurisdiction to make affiliation order—Bastardy Laws Amendment Act 1872, s 3.—Maintenance Orders Act 1950, s 27(2). **R v Wilson (Metropolitan Magistrate), Ex parte Pereira** [1952] 2 706, QBD.

Child born abroad—Child born abroad when mother domiciled abroad—Child, mother and father in England—English court, where mother resides, has jurisdiction to make affiliation order for maintenance of child—Affiliation Proceedings Act 1957, s 1, s 4. **R v Bow Road Domestic Proceedings Court, Ex parte Adedigba** [1968] 2 89, CA.

Domicile of mother—Child born in England to Jamaican woman ordinarily resident in England but retaining her Jamaican domicile of origin—Whether English court had jurisdiction to make affiliation order—Affiliation Proceedings Act 1957, s 1, s 3(1)(a). **Buckeridge v Hall** [1963] 1 509, QBD.

Second application—First application dismissed on merits—Fresh evidence produced by complainant on second application—Jurisdiction of justices to hear second application. **R v Sunderland Justices, Ex parte Hodgkinson** [1945] 2 175, KBD.

Second application—First application dismissed on merits—New evidence adduced on behalf of complainant on second application dismissed—Appeal to quarter sessions against second dismissal allowed and order made against putative father—Jurisdiction of justices and quarter sessions to hear second complaint when evidence called thereon was available on first complaint but not called. **Robinson v Williams** [1964] 3 12, QBD.

Second application—First order quashed on appeal by quarter sessions—Finality of order of quarter sessions. **R v Howard, ex parte Da Costa** [1938] 3 241, KBD.

National Assistance Board—

Right of board to apply—National Assistance Act 1948, s 44(2), (3). **National Assistance Board v Mitchell** [1955] 3 291, QBD.

Right of board to apply—Right to apply after order obtained by mother set aside on appeal—Board's right separate and independent from mother's right—National Assistance Act 1948, s 44(3). **Clapham v National Assistance Board** [1961] 2 50, QBD.

AFFILIATION (cont)

Application for order (cont)—

National Assistance Board (cont)—

Right of board to apply—Whether necessary to prove that mother is a single woman—National Assistance Act 1948, s 44(2). **National Assistance Board v Tugby** [1957] 1 509, QBD.

Single woman—

Married mother—Living apart from husband—Child born before marriage of mother and putative father—Separation of mother and father under separation order made some years after their marriage—Whether mother a 'single woman' quoad her husband—Bastardy Laws Amendment Act 1872, s 3, as amended. **Kruhlak v Kruhlak** [1958] 1 154, QBD.

Married mother—Living apart from husband—Child born out of wedlock—Subsequent marriage of parents—Wife now living apart from husband—Whether 'single woman' quoad her husband—Bastardy Laws Amendment Act 1872, s 3. **Mooney v Mooney** [1952] 2 812, QBD.

Married mother—Living apart from husband—Mother married and living in same house as husband, though separate and apart from him, at dates of conception and birth of illegitimate child—At the date of the application for affiliation order, the husband had left the matrimonial home—Whether mother entitled to bring affiliation proceedings—Affiliation Proceedings Act 1957, s 1. **Gaines v W (an infant)** [1968] 1 189, QBD.

Married mother—Living apart from husband—Wife of soldier serving overseas—Adultery—Birth of child—Husband not father of child—Statement by husband to third party that he will 'try and live it down and go on'—Expression of future intention—No condonation—Wife a 'single woman'—Bastardy Laws Amendment Act 1872, s 3. **Hockaday v Goodenough** [1945] 2 335, KBD.

Married mother—Living in same house as husband at date of application for affiliation order—Mother's evidence that she and husband living separate and apart during material time not challenged in cross—examination—Whether mother a 'single woman'—Affiliation Proceedings Act 1957, s 1. **Whitton v Garner** [1965] 1 70, QBD.

Married mother—Living with husband at date of application for affiliation order—Whether 'single woman'—National Assistance Act 1948, s 1, s 42(1), (2).—Bastardy Laws Amendment Act 1872, s 3. **Taylor v Parry** [1951] 1 355, KBD.

Married woman living apart from husband—Wife of soldier serving overseas—De facto separation—Adultery—Birth of child—Husband not father of child—Husband stating that he forgave wife 'to a certain extent'—No condonation—Whether wife a 'single woman'—Bastardy Laws Amendment 1872, s 3. **Jones v Evans** [1945] 1 19, KBD.

Married woman living in same house as husband—Living in same house as husband at date of application for affiliation order—No sexual intercourse with husband for more than one and a half years—Whether mother a 'single woman'—Affiliation Proceedings Act 1957, s 1. **Giltrow v Day** [1965] 1 73, QBD.

Time for application—

Payment by putative father—Payment within 12 months after child's birth—Putative father an infant—Payment by agent made allegedly on behalf of putative father—Whether payment by agent entitled mother to take out summons—Affiliation Proceedings Act 1957, s 2(1)(b). **G (A) v G (T)** [1970] 3 546, CA.

Payment by putative father—Payment within 12 months after child's birth—Evidence—Child a member of his household **Roberts v Roberts** [1962] 2 967, Div.

Evidence—

Admissibility—

Evidence of welfare worker—Conversations with respondent and his solicitor—Conversations exploring possibilities of adoption of unborn child—Alleged admissions that respondent might be father—Whether conversations without prejudice—Whether disclosure against public policy—Whether conversations rendered confidential by rule relating to adoption proceedings—Adoption (Juvenile Court) Rules 1959 (SI 1959 No 504 as amended by SI 1965 No 2072), r 30. **R v Nottingham County Justices, Ex parte Bostock** [1970] 2 641, QBD.

Corroboration of mother's evidence—

Material particular—Admission by man of two acts of intercourse with mother, within two and four months before conception—Affiliation Proceedings Act 1957, s 4(2). **Simpson v Collinson** [1964] 1 262, CA.

Material particular—Association on terms of close affection—Letters from putative father produced by complainant. **Moore v Hewitt** [1947] 2 270, KBD.

Material particular—Evidence of opportunity not corroboration—Defendant's not giving evidence not corroboration—Affiliation Proceedings Act 1957, s 4. **Cracknell v Smith** [1960] 3 569, QBD.

Material particular—Lie by putative father on whether opportunity for intercourse alleged by mother occurred—Affiliation Proceedings Act 1957, s 4(2). **Corfield v Hodgson** [1966] 2 205, QBD.

Material particular—Proof by mother of handwriting of letter alleged to be written by putative father—Bastardy Laws Amendment Act 1872, s 4. **Jeffery v Johnson** [1952] 1 450, CA.

Putative father—

Compellable witness at instance of mother—Whether putative father privileged to decline to answer questions tending to establish paternity—Whether affiliation proceedings were civil proceedings—Foreign Tribunals Evidence Act 1856, s 1. **S v E** [1967] 1 593, QBD.

Jurisdiction to entertain application for order. *See* Application for order—Jurisdiction, *ante*.

Maintenance—

Obligation of father—

Duration—Agreement that mother shall have child if child well looked after and happy—Father agreeing to contribute weekly sums—Whether father bound to continue paying so long as mother looks after child. **Ward v Byham** [1956] 2 318, CA.

Order—

Application for. *See* Application for order, *ante*.

AFFILIATION (cont)

Order (cont)—

Generally. *See* **Affiliation order**, *ante*.

Proceedings—

Nature of proceedings—

Whether civil or criminal. **S v E** [1967] 1 593, QBD.

Right to bring proceedings—

Illegitimate child born to married woman—Decree of divorce made absolute later the same day—Father then free to marry—Subsequent marriage of father and mother—whether affiliation proceedings lay after the parents' marriage—**Bastardy Laws Amendment Act 1872**, s 3, as amended.—**Legitimacy Act 1926**, s 1(1). **Kruhlak v Kruhlak** (No 2) [1958] 2 294, QBD.

Single woman—

Application by. *See* **Application for order**—Single woman, *ante*.**AFFIRMATION**Witness. *See* **Evidence** (Witness—Affirmation).**AFFRAY**

Defence—

Unlawful arrest. *See* **Arrest** (Unlawful arrest—Defence to other charges—Accused unlawfully arrested—Accused resisting arrest—Accused charged with affray).

Offence. *See* **Criminal law** (Affray).**AFFREIGHTMENT**

Contract—

Proper law. *See* **Conflict of laws** (Contract—Proper law of contract—Contract of affreightment).

AGEDriving under age. *See* **Road traffic** (Driving under age).

Offender—

Sentence. *See* **Sentence** (Age of offender).**AGED PERSONS**

Gift for—

Charitable purpose. *See* **Charity** (Benefit to community—Aged persons).**AGENCY**

Employment agency—

Licensing—

London. *See* **London** (Employment agencies—Licensing).

Nurses—

Agency for supply of nurses—

Licence. *See* **Nurse** (Agency for supply of nurses—Licence by local authority).**AGENT**

Absolute offence—

Liability for act of agent. *See* **Criminal law** (Absolute liability—Statutory offence—Delivery of short weight—Act of agent).

Account—

Duty to account—

Agency terminated by war—Right to transfer property vested in Custodian of Enemy Property—Purchase by agent and resale—Duty to account for profit. **Nordisk Insulinlaboratorium v C L Bencard** (1934), Ltd [1953] 1 986, CA.

Money recovered on behalf of principal—Jus tertii. **Blaustein v Maltz, Mitchell & Co** [1937] 1 497, CA.

Secret commission. *See* **Secret commission**—Duty to account, *post*.

Profit acquired from acting for trust. *See* **Trust and trustee** (Profit from trust—Account of profits—Agents for trust).

Acknowledgment by agent—

Limitation of action. *See* **Limitation of action** (Acknowledgment—Acknowledgment by agent).

Affiliation proceedings—

Payment by agent on behalf of putative father—

Payment in respect of illegitimate child—Payment within 12 months of birth of child. *See* **Affiliation** (Application for order—Time for application—Payment by putative father within 12 months after child's birth—Putative father an infant—Payment by agent made allegedly on behalf of putative father).

Agency of necessity—

Gratuitous bailee—

Sale of bailed goods—Principal's instructions unobtainable. **Munro v Willmott** [1948] 2 983, KBD.

Sale of bailed goods—Principal's instructions unobtainable. **Sachs v Miklos** [1948] 1 67, CA.

Authority—

Apparent authority—

Sale by agent clothed with apparent authority to sell as owner—Sale in excess of actual authority—Title of purchaser. **Eastern Distributors Ltd v Goldring** (Murphy third party) [1957] 2 525, CA.

Auctioneer. *See* **Auctioneer** (Authority).Company director. *See* **Company** (Director—Authority).Company secretary. *See* **Company** (Secretary—Authority).Counsel. *See* **Counsel** (Authority).

AGENT (cont)

Authority (cont)—

Estate agent—

Authority from vendor to receive deposit prior to contract. *See* **Estate agent** (Deposit—Deposit prior to contract—Capacity in which deposit received by estate agent).

Implied authority—

Authority to delegate—Estate agent. *See* **Estate agent** (Authority—Authority to delegate—Implied authority).

Company director. *See* **Company** (Director—Authority—Implied authority).

Limitation of authority—

Negotiations for lease subject to approval by principal—Limitation of authority of agent communicated to other party—Whether concluded agreement reached through agent. **Warehousing & Forwarding Company of East Africa Ltd v Jafferai & Sons Ltd** [1963] 3 571, PC.

Ostensible authority—

Auctioneer. *See* **Auctioneer** (Authority—Ostensible authority).

Company director. *See* **Company** (Director—Authority—Ostensible authority).

Company secretary. *See* **Company** (Secretary—Authority—Ostensible authority).

Limitation by principal—Authority to make representations on behalf of principal—Auctioneer—Auctioneer instructed to sell property for vendor—Auction catalogue containing condition excluding authority of auctioneer to make representations in relation to property—Auctioneer giving prospective purchaser information relating to property—Purchaser buying property in reliance on information—Information subsequently found to be inaccurate—Whether representation within ostensible authority of auctioneer. **Overbrooke Estates Ltd v Glencombe Properties Ltd** [1974] 3 511, ChD.

Shop steward—

Authority as agent of trade union—Liability of union for wrongful acts. *See* **Trade union** (Official—Wrongful acts—Liability of union).

Care and diligence—

Sole agent. *See* **Sole agency**—Care and diligence of agent, *post*.

Care and skill—

Duty. *See* **Duty to principal**—Duty to use care and skill, *post*.

Commission—

Amount payable—

Commission in respect of sale of shares in hotel company—Hotel mortgaged by company—Whether commission payable on full value of hotel **Way and Waller Ltd v Ryde** [1944] 1 9, CA.

Auctioneer. *See* **Auctioneer** (Commission).

Declaration of agent's right to commission. *See* **Declaration** (Discretion to grant—Declaration as to rights under contract—Declaration of agent's right to commission).

Effective cause—

Agent for sale of property—Property purchased under compulsory powers—Agent introducing official of authority exercising those powers **G T Hodges & Sons v Hackbridge Park Residential Hotel Ltd** [1939] 4 347, CA.

Estate agent. *See* **Estate agent** (Commission).

Illegal commission—

Estate agent. *See* **Estate agent** (Commission—Illegal commission).

Income tax—

Commission on insurance premiums. *See* **Income tax** (Persons chargeable—Profits and interest of money—Persons entitled to income chargeable—Commissions on insurance premiums).

Loss of commission—

Damages—Measure of damages—Agent prevented from earning commission—Wilful default of principal. **Kahn v Aircraft Industries Corp Ltd** [1937] 3 476, CA.

Termination of agency. *See* **Commission**—Termination of agency—Loss of commission, *post*.

Payments for expenses—

Repayment at termination of agency of excess of payments over commission earned. **Clayton Newbury Ltd v Findlay** [1953] 2 826, KBD.

Payments on account of commission—

Repayment at termination of agency of excess of payments over commission earned—**Rivoli Hats Ltd v Gooch** [1953] 2 823, QBD.

Right to commission—

Declaratory judgment. **Jacobs v Aveling-Barford Ltd** [1936] 1 297, KBD.

Secret commission. *See* **Secret commission**, *post*.

Termination of agency—

Loss of commission—Loss of commission on repeat orders—Contract providing for commission on all orders and 'all repeats'—Right to commission on 'repeats' after termination of agency. **Crocker Horlock Ltd v B Lang & Co Ltd** [1949] 1 526, KBD.

Loss of commission—Loss of commission on repeat orders—Remedy to which agent entitled. **Roberts v Elwells Engineers Ltd** [1972] 2 890, CA.

Loss of commission—Loss of commission on repeat orders—Compensation for loss of commission—Assessment of compensation—Factors to be taken into account. **Roberts v Elwells Engineers Ltd** [1972] 2 890, CA.

Company secretary—

Authority. *See* **Company** (Secretary—Authority).

Conflict of interest. *See* **Duty to principal**—Conflict of interest, *post*.

Constructive trustee—

Liability as—

Participation in dishonest design on part of trustee. *See* **Trust and trustee** (Constructive trust—Participation in dishonest design).

Contract—

Proper law. *See* **Conflict of laws** (Contract—Proper law of contract—Agency agreement).

AGENT (cont)

Contract (cont)—

Undisclosed principal—

Foreign undisclosed principal—Principal instructing English merchants to negotiate purchase of machines from English suppliers—Machines invoiced to English merchants—Whether privity of contract between English suppliers and foreign principal. **Teheran-Europe Co Ltd v S T Belton (Tractors) Ltd** [1968] 2 886, CA.

Fraud of principal—Rescission of contract made with innocent agent for fraud of undisclosed principal. **Garnac Grain Co Inc v HMF Faure & Fairclough Ltd and Bunge Corp** [1967] 2 353, HL.

Corruption when acting as agent. *See* **Criminal law** (Corruption—Transactions with agents).

Counsel—

Authority. *See* **Counsel** (Authority).

Creation of agency—

Agency for entering into contract—

Circle of contracts made on same day whereby A sold goods and subsequently rebought the goods from another purchaser further down the chain of buyers—Transactions designed by A for financial reasons—Written contracts enforceable according to their tenor—Whether buyer who resold to A acted in his purchase from a previous buyer as agent for A as undisclosed principal—Contracts genuine, not shams. **Garnac Grain Co Inc v HMF Faure & Fairclough Ltd and Bunge Corp** [1967] 2 353, HL.

Custom—

Duty of agent to principal—

Effect of custom. *See* **Duty to principal**—Effect of custom, *post*.

Del credere agent—

Buyer's acceptance of bill of exchange for price of goods—

Rejection of goods—Right to sue on bill of exchange. **Churchill and Sim v Goddard** [1936] 1 675, CA.

Delegation by agent—

Implied authority—

Estate agent. *See* **Estate agent** (Authority—Authority to delegate—Implied authority).

Signing notice to terminate licence on behalf of company. *See* **Licence** (Notice to terminate occupation).

Diplomatic agent—

Immunity from legal process. *See* **Constitutional law** (Diplomatic privilege).

Duty of care—

Estate agent. *See* **Estate agent** (Negligence).

Duty to principal—

Conflict of interest—

Acting for principal and other contracting party—Insurance party—Insurance broker—Requested by insurer to obtain report from assessors—Whether breach of duty by broker. **Anglo-African Merchants Ltd v Bayley** [1969] 2 421, QBD.

Duty to use skill and care—

Sale of principal's goods to third party by agent—Payment to be made to agent—Buyer in financial difficulties—Compromise by agent—Whether agent made best bargain in circumstances—Whether agent guilty of breach of duty. **Gokal Chand-Jagan Nath (a firm) v Nand Ram Das-Atma Ram (a firm)** [1938] 4 407, PC.

Effect of custom—

Acts inconsistent with duty to principal—Acts in accordance with long standing practice—Insurance brokers—Brokers agents of assured—Claim by assured against insurers—Brokers acting on behalf of insurers in procuring assessors' report on claim—Non-disclosure to assured—Brokers acting in accordance with long standing practice of Lloyd's—Whether brokers in breach of duty to assured—Whether Lloyd's practice reasonable and capable of amounting to a legal usage—Whether brokers liable to deliver up copies of assessors' report to assured. **North & South Trust Co v Berkeley** [1971] 1 980, QBD.

Estate agent. *See* **Estate agent**.

Estoppel—

Conduct of agent. *See* **Estoppel** (Conduct—Agent).

Fiduciary duty—

Purchaser of goods—

Duty to account for proceeds of sub-sales—Vendor retaining property in goods. *See* **Sale of goods** (Passing of property—Vendor retaining property in goods—Duty of purchaser to account for proceeds of sub-sales—Fiduciary duty as agent and bailee of goods).

Foreign—

Costs—

Legal aid. *See* **Legal aid** (Taxation of costs—Foreign agent).

Foreign principal—

Enemy alien—

Ratification. *See* **Ratification**—Validity—Foreign principal becoming enemy alien by enemy occupation during war, *post*.

Illegal commission—

Estate agent. *See* **Estate agent** (Commission—Illegal commission).

Illegal contract—

Money received by agent under illegal contract—

Right of principal to recover. *See* **Contract** (Illegality—Enforceability of contract—Money received by agent under illegal contract—Right of principal to recover).

AGENT (cont)

Income tax—

Interest of money—

Clients' money paid into bank deposit account in agent's name—Whether interest to be charged on agent as interest of money received by him. *See* **Income tax** (Persons chargeable—Profits and interest of money—Person receiving income chargeable—Interest of money—Agent receiving interest belonging to principal).

Insurance broker—

Duty to principal. *See* **Duty to principal**—Effect of custom—Acts inconsistent with duty to principal—Acts in accordance with longstanding practice, *ante*.

Generally. *See* **Insurance** (Broker).

Landlord—

Agent of landlord—

Notice to quit given in name of agent. *See* **Landlord and tenant** (Validity of notice to quit—Landlord a company).

Liability as principal—

Undisclosed principal—

Action for return of purchase money—Principal named in defence—Rejection of evidence as to identity of principal **Hersom v Bennett** [1954] 3 370, QBD.

Election to sue principal—Issue and service of writ—Action not proceeded with as principal insolvent—Whether plaintiff contractor had abandoned right to sue agent **Clarkson, Booker Ltd v Andjel** [1964] 3 260, CA.

Liability of principal—

Agent known to be contracting as such—

No express words in memorandum to show that agent so contracted—Whether agent bound by contract—Whether principal bound by contract. **Davies v Sweet** [1962] 1 92, CA.

Crime—

Act or default of agent—Weights and measures offences. *See* **Weights and measures** (Defence to proceedings).

Defective goods—

Signature 'for account of our [disclosed] principal'—Liability of principal for defect in goods sold. **Lester v Balfour Williamson Merchant Shippers Ltd** [1953] 1 1146, QBD.

Estate agent holding deposit—

Loss of deposit. *See* **Estate agent** (Deposit—Interest—Loss of deposit—Liability of vendor for agent's default).

Tort—

Fraud—Deception of principal. **Chao (Trading as Zung Fu Co) v British Traders and Shippers Ltd (N V Handelsmaatschappij J Smits Import-Export Third Party)** [1954] 1 779, QBD.

Separation of representation and guilty knowledge—Communication in name of principal by innocent agent on information from guilty agent **London County Freehold & Leasehold Properties Ltd v Berkeley Property & Investment Co Ltd** [1936] 2 1039, CA.

Undisclosed principal—

Fraud of principal—Rescission of contract made with innocent agent for fraud of undisclosed principal. **Garnac Grain Co Inc v HMF Faure & Fairclough Ltd and Bunge Corp** [1967] 2 353, HL.

Liability to person other than principal—

Money received on behalf of principal—

Payment to agent a mistaken or wrongful act—Agent informed of wrongful nature of payment—Money still in possession of agent—Duty of agent. **Rahimtoola v Nizam of Hyderabad** [1957] 3 441, HL.

Limitation of action—

Concealment of right of action by agent. *See* **Limitation of action** (Concealment of right of action by fraud—Concealment by agent).

Limitation of authority. *See* **Authority**—Limitation of authority, *ante*.

Mercantile agent—

Possession of goods—

Consent of owner—Agent put in possession of goods and authorised to sell as principal—Sale in fact made on terms involving payment of purchase price in part satisfaction of agent's debt to third party—Title of purchaser at common law irrespective of estoppel. **Lloyds and Scottish Finance Ltd v Williamson** [1965] 1 641, CA.

Consent of owner—Consent given by owner to possession of car—Registration book obtained by trick—Sale of car with registration book—Title of innocent purchaser—Factors Act 1889, s 2(1). **Pearson v Rose & Young Ltd (Little, third party, Marshall, fourth party)** [1950] 2 1027, CA.

Consent of owner—Document of title—Motor car registration book—Factors Act 1889, s 1(4).—Road Vehicle (Registration and Licensing) Regulations, 1941 (SR & O 1941 No 1149), reg 9(1). **Joblin v Watkins and Roseveare (Motors) Ltd** [1949] 1 47, KBD.

Consent of owner—False pretences—Consent given by owner to acquirer taking possession of car—Voidable title—Car sold by acquirer to purchaser buying in good faith and without notice—Title of subsequent innocent purchaser—Factors Act 1889, s 2, s 9. **Newtons of Wembley Ltd v Williams** [1964] 3 532, CA.

Consent of owner—'Goods'—Possession as mercantile agent—Presumption of consent of owner—Car delivered to dealer for display without ignition key and without intentional delivery of registration book—Dealer replaced ignition key and abstracted registration book from locked glove compartment—Sale of car on hire-purchase—Purchaser defaulting in payment—Possession claimed by finance company—Title—Factors Act 1889, s 2(1), (4). **Stadium Finance Ltd v Robbins** [1962] 2 633, CA.

Consent of owner—Pledge of documents—Surrender of documents to pledgor on trust for sale—Pledge to third party—'Owner'—Estoppel—Factors Act 1889, ss 1(1), 2(1). **Lloyds Bank Ltd v Bank of America National Trust and Savings Assn** [1938] 2 63, CA.

AGENT (cont)

Mercantile agent (cont)—

Possession of goods (cont)—

Consent of owner—Possession obtained by trick—Title of innocent purchaser—Factors Act 1889, s 9—Sale of Goods Act 1893, s 25(2). **Du Jardin v Beadman Brothers Ltd** [1952] 2 160, QBD.

Consent of owner—Possession under illegal hire-purchase agreement—Whether with consent of owner—Factors Act 1889, s 2(1). **Belvoir Finance Co Ltd v Harold G Cole & Co Ltd** [1969] 2 904, QBD.

Power to transfer title—

Power dependent on possession being given to him as mercantile agent—Motor car—Company operating mainly self-drive hire business but selling secondhand cars as ancillary business—New car released to company by motor distributors, as addition to self-drive hire fleet—Sale of new car to customer—Hire-purchase agreement by company with finance house after sale of car—Whether title to car passed on sale by company to customer—Factors Act 1889, s 2(1). **Astley Industrial Trust Ltd v Miller (Oakes, Third Party)** [1968] 2 36, Assizes.

Unauthorised disposition—

Motor car hire company—Fleet of cars on hire-purchase—Practice to sell cars on its own behalf with owner's consent when no longer usable in car hire business—Cars sold in this way but without knowledge or consent of owner—Whether car hire company mercantile agent or in possession of cars in that capacity so as to pass good title to purchaser—Factors Act 1889, s 1(1), s 2(1). **Belvoir Finance Co Ltd v Harold G Cole & Co Ltd** [1969] 2 904, QBD.

Minor—

Disposition of minor's property by agent. *See* **Minor**.

Misrepresentation—

Fraudulent misrepresentation—

Liability of principal for misrepresentation of agent. *See* **Misrepresentation** (Fraudulent misrepresentation—Agent).

Innocent misrepresentation—

Liability of principal for misrepresentation of agent. *See* **Misrepresentation** (Innocent misrepresentation—Agent).

Ostensible authority. *See* **Authority**—Ostensible authority, *ante*.

Professional agent—

Duty of care—

Estate agent. *See* **Estate agent** (Negligence).

Ratification—

Validity—

Foreign principal becoming enemy alien by enemy occupation during war—Whether foreign company can ratify after war ended acts done during occupation. **Boston Deep Sea Fishing & Ice Co Ltd v Farnham (Inspector of Taxes)** [1957] 3 204, ChD.

Receiver appointed by debenture-holders of first company—Contract for purchase of shares by another company on behalf of first company without receiver being a party to contract or authorising it—Ratification of contract some years later by successor to receiver—Validity. **Lawson (Inspector of Taxes) v Hosemaster Machine Co Ltd** [1966] 2 944, CA.

Sale of goods—

Sale by agent. *See* **Sale of goods** (Agent—Sale by agent).

Secret commission—

Bribe—

Payment to agent—Presumption of corrupt motive—Presumption of damage—Measure of damages—Loan procured by company—Fee shared with borrower's agent. **Industries & General Mortgage Co Ltd v Lewis** [1949] 2 573, KBD.

Duty to account—

Termination of agency—Agent's duty to act honestly and faithfully—Non-disclosure of secret profit—Duty to account. **Regier v Campbell-Stuart** [1939] 3 235, ChD.

Sole agency—

Care and diligence of agent—

Extent of undertaking to 'push' sales—Duty in premises under agent's control—Supply by agent of defective stoppers. **B Davis Ltd v Tooth & Co Ltd** [1937] 4 118, PC.

Termination of agency—

Duty to account—

Agency terminated by war. *See* **Account**—Duty to account—Agency terminated by war, *ante*.

Loss of commission. *See* **Commission**—Termination of agency, *ante*.

Notice—

Length of notice—Selling-agent in North America—Contract terminable on reasonable notice—Length of notice. **Martin-Baker Aircraft Co Ltd v Canadian Flight Equipment Ltd Same v Murison** [1955] 2 722, QBD.

Secret commission. *See* **Secret commission**—Duty to account—Termination of agency, *ante*.

Trade union—

Officials of union—

Shop stewards—Liability of union for wrongful acts. *See* **Trade union** (Official—Wrongful acts—Liability of union).

Transfer of title to agent—

Sale of goods. *See* **Sale of goods** (Transfer of title—Agent put in possession of goods and authorised to sell as principal).

Undisclosed principal—

Contract. *See* **Contract**—Undisclosed principal, *ante*.

Estoppel—

No trust relationship with other party to contract. *See* **Estoppel** (Res judicata—Undisclosed principal—Action by agent).

AGENT (cont)

Undisclosed principal (cont)—

Liability of agent. *See* Liability as principal—Undisclosed principal, *ante*.

Vicarious liability—

Liability of principal. *See* Vicarious liability (Principal and agent).**AGENT PROVOCATEUR**Police. *See* Police (Conduct).**AGGREGATION**Estate duty. *See* Estate duty (Aggregation).

Supplementary benefit—

Aggregation of requirements and resources. *See* Supplementary benefit (Entitlement—

Aggregation of requirements and resources).

AGREED STATEMENT OF FACTS

Admiralty—

Practice. *See* Admiralty (Practice—Agreed statement of facts).**AGREEMENT**

Agency agreement—

Proper law of contract. *See* Conflict of laws (Contract—Proper law of contract—Agency agreement).Arbitration clause. *See* Arbitration (Agreement—Arbitration clause).

Collusive—

Divorce. *See* Divorce (Collusion—Agreements and arrangements).Compromise of action. *See* Practice (Compromise of action).

Compromise of insurance claim—

Mistake. *See* Mistake (Agreement to compromise).

Concessionaire agreement—

Length of notice to determine. *See* Contract (Time—Duration of contract—Reasonable notice—Concessionaire agreement).Development or use of land. *See* Town and country planning (Agreement regulating development or use of land).Enforceability. *See* Contract (Enforceability).Hire-purchase. *See* Hire-purchase.Interim development. *See* Town and country planning (Interim development—Agreement between landowners and local authority).

Lease—

Agreement for lease—

Generally. *See* Landlord and tenant (Agreement for lease).Repudiation—Test. *See* Contract (Repudiation—Test—Agreement for lease).

Liability for damages—

Admissibility in evidence of without prejudice correspondence. *See* Evidence (Without prejudice correspondence—Agreement on liability for accident at work).Maintenance. *See* Husband and wife (Maintenance—Agreement).

Planning—

Agreement restricting planning. *See* Town and country planning (Agreement restricting planning in lieu of scheme).

Rent increase—

Failure to provide rent book—

Whether rent recoverable by action. *See* Landlord and tenants (Rent—Agreement for increase—Rent book required by law not supplied by landlord—Whether rent recoverable by action).Restraint of trade. *See* Restraint of trade by agreement.

Restrictive trading—

European Economic Communities. *See* European Economic Communities (Restrictive trade practices—Validity—Agreements or decisions affecting trade between member states of Community and having object or effect of preventing, restricting or distorting compGenerally. *See* Restrictive trade practices.Registration. *See* Restrictive trade practices (Registration of agreement).

Sale of land—

Agreement subject to contract—

Exchange of contracts. *See* Sale of land (Exchange of contracts—Agreement subject to contract).

Sale, purchase or exchange of property—

Specific performance—

Summary procedure. *See* Specific performance (Summary procedure).

Salvage—

Arbitration. *See* Arbitration (Agreement—Arbitration clause—Scope—Salvage agreement).Specific performance. *See* Specific performance.

Tenancy—

Agricultural holding. *See* Agricultural holding.Frustration. *See* Landlord and tenant (Determination of lease—Requisition of premises—Frustration of tenancy agreement).Implied grant. *See* Landlord and tenant (Tenancy agreement—Implied grant).

Trade union—

Employer and unions. *See* Trade union (Collective agreement—Joint negotiating committee of employer and unions).Provision of benefits. *See* Trade union (Agreement—Enforceability—Agreement to provide benefits).

Written agreement—

Construction. *See* Contract (Construction).

AGRICULTURAL BUILDING

Rates—

Exemption. *See* **Rates** (Exemption—Buildings occupied together with agricultural land and used solely in connection with agricultural operations thereon).

AGRICULTURAL HOLDING

Agricultural Land Tribunal—

Consent to notice to quit agricultural holding. *See* **Notice to quit—Consent, post.**

Allotment—

Whether an allotment an agricultural holding. *See* **Notice to quit—Allotment, post.**

Arbitration—

Award—

Form of award—Consultative case and conditional final award combined—Departure from statutory form—Effect—Agricultural Holdings Act 1948, s 24(2)(b), s 77(1), Sch 6, para 24—Agricultural Holdings (England and Wales) Rules 1948 (SI 1948 No 1943), r 1 and Sch 1, Form A. **Public Trustee v Randag** [1965] 3 88, ChD.

Setting aside award—Error of law on face of award—Arbitration on term of tenancy as to rent—Evidence adduced to arbitrator as to tenant's improvements—Award and arbitrator's reasons silent as to evidence of improvements—Affidavit evidence not incorporated in award—Tenant alleging failure of arbitrator to take account of improvements—No error of law on face of award—Agricultural Holdings Act 1948, s 8(2)(a)—Tribunals and Inquiries Act 1958, s 12(1)(a). **Re Allen and Matthews's Arbitration** [1971] 2 1259, QBD.

Setting aside award—Jurisdiction—County court—Error of law on face of award—Reasons for arbitrator's decision stated in letter subsequent to award in response to request under s 12(1) of the Tribunals and Inquiries Act 1958—Reasons incorporated in award—Jurisdiction of county court to set aside award on ground of inadequacy of reasons—Agricultural Holdings Act 1948, s 77(1), Sch 6, para 24, para 25—Tribunals and Inquiries Act 1958, s 12(3). **Re Poyser and Mills' Arbitration** [1963] 1 612, QBD.

Notice to quit. *See* **Notice to quit—Arbitration, post.**

Question as to jurisdiction of an arbitrator—

Jurisdiction conferred on county court to decide such question—Whether concurrent jurisdiction subsists in High Court—Agricultural Holdings Act 1948, Sch 6, para 24—Agriculture Act 1958, Sch 1, para 21(1). **Jones v Pembrokeshire County Council** [1966] 1 1027, QBD.

Rent—

Date of appointment of arbitrator—Date of alteration of rent—Agricultural Holdings Act 1948, s 8(1). **Slater v Horton** [1954] 1 712, CA.

Special case for county court—

Right of appeal from county court decision—County Courts Act 1934, s 105.—Agricultural Holdings Act 1948, sched VI, para 24. **Re Lower Onibury Farm, Onibury, Shropshire** [1955] 2 409, CA.

Breach of covenant—

Compensation—

Claim by landlord for compensation for breach of covenant—Jurisdiction of court to entertain—Notice to quit given before March 1 1948—Agricultural Holdings Act 1923, s 10—Agriculture Act 1947, s 29(1), s 44(1)—Agricultural Holdings Act 1948, s 57(1), (3), s 70(1)(b), s 99. **Gulliver v Catt** [1952] 1 929, CA.

Damages—

Claim by landlord for damages for breach of covenant—Claim made during currency of tenancy—Whether claim displaced by statutory provisions for compensation on termination of tenancy—Agricultural Holdings Act 1948, s 57(3)(a). **Kent v Conniff** [1953] 1 155, CA.

Notice to remedy breach of covenant—

Failure to comply with notice—Notice to quit—Consent of Agricultural Land Tribunal to notice to quit not required. *See* **Notice to quit—Consent—Exception—Non-compliance with notice to remedy breaches of terms of tenancy, post.**

Failure to comply with notice—Notice to quit—Validity. *See* **Notice to quit—Validity—Non-compliance with notice to remedy breaches of agreement, post.**

Compensation—

Compulsory purchase. *See* **Compulsory purchase** (Compensation—Assessment—Agricultural holding).

Right to compensation—

Clause in tenancy agreement depriving tenant of statutory right to compensation—Effect. *See* **Tenancy—Agreement—Provision for resumption of possession of part of holding without compensation, post.**

Limitation of right by lease—Limiting provision void under Agricultural Holdings Act 1923, s 50.—Repeal of s 50 by Agriculture Act 1947, s 33(3).—Provision in lease not rendered valid—Effect of Agricultural Holdings Act 1948, s 65(1)—Interpretation Act 1889, s 38(2)(a)(b)(c)—Agricultural Holdings Act 1923, s 50.—Agricultural Holdings Act 1948, s 65. **Coates v Diment** [1951] 1 890, Assizes.

Termination of tenancy. *See* **Termination of tenancy—Compensation, post.**

Compulsory purchase—

Compensation—

Assessment. *See* **Compulsory purchase** (Compensation—Assessment—Agricultural holding).

Consent to notice to quit. *See* **Notice to quit—Consent, post.**

Contract of tenancy. *See* **Tenancy—Agreement, post.**

Covenant—

Personal occupation—

Death of tenant—Effect. *See* **Tenancy—Death of tenant, post.**

Death of tenant—

Effect where covenant for personal occupation. *See* **Tenancy—Death of tenant, post.**

AGRICULTURAL HOLDING (cont)

Death of tenant (cont)—

Notice to quit—

Consent of Agricultural Land Tribunal to notice not required where tenant with whom contract of tenancy made dying within three months before notice given. *See* Notice to quit—
Consent—Exception—Death of tenant with whom contract made within three months before notice to quit, *post*.

Deterioration of holding—

Compensation to landlord on termination of tenancy. *See* Termination of tenancy—
Compensation—Landlord, *post*.

Dispossession—

Order—

Jurisdiction of Minister—Order comprising more land than previous supervision order—
Validity of order and of prior proceedings—Agriculture Act 1947, s 17(1), s 74(4). *R v Minister of Agriculture and Fisheries, Ex parte Graham, Same v Agricultural Land Tribunal (South Western Province), Ex parte Benney* [1955] 2 129, CA.

Representations to Minister before action of Minister—

Hearing by person appointed for that purpose—No delegation to county agricultural executive committee or sub-committee—Agriculture Act 1947, s 17(2), s 104(4), (5). *R v Minister of Agriculture and Fisheries, Ex parte Graham, R v Agricultural Land Tribunal (South Western Province), Ex parte Benney* [1955] 2 129, CA.

Evidence of tenancy. *See* Tenancy—Evidence, *post*.

Fences and hedges—

Repair. *See* Repairs—Fences and hedges, *post*.

Fire insurance—

Insurable interest. *See* Insurance (Fire insurance—Insurable interest—Agricultural holding).Grazing agreement. *See* Tenancy—Agreement in contemplation of use of land for grazing during specified period of year, *post*.

Insurance—

Fire—

Insurable interest. *See* Insurance (Fire insurance—Insurable interest—Agricultural holding).

Passing of property on termination of tenancy. *See* Termination of tenancy—Passing of property, *post*.

Jurisdiction of court—

Jurisdiction of county court to set aside arbitration award in respect of agricultural holding. *See* Arbitration—Award—Setting aside award—Jurisdiction, *ante*.

Jurisdiction of High Court to decide question as to jurisdiction of an arbitrator. *See* Arbitration—Question as to jurisdiction of an arbitrator, *ante*.

Jurisdiction to determine whether transaction an 'agreement' within Agricultural Holdings Act 1948, s 2(1). *See* Tenancy—Agreement whereby land let for interest less than tenancy from year to year—Agreement to take effect with necessary modifications as

Letting for period of less than from year to year. *See* Tenancy—Agreement whereby land let for interest less than tenancy from year to year, *post*.

Licence to occupy land for use as agricultural land. *See* Tenancy—Agreement whereby person granted licence to occupy land for use as agricultural land, *post*.

Notice to quit—

Aggregate of agricultural land comprised in contract of tenancy—

Aggregate of agricultural land—Inn and orchard land and pasture—Inn buildings used in connection with agricultural trade—Whole of premises constituting agricultural holding—Agricultural Holdings Act 1948, s 1(1). *Dunn v Fidoe* [1950] 2 685, CA.

Contract of tenancy—Notice to quit cottage occupied by farm worker employed by tenant on adjoining holding—Whether cottage part of agricultural holding or itself an agricultural holding—Cottage and holding held on separate agreements—Agricultural Holdings Act 1948, s 1(1), (2). *Blackmore v Butler* [1954] 2 403, CA.

Allotment—

Land of half an acre used for production of produce for sale—Whether 'agricultural holding'—Allotments Act 1925, s 1—Agricultural Holdings Act 1948, s 1(1). *Stevens v Sedgman* [1951] 2 33, CA.

Ambiguity in notice—

Validity of notice. *See* Notice to quit—Validity—Ambiguity in notice, *post*.

Arbitration—

Jurisdiction of court—Reason for notice to quit—Tenant wishing to contest reason—Notice requiring arbitration—Non-payment of rent—Tenant alleging notice to remedy and therefore notice to quit invalid—Notice to quit valid on its face—Tenant failing to give notice requiring arbitration—Whether by alleging invalidity tenant contesting reason for notice to quit—Whether tenant precluded from raising issue of validity as defence to claim for possession—Agricultural Holdings Act 1948, s 24(2)(d) (as amended by the Agriculture (Miscellaneous Provisions) Act 1963, s 19(6)).—Agriculture (Notices to Remedy and Notices to Quit) Order 1964 (SI 1964 No 706), art 9. *Magdalen College, Oxford v Heritage* [1974] 1 1065, CA.

Jurisdiction of court—Reason for notice to quit—Tenant wishing to contest reason—Reason given was failure to comply with notice demanding payment of rent within two months—No notice served by tenant requiring question of validity of reason to be referred to arbitration—Application by landlord to court to determine effectiveness of notice—Jurisdiction to determine question as to validity of reason—Agricultural Land Tribunals and Notices to Quit Order 1959 (SI 1959 No 81), art 6—Agricultural Holdings Act 1948, s 24(2)(d). *Attorney-General of the Duchy of Lancaster v Simcock* [1965] 2 32, ChD.

Compensation to outgoing tenants for improvements—

Reimbursement of landlord from capital moneys where holding subject to trusts and settlement. *See* Settled land (Application of capital money—Payment for improvements).

AGRICULTURAL HOLDING (cont)

Notice to quit (cont)—

Consent—

Circumstances in which consent not required.

Consent subject to condition—Condition not complied with—Validity of notice—Agricultural Holdings Act 1948, s 25(5). *Martin-Smith v Smale* [1954] 1 237, CA.Desirable in interests of efficient farming—Interests of efficient farming—Whether only holding to be considered—Agricultural Holdings Act 1948, s 25(1)(a). *R v Agricultural Land Tribunal for the Wales and Monmouth Area, ex parte Davies* [1953] 1 1182, QBD.Desirable in interests of efficient farming—Interests of efficient farming—Whether only holding to be considered—Agricultural Holdings Act 1948, s 25(1)(a). *R v Agricultural Land Tribunal for the Eastern Province of England, ex parte Grant* [1956] 3 321, CA.Desirable in interests of sound management of estate—Factors to be considered—Land to be taken from one farm on estate and added to another—Whether relevant that tenant of farm from which land taken would suffer—Agricultural Holdings Act 1948, s 25(1)(b), as amended by Agriculture Act 1958, s 3(1), (2). *Evans v Roper* [1960] 2 507, QBD.Desirable in interests of sound management of estate—Meaning of 'sound management'—Personal financial interest of landlord not a matter of sound management—Purpose for terminating tenancy must be connected with way estate managed—Landlords giving notice to quit to enable them to renegotiate letting on terms excluding their existing obligation to supply tenant with cheap electricity—Purpose of termination not desirable in interests of sound management—Consent to operation of notice to quit refused—Agricultural Holdings Act 1948, s 25(1)(b). *National Coal Board v Naylor* [1972] 1 1153, QBD.Discretion—Exercise of discretion—Matters for consideration—Agricultural Holdings Act 1948, s 25(1)(a). *R v Agricultural Land Tribunal for the Wales and Monmouth Area, Ex parte Davies* [1953] 1 1182, QBD.Discretion—Exercise of discretion—Matters for consideration—Order of consideration—Agricultural Holdings Act 1948, ss 24(1), s 25(1). *R v Agricultural Land Tribunal for the Eastern Province of England, Ex parte Grant* [1956] 3 321, CA.Exception—Death of tenant with whom contract made within three months before notice to quit—Joint tenants—Death of survivor only within three months before date of notice to quit—Whether consent necessary—Agricultural Holdings Act 1948, s 24(1), s 24(2)(g). *Woodward v Dudley (Earl)* [1954] 1 559, ChD.Exception—Death of tenant with whom contract made within three months before notice to quit—Deceased 'tenant' not holder of land at date of death—Whether consent of tribunal needed—Agricultural Holdings Act 1948, s 24(2)(g), s 94. *Clarke v Hall* [1961] 2 365, QBD.Exception—Death of tenant with whom contract made within three months before notice to quit—Notice given to personal representatives—Reason stated that the late tenant had died within three months—Deceased was herself widow and executrix of original tenant—Whether executrix of tenant 'tenant' within Agricultural Holdings Act 1948, s 24(2)(g). *Costagliola v Bunting* [1958] 1 846, Assizes.Exception—Land required for non-agricultural use—Planning permission granted or not required—Notice to quit Crown land—Whether planning permission required by Crown in respect of own interest in land—Agricultural Holdings Act 1948, s 24(1), (2)(Sb), as amended by the Agriculture Act 1958, s 8, Sch 1, para 8.—*Town and Country Planning Act 1947, s 87(2)(b)*, Ministry of Agriculture, Fisheries and Food v Jenkins [1963] 2 147, CA.Exception—Non-compliance with notice to remedy breaches of terms of tenancy—Several works required to be done by tenant—Failure of tenant to carry out one of the specified works by date of notice to quit—Whether partial failure in compliance sufficient to render tribunal's consent unnecessary under Agricultural Holdings Act 1948, s 24(2)(d). *Price v Romilly* [1960] 3 429, QBD.Exception—Resumption of occupation by landlord—Occupation by landlord for twelve months immediately before tenancy—Need of personal occupation—Agricultural Holdings Act 1948, s 24(3)(a). *Lawes v Caulcutt* [1952] 1 748, QBD.Failure to obtain consent—Notice given before, but expiring after, date of revocation of regulation requiring consent—Effect of revocation—Interpretation Act 1889, s 38(2)—Defence (General) Regulations 1939, regulation 62 (4A)—Defence Regulations (No 3) Order 1948 (SI 1948 No 336), art 1. *Boddington v Wisson* [1951] 1 166, CA.Greater hardship—Considerations taken into account—Hardship to persons other than the landlord or the tenant—Landlord's death leaving insolvent estate and widow in poverty—Sale of holding sought by son for benefit of estate—Whether greater hardship 'caused' by withholding consent—Agricultural Holdings Act 1948, s 25(1)(d) as substituted by Agriculture Act 1958, s 3(2). *Bailey v Purser* [1967] 2 189, CA.Nature of act of consent—Whether judicial or administrative act—Defence (General) Regulations 1939, reg 62(4A). *Irving v Patterson* [1943] 1 652, ChD.Need for consent—Sale since Sept 3 1939—Conveyance by tenants in common of their interest in farm to other tenant in common—Whether consent necessary—Defence (General) Regulations 1939, reg 62(4A). *Edwards v Hall* [1949] 1 352, KBD.Time of consent—Consent during currency of notice—Validity of notice—Defence (General) Regulations 1939, reg 62. *Re Kendrick's Agreement* [1948] 2 101, ChD.

Counter-notice—

Exclusion of right to give counter-notice—'Land...required for a use other than for agriculture'—Intention of landlord to sell land as sports ground, but no actual purchaser—Whether tenant's right to give counter-notice excluded—Agricultural Holdings Act 1948, s 24(2)(b). *Jones v Gates* [1954] 1 158, CA.Exclusion of right to give counter-notice—Necessity to indicate statutory ground for exclusion—Agricultural Holdings Act 1948, s 24(1), (2)—Agricultural (Control of Notices to Quit) Regulations, 1948 (SI 1948 No 190), regulation 4. *Budge v Hicks* [1951] 2 245, CA.

AGRICULTURAL HOLDING (cont)

Notice to quit (cont)—

Counter-notice (cont)—

What is sufficient counter-notice—Clear intention to invoke Agricultural Holdings Act 1948, s 24(1). **Mountford v Hodgkinson** [1956] 2 17, CA.

Death of tenant—

Consent of Agricultural Land Tribunal to notice not required. *See* Notice to quit—Consent—Exception—Death of tenant with whom contract made within three months before notice to quit, *ante*.

Invalid notice—

Effect on tenant's right to claim compensation. *See* Termination of tenancy—Compensation—Tenant—Compensation for disturbance—Notice to quit served on tenant, *post*.

Land and cottages—

Land, but not cottages, used for agriculture—No severance of cottages—Agricultural Holdings Act 1948, s 1(1), (2). **Howkins v Jardine** [1951] 1 320, CA.

Land required for non-agricultural purposes—

Consent of Agricultural Land Tribunal not required. *See* Notice to quit—Consent—Exception—Land required for non-agricultural use, *ante*.

Length of notice—

Statutory provision for half-year's notice—Express term of lease giving lessor right to determine lease on one month's notice—Whether term of lease replaced by statutory provisions—Agricultural Holdings Act 1908, s 22. **Wembley Corp'n v Sherren** [1938] 4 255, KBD.

Non-compliance with notice to remedy breaches of tenancy agreement—

Consent of Agricultural Land Tribunal to notice not required. *See* Notice to quit—Consent—Exception—Non-compliance with notice to remedy breaches of terms of tenancy, *ante*.

Non-payment of rent—

Validity of notice. *See* Notice to quit—Validity—Service by landlord requiring payment of rent due within two months, *post*.

Resumption of occupation by landlord—

Consent of Agricultural Land Tribunal to notice not required. *See* Notice to quit—Consent—Exception—Resumption of occupation by landlord, *ante*.

Service—

Effectiveness—Service by leaving notice at recipient's proper address—Need to service notice in manner reasonable person would adopt—Notice pushed by landlord under tenant's door—Notice remaining concealed under linoleum inside door—Whether necessary that notice should be left in a place at address where likely to be observed—Whether service of notice by landlord effective—Agricultural Holdings Act 1948, s 92(1). **Lord Newborough v Jones** [1974] 3 17, CA.

Effectiveness—Service by ordinary post—Whether delivery by post due service although notice not sent by registered post—Agricultural Holdings Act 1948, s 92(1). **Re Poyser and Mills' Arbitration** [1963] 1 612, QBD.

Effectiveness—Service by ordinary post—Agricultural Holdings Act 1923, s 53. **Re An Arbitration between Sharpley and Manby** [1942] 1 66, CA.

Effectiveness—Service on agent of tenant—Person responsible for farming in occupation with knowledge of tenant—Agricultural Holdings Act 1948, s 92(3). **Wilbraham v Colclough** [1952] 1 979, Assizes.

Second notice served before first had expired—Effect. **Lower v Sorrell** [1962] 3 1074, CA.

Tenant and sub-tenant—

Landlord serving valid notice to quit on tenant—Tenant serving invalid notice to quit on sub-tenant—Whether sub-tenancy continuing to exist after termination of main tenancy—Agricultural Holdings Act 1948, s 24(1). **Sherwood (Baron) v Moody** [1952] 1 389, KBD.

Tenant quitting holding in consequence of notice to quit—

In consequence of—Notice to quit served on tenant—Landlord obtaining judgment for possession—Whether tenant quitting 'in consequence of' notice to quit—Agricultural Holdings Act 1923, s 12(1). **Preston v Norfolk County Council** [1947] 2 124, CA.

Validity—

Ambiguity in notice—Notice failing to make plain under which statutory provision given—Landlords claiming notice given under one statutory provision—Terms of notice suggesting alternative provision—Agricultural Holdings Act 1948, s 24(1), (2). **Mills v Edwards** [1971] 1 922, CA.

Ambiguity in notice—Notice invalid under one statutory provision—Whether notice could serve as general notice under another statutory provision—Agricultural Holdings Act 1948, s 24(1) (2). **Cowan v Wrayford** [1953] 2 1138, CA.

Ambiguity in notice—Notice stating reason—None of reasons given reasons for purposes of Agricultural Holdings Act 1948, s 24(2)—Agricultural Holdings Act 1948, s 24(1), (2). **Hammon v Fairbrother** [1956] 2 108, QBD.

Ambiguity in notice—Notice invalid under one statutory provision—Whether notice could serve as general notice under another statutory provision—Agricultural Holdings Act 1948, s 24(1), (2). **Cowan v Wrayford** [1953] 2 1138, CA.

Land subject to contract of sale—Notice given before contract of sale concluded—Notice expiring after end of 1941—Defence (General) Regulations 1939, reg 62. **Lloyds Bank Ltd v Elliott** [1947] 1 79, KBD.

AGRICULTURAL HOLDING (cont)

Notice to quit (cont)—

Validity (cont)—

Non-compliance with notice to remedy breaches of agreement—Effectiveness of notice to remedy—Reasonable period specified for remedying breaches—More than one breach specified in notice—Notice specifying seven months as period to remedy breaches—Insufficient period to remedy all breaches—Meaning of 'reasonable period...to remedy any breach'—Whether notice valid if specified period is not a reasonable one in which to remedy all breaches although reasonable for remedying some—Agricultural Holdings Act 1948, s 24(2)(d).—Agriculture (Miscellaneous Provisions) Act 1963, s 19(1). **Wykes v Davis** [1975] 1 399, CA.

Non-compliance with notice to remedy breaches of agreement—Effectiveness of notice to remedy—Notice served on tenant less than 12 months after service of earlier notice—Notice to be disregarded unless tenant's agreement in writing given to withdrawal of earlier notice—Form of agreement in writing—Date when agreement in writing should be given—Agreement given after service of further notice to remedy but before service of notice to quit—Power of tenant to waive requirement that agreement in writing should be given—Agriculture (Miscellaneous Provisions) Act 1963, s 19(1)(b). **Mercantile and General Re-Insurance Co Ltd v Groves** [1973] 3 330, CA.

Non-compliance with notice to remedy breaches of agreement—Non-compliance with notice to remedy breaches within period of six months—Some breaches requiring supply of materials by landlords—Materials not supplied—Failure of tenant to remedy any breaches—Agricultural Holdings Act 1948, s 24(2)(d). **Shepherd v Lomas** [1963] 2 902, CA.

Notice given before commencement of tenancy—Agricultural Holdings Act 1948, s 23(1). **Lower v Sorrell** [1962] 3 1074, CA.

Notice given within three months of death of original tenant—Whether original tenancy agreement still in existence—Agricultural Holdings Act 1948, s 24(2)(g). **Jenkin R Lewis & Son Ltd v Kerman** [1970] 3 414, CA.

Notice stating reason—Two notices—Second notice stating same reason as first and a new reason—Arbitration application by tenant in regard to first notice before delivery of second notice—Arbitration not yet determined—Whether second notice to quit was good as one reason was good and the other was bad—Whether operation of second notice was suspended pending determination of arbitration under the first—Agricultural Holdings Act 1948, s 24(2)(d).—Agriculture (Control of Notices to Quit) Regulations 1948 (SI 1948 No 190), reg 7. **French v Elliott** [1959] 3 866, QBD.

Service of notice by landlord requiring payment of rent due within two months—Failure by tenant to pay within two months—Payment after expiry of two months and before service of notice to quit—Whether landlord entitled to serve valid notice to quit after payment—Agricultural Holdings Act 1948, s 24(2)(d). **Stoneman v Brown** [1973] 2 225, CA.

Rent—

Non-payment of rent—

Notice to quit—Arbitration. *See* Notice to quit—Arbitration, *ante*.

Repairs—

Fences and hedges—

Incorporation by statute of clause into tenancy agreement—Conflict with contractual clause—Agricultural Holdings Act 1948, s 6(1)—Agricultural (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1948 (SI 1948 No 184), Sch para 5. **Burden v Hannaford** [1955] 3 401, CA.

Improvements—

Recoupment of cost. *See* **Trust and trustee** (Trust for sale—Repairs and improvements to agricultural land—Cost paid out of income).

Restriction on letting agricultural land for less than from year to year. *See* Tenancy—Agreement whereby land let for interest less than tenancy from year to year, *post*.

Sale—

Purchaser's liability—

Agreement by purchaser to pay 'outgoing valuation due to the tenant'—Estoppel **Oades v Spafford** [1948] 1 607, CA.

Supervision order—

Representations to Minister before action by Minister—

Hearing by person appointed for that purpose—Minister's power to appoint county agricultural executive committee's sub-committee—Previous inspection by sub-committee—Sub-committee's officer's attendance, participation and preparation of report—Agriculture Act 1947, s 12(1), s 17(2), s 74(4), s 104(4), (5).—Interpretation Act 1889, s 1(1), s 19. **R v Minister of Agriculture and Fisheries, Ex parte Graham, R v Agricultural Land Tribunal (South Western Province), Ex parte Benney** [1955] 2 129, CA.

Tenancy—

Agreement—

Provision for resumption of possession of part of holding without compensation—Clause depriving tenant of statutory right to compensation—Whether clause void—Agricultural Holdings Act 1923, ss 12, 13, 27, 50, 57. **Re Disraeli Agreement** [1938] 4 658, ChD.

Agreement in contemplation of use of land for grazing during specified period of year—

Agreement to let for grazing for period of 364 days—Whether a "specified period of the year"—Agricultural Holdings Act 1948, s 2(1), proviso. **Reid v Dawson** [1954] 3 498, CA.

Agreement to let land for one year less one day—Grazing—Agreement to let land to grazing for cattle, sheep and horses—Undertaking to keep land as grassland only—Undertaking not to plough except in interests of good husbandry on a crop rotation basis—Use of land partly for grazing and partly for ploughing and growing crops—Whether agreement made in contemplation of use of land only for grazing—Whether agreement taking effect as agricultural tenancy from year to year—Agricultural Holdings Act 1948, s 2(1), proviso. **Lory v London Borough of Brent** [1971] 1 1042, ChD.

AGRICULTURAL HOLDING (cont)

Tenancy (cont)—

Agreement in contemplation of use of land for grazing during specified period of year (cont)—

In contemplation of—Agreement to let for grazing for period of three months—Letting renewed every three months 21 times—At time of original letting each party expected renewals but there was no contract for renewals—Whether letting in 'contemplation' of the use of the land only during some specified period of year—Agricultural Holdings Act 1948, s 2(1), proviso. **Scene Estate Ltd v Amos** [1957] 2 325, CA.

Land used for agriculture for purpose of trade or business—Agreement to let for 'six-month periods'—Land used for grazing horses of riding school—Whether used for purpose of trade or business and for specified period of the year—Agricultural Holdings Act 1948, s 1(1), 2, s 2(1), s 94(1). **Rutherford v Maurer** [1961] 2 775, CA.

Agreement whereby land let for interest less than tenancy from year to year—

Agreement to take effect with necessary modifications as agreement for tenancy from year to year—Agreement to let land for fixed period of 18 months—Whether land let for an interest less than a 'tenancy from year to year'—Whether tenant entitled to notice to quit—Agricultural Holdings Act 1948, s 2(1). **Gladstone v Bower** [1960] 3 353, CA.

Agreement to take effect with necessary modifications as agreement for tenancy from year to year—Agreement to let land for period of one year—Whether land let for an interest less than a tenancy from year to year—Agricultural Holdings Act 1948, s 2(1). **Bernays v Prosser** [1963] 2, CA.

Agreement to take effect with necessary modifications as agreement for tenancy from year to year—Arrangement whereby defendant went into possession of plaintiff's farm for a trial period of a year without paying rent and on footing that he was to be entitled to any profits—Legally enforceable contract—Whether land let to defendant during continuance of an appointment under the plaintiff—Whether arrangement should take effect as creating tenancy from year to year—Agricultural Holdings Act 1948, s 1(1), s 2(1). **Verrall v Farnes** [1966] 2 808, ChD.

Agreement to take effect with necessary modifications as agreement for tenancy from year to year—Letting for about a year—Whether tenancy from year to year created—Agricultural Holdings Act 1948, s 2(1). **Lower v Sorrell** [1962] 3 1074, CA.

Agreement to take effect with necessary modifications as agreement for tenancy from year to year—Letting for successive periods of 364 days—Term of years or from year to year—Agricultural Holdings Act 1923, ss 25(1), 57. **Land Settlement Assn Ltd v Carr** [1944] 2 126, CA.

Agreement to take effect with necessary modifications as agreement for tenancy from year to year—Meaning of 'agreement'—Jurisdiction of court to determine whether transaction agreement—Agricultural Holdings Act 1948, s 2(1)(2). **Goldsack v Shore** [1950] 1 276, CA.

Agreement to take effect with necessary modifications as agreement for tenancy from year to year—Necessary modifications—Modifications such as to render modified agreement essentially different from agreement made by parties—Whether original agreement to take effect as agreement for tenancy from year to year—Agricultural Holdings Act 1948, s 2(1). **Bahamas International Trust Co Ltd v Threadgold** [1974] 3 428, CA.

Agreement whereby person granted licence to occupy land for use as agricultural land—

Agreement to take effect with necessary modifications as agreement for tenancy from year to year—Meaning of 'licence' to occupy land for use as agricultural land—Licensee to have exclusive right of occupation for agricultural purposes during currency of licence—Licensor owner of farm—Licensee granted licence to live in farmhouse—Licensor paying licensee weekly sum as caretaker of farm while licensee occupying farmhouse—Licensee allowed to retain his cattle on land and to sell milk—Whether licensee having licence to occupy land for use as agricultural land—Agricultural Holdings Act 1948, s 2(1). **Bahamas International Trust Co Ltd v Threadgold** [1974] 3 881, HL.

Agreement to take effect with necessary modifications as agreement for tenancy from year to year—Meaning of—Licence to occupy land—Partnership of farm—Part of house occupied by managing partner rent-free—Whether managing and only active partner was in occupation of land and part of house under licence within Agricultural Holdings Act 1948, s 2(1). **Harrison-Broadley v Smith** [1964] 1 867, CA.

Approval of grant by Minister—Document declaring Minister's approval of all licences by specified government departments—Approval stated to be given under repealed enactment—Enactment re-enacted in slightly different terms—Whether document effective to give approval—Whether approval required to be given ad hoc—Agricultural Holdings Act 1948, s 2(1). **Finbow v Air Ministry** [1963] 2 647, QBD.

Creation of tenancy—

Mortgage—Attornment clause—Agricultural Holdings Act 1948, s 2(1), s 23(1). **Steyning and Littlehampton Building Society v Wilson** [1951] 2 452, ChD.

Death of tenant—

Effect—Covenant for personal occupation—Tenant dying—Occupation thereafter by one or two will trustees **Re Lower Onibury Farm, Onibury, Shropshire** [1955] 2 409, CA.

Evidence—

Evidence of contractual tenancy from owner allowing occupation for an annual payment—Agricultural Holdings Act 1948, s 2(1). **Holder v Holder** [1968] 1 665, CA.

Inference—

Inference of contractual tenancy from owner allowing occupation for an annual payment—Agricultural Holdings Act 1948, s 2(1). **Holder v Holder** [1966] 2 116, ChD.

Termination of tenancy—

Compensation—

Expenses incurred in preparation of claim for compensation—Landlord giving tenant notice to quit on ground land not cultivated according to rules of good husbandry—Tenant refusing claim—Tenant consulting surveyor about claim—Expenses of tenant in consulting surveyor—Whether expenses incurred in preparation of claim—Agricultural Holdings Act 1923, s 12(6). **Dunston v Benney** [1937] 4 510, CA.

AGRICULTURAL HOLDING (cont)

Termination of tenancy (cont)—

Compensation (cont)—

Landlord—Compensation for delapidations—Determination of claim by arbitrator—Matters to be considered by arbitrator—Agricultural Holdings Act 1948, s 57(1). **Barrow Green Estate Co v Walker's Executors** [1954] 1 204, CA.

Landlord—Compensation for deterioration—Deterioration of particular parts of holding—Cost of reclaiming fields in bad state of cultivation—Liability of tenant to repair fences, hedges and ditches—Agricultural Holdings Act 1948, s 57(1), (2), s 58.—Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1948 (SI 1948 No 184), Sch para 5. **Evans v Jones** [1955] 2 118, CA.

Notice of claim—Validity—Notice claiming under contract and under Agricultural Holdings Act 1948, s 57.—Subsequent abandonment of claim under Act—Whether notice bad—Agricultural Holdings Act 1948, s 57(1), (3), s 70(1), (2), (4). **Boyd v Wilton** [1957] 2 102, CA.

Notice of claim—Validity—Name of landlord's son erroneously inserted for that of landlord in notice—Agricultural Holdings Act 1948, s 70(2). **Frankland v Capstick** [1959] 1 209, CA.

Tenant—Compensation for disturbance—Amount of compensation—Covenant by landlord to pay 'for any loss or damage through disturbance'—Amount of compensation not confined to statutory limits—Agricultural Holdings Act 1923, s 12(6). **Dean v Secretary of State for War** [1950] 1 344, CA.

Tenant—Compensation for disturbance—Amount of compensation—Tenant of two holdings—Agricultural Holdings Act 1923, s 12(6), (8). **Re An Arbitration between Bebb and Frank** [1939] 1 253, CA.

Tenant—Compensation for disturbance—Notice to quit served on tenant—Tenant quitting holding as result of notice—Notice to quit invalid—Right of tenant to claim compensation—Agricultural Holdings Act 1923, s 12(1).—Defence (General) Regulations 1939, regulation 62(4A) (as amended). **Kestell v Langmaid** [1949] 2 749, CA.

Notice—

Tenancy by holding over—Clause in original seven year lease giving lessor right to determine lease on a month's notice—Whether clause applied to tenancy from year to year—Agricultural Holdings Act 1908, s 22. **Wembley Corp v Sherren** [1938] 4 255, KBD.

Notice to quit. *See* Notice to quit, *ante*.

Passing of property—

Effect on insurance—Crops insured by tenant—Crops covered unless passing to another otherwise than by operation of law—Crops grown on holding in last year of tenancy—Property in crops left on holding passing to landlord on tenant quitting the holding—Whether tenant continued to have insurable interest in crops—Whether property in crops passed to landlord by operation of law—Agricultural Holdings Act 1948, s 47, Sch 4, Pt 2, para 8. **Thomas v National Farmers Union Mutual Insurance Society Ltd** [1961] 1 363, QBD.

Sub-tenancy—

Invalid notice to quit—Effect. *See* Notice to quit—Tenant and sub-tenant, *ante*.

What constitutes an agricultural holding—

Test to be applied—

Land leased for horticultural purposes—One-third of land cultivated but land used chiefly for the purposes of retail shop—Whether 'agricultural holding'—Agricultural Holdings Act 1948, s 1(1). **Monson (Lord) v Bound** [1954] 3 228, QBD.

AGRICULTURAL LANDAgricultural holding. *See* Agricultural holding.

Income tax—

Capital allowances. *See* Income tax (Capital allowances—Agricultural land and buildings).

AGRICULTURAL LAND TRIBUNAL

Appointment of members—

Appointment by Minister of Agriculture—

Delegation of power of appointment—Power of Minister of Agriculture to delegate to chairman duty to appoint other members—Agriculture Act 1947, Sch IX, Pt 15. **Martin-Smith v Smale** [1954] 1 237, CA.

Delegation of power of appointment—Two nominated members appointed by civil servant in Ministry of Agriculture employed as members—Agriculture of tribunal—Validity of proceedings—Agriculture Act 1947, Sch IX, para 15, para 20(2). **Woollett v Minister of Agriculture and Fisheries** [1954] 3 529, CA.

Consent to operation of notice to quit agricultural holding. *See* Agricultural holding (Notice to quit—Consent).

AGRICULTURAL LAND TRIBUNAL (cont)

Decision—

Certification—

Mistake—Certified copy sent to tenant—Mistake in certified decision—Subsequent service of 'amended decision notice'—Validity of amended notice—Agriculture (Procedure of Agricultural Land Tribunals) Order 1948 (SI 1948 No 186), art 15(2). **R v Agricultural Land Tribunal (South Eastern Area), Ex parte Hooker** [1951] 2 801, KBD.

Reasons—

Whether tribunal bound to state reasons. **Davies v Price** [1958] 1 671, CA.

AGRICULTURE

Agricultural holding. *See* **Agricultural holding**.

Agricultural land—

Planning control. *See* **Town and country planning** (Agricultural land).

Agricultural worker—

Licence to occupy farm cottage. *See* **Licence** (Licence to occupy premises—Agricultural worker).

Minimum wage. *See* **Agricultural worker—Wages—Minimum wage, post**.

Redundancy payment. *See* **Redundancy** (Dismissal by reason of redundancy—Change of ownership in business).

Tied cottage—

Possession—Suspended order for possession—Costs—Special reasons for making order for costs—Generosity of landlord in allowing service occupant to stay on without payment for period after termination of employment—Rent Act 1965, s 33(b). **Wilson v Croft** [1970] 2 623, CA.

Wages—

Benefits or advantages reckoned as wages—Provision of cottage—Value of cottage fixed by statutory order—Rent paid by tenant higher than value of cottage fixed by statutory order—Right of tenant to recover rent paid in excess of sum fixed by order—Agricultural Wages (Regulation) Act 1924, s 7(11). **Long Eaton Co-operative Society Ltd v Smith** [1949] 1 633, CA.

Minimum wage—Deduction—Benefit received by worker—Agricultural Wages (Regulation) Act 1924, s 7(11). **Williams v Hughes** [1936] 1 674, KBD.

Minimum wage—Person employed in agriculture—Wages of general worker on poultry farm—Whether 'employed in agriculture'—Agricultural Wages (Regulation) Act 1924, s 16. **Walters v Wright** [1938] 4 116, KBD.

Wages during illness—Agreement that no wages be paid while worker away through illness—Validity—Agricultural Wages (Regulation) Act 1924, s 7(1), (10), s 8(1)(a). **Smart v Spencer** [1948] 1 749, CA.

Allotments. *See* **Allotment**.

Buildings—

Rates—

Exemption. *See* **Rates** (Exemption—Buildings occupied together with agricultural land and used solely in connection with agricultural operations thereon).

Farmer's goods vehicle—

Licence—

Alteration of vehicle or its use—Rate of duty. *See* **Road traffic** (Excise licence—Rate of duty—Alteration of vehicle or its use—Lorry licensed as farmer's goods vehicle).

Feeding stuffs—

Sale for use as food for cattle or poultry—

Implied warranty suitable for use as such—Sale for use as an ingredient in poultry food—Imported ground nut extractions unfit for purpose—Compound meal fed to young pheasants which were poisoned thereby—Cif contracts by wholesalers for importing ground nut extractions—Sale by transfer of cif documents—Whether pheasants were 'poultry'—Whether warranty of feeding stuffs applied—Fertilisers and Feeding Stuffs Act 1926, s 2(2). **Henry Kendall & Sons (a firm) v William Lillico & Sons Ltd** [1968] 2 444, HL.

Implied warranty suitable for use as such—'Sale' takes place when property in goods passes—Goods shipped from Burma under cif contract and partly resold when in transit to United Kingdom port—Property in these goods passed before arrival at United Kingdom port—Goods unfit for use as feeding stuff—Whether statutory warranty as to fitness applied—Fertilisers and Feeding Stuffs Act 1926, s 1, s 2(2). **C E B Draper & Son Ltd v Edward Turner & Son Ltd (H Gamwell, Junior Ltd Third Party; G C Dobell & Co Ltd Fourth Party; and Steel Brothers & Co Ltd Fifth Party** [1964] 3 148, CA.

Fertiliser—

Analysis of sample—

Parcel—Sample not conforming to particulars indicated by mark—Whether parcel must be made up for purpose of particular sale—Fertilisers and Feeding Stuffs Act 1926, s 4(3). **Soil Fertility Ltd v Breed** [1968] 3 193, QBD.

Goods vehicle—

Farmer's goods vehicle—

Licence—Alteration of vehicle or its use—Rate of duty. *See* **Road traffic** (Excise licence—Rate of duty—Alteration of vehicle or its use—Lorry licensed as farmer's goods vehicle).

Horticulture—

Selective employment tax—

Refund. *See* **Selective employment tax** (Refund—Business and private activities—Horticulture).

Housing—

Rural worker—

Rent—Right to increase—'General increase of rents in the district'—Dwelling in respect of which grant towards cost of repairs given by local authority—Rent fixed after execution of works in 1938—Housing (Rural Workers) Act 1926, s 3(1)(b) (as amended by Housing (Rural Workers) Amendment Act 1938, s 4). **Black Mill Ltd v Straker** [1949] 2 919, CA.

AGRICULTURE (cont)

- Land—
 - Income tax—
 - Capital allowances. *See* **Income tax** (Capital allowances—Agricultural land and buildings).
 - Refusal of planning permission. *See* **Town and country planning** (Permission for development—Refusal—Agricultural land).
- Machinery—
 - Threshing machine. *See* **Threshing machine, post.**
- Marketing scheme—
 - Validity—
 - Apple and Pear Publicity Scheme—Proposed board—Discretionary functions—No power of buying or selling or regulation—Agricultural Marketing Act 1931, s 1(1), s 5, s 6.—Agricultural Marketing Act 1958, s 1(1), s 6, s 7, s 8, s 9. **Tuker v Ministry of Agriculture, Fisheries and Food** [1960] 2 834, CA.
- Milk marketing. *See* **Milk marketing.**
- Mortgagor's power of leasing. *See* **Mortgage** (Power of leasing—Agricultural land).
- Potato marketing. *See* **Potato marketing.**
- Rating—
 - Valuation—
 - Factors to be considered—Agricultural worker's cottage—Limitation of value by amount which may be deducted from wages in respect of cottage. **Bomford v South Worcestershire Assessment Committee** [1947] 1 299, CA.
- Rural worker—
 - Housing. *See* **Housing—Rural worker, ante.**
- Selective employment tax—
 - Refund—
 - Horticulture. *See* **Selective employment tax** (Refund—Business and private activities—Horticulture).
- Spray-irrigation. *See* **Water and watercourses** (Riparian rights).
- Threshing machine—
 - Fencing of dangerous parts—
 - Duty to ensure sufficiently and securely fenced during working of machine—Feeding mouth guarded only by adjustable door—Workman injured while machine moving—Corn not being fed into machine—Threshing not taking place—Liability of owner of machine and employer of operator—Liability of farmer to whom machine hired—Threshing Machines Act 1878, s 1. **Jones v Richards** [1955] 1 463, Assizes.
- Timber—
 - Contract for sale—
 - Sale of standing trees—Assignability of a part of the benefit of the contract—Whether the word 'timber' referred to the whole of the tree or merely the trunk—Obligation to remove everything sold—Lops and tops left on the ground—Damages for non-removal **Sir Grey Skipwith (Bart) v Homewoods Sawmills Ltd** [1938] 2 733, ChD.
- Unemployment insurance—
 - Insured person. *See* **Unemployment insurance** (Insured person—Employment in agriculture).
- Vehicle—
 - Driver's records—
 - Exemption. *See* **Road traffic** (Goods vehicle—Driver's records—Agricultural vehicle exempt).
- Wheat—
 - Quota payments—
 - Liability of importers of flour to make payments—Importation of—Middlings—Whether flour or offal—Wheat Act 1932, ss 3, 5, 20. **R & W Paul Ltd v Wheat Commission** [1936] 2 1243, HL.
 - Recovery of quota payments made to Wheat Commission—Payments made more than six months before commencement of action—Whether claim statute barred—Public Authorities Protection Act 1893, s 1. **R & W Paul Ltd v Wheat Commission** [1936] 2 1243, HL.
 - Wheat Commission—
 - Powers—Wheat Commission making byelaw providing for reference of all disputes about flour to arbitration—Whether ultra vires Wheat Commission. **R & W Paul Ltd v Wheat Commission** [1936] 2 1243, HL.

AIDING AND ABETTING

- Assisting in importation of drugs into foreign country. *See* **Drugs** (Dangerous drugs—Assisting in or inducing commission of offences outside United Kingdom).
- Breach of undertaking—
 - Committal for contempt. *See* **Contempt of court** (Committal—Breach of undertaking—Act or omission of third parties precluding implementation of undertaking by defendant).
- Generally. *See* **Criminal law** (Aiding and abetting).

AIR

- Space—
 - Trespass. *See* **Trespass to land** (Air space).

AIR FORCE

- Airman—
 - Exemption from civil process. *See* **Execution** (Exemption from civil process—Airman).
- Court-martial. *See* **Court-martial.**

AIR GUN

- Possession by child—
 - Parent's liability—
 - Negligence. *See* **Child** (Negligence—Parent's liability—Firearms).

AIR RAID PRECAUTIONS

See **Emergency legislation** (Air raid precautions).

AIR RAID SHELTER

Injuries sustained entering air raid shelter after air raid warning—

Exclusion of right of action for damages—

War injury. *See* **War injury** (Exclusion of right of action for damages—Exclusion of right where injury war injury—Injuries sustained entering air-raid shelter after air-raid warning).

Obstruction on highway—

Lighting. *See* **Highway** (Obstruction—Lighting of obstruction—Air-raid shelter).

Lighting restrictions. *See* **Lighting restriction** (Obstruction on highway—Lighting obstructions—Air raid shelter in highway).

AIR TRAFFIC

Aerodrome. *See* **Aerodrome**.

Aircraft—

Damage caused by aircraft—

Damage caused by aircraft 'taking off'—Aircraft about to 'taxi' to 'take off' position—Air Navigation Act 1920, s 9(1). **Blankley v Godley** [1952] 1 436, Assizes.

Airport—

Refuelling services for aircraft—

Selective employment tax—Right to refund. *See* **Selective employment tax** (Refund—Right to refund—Aircraft refuelling depot at airport).

Carriage by air. *See* **Carriage by air**.

AIRCRAFT

Arrest—

Admiralty proceedings. *See* **Admiralty** (Jurisdiction—Action in rem—Aircraft).

Criminal jurisdiction. *See* **Criminal law** (Jurisdiction—Aircraft).

Insurance. *See* **Insurance** (Aviation insurance).

Meals on—

Meals supplied by contractor to airline—

Whether contractor liable for industrial training levy. *See* **Industrial training** (Levy—Activities of industry—Hotel and catering industry—Meals supplied to airlines for passengers' consumption).

Navigation. *See* **Air traffic**.

AIRLINE

Overbooking of seats—

Liability for false or misleading statement. *See* **Trade description** (False or misleading statement as to services etc—Promise in regard to future—Statement of fact coupled with promise—Booking and reservation of seat—Airline).

ALDERMAN

Election. *See* **Elections** (Local government—Election of aldermen).

ALIBI

Direction to jury. *See* **Jury** (Direction to jury—Alibi).

Evidence in support—

Criminal proceedings. *See* **Criminal evidence** (Alibi).

ALIEN

Action—

Fatal accident—

Competency of claim. *See* **Fatal accident** (Action—Competency—Alien).

Adoption of alien child. *See* **Adoption** (Order—Discretion—Nationality—Change of nationality).

Allegiance to Crown—

Treason. *See* **Criminal law** (Treason—Allegiance to Crown—Alien).

Breach of condition of leave to land—

Aiding and abetting—

What constitutes aiding and abetting—Presence of music critic at concert—Leave to musician subject to condition not to take employment—Performance at concert—Aliens Order 1920 (SR & O 1920 No 448), art 18(2). **Wilcox v Jeffery** [1951] 1 464, KBD.

Punishment—

Jurisdiction—Jurisdiction to order alien to enter into recognisance to leave United Kingdom within a specified time—Home Secretary's power to make deportation order unfettered—Aliens Order 1953 (SI 1953 No 1671), art 26(1). **R v Brixton Prison (Governor), Ex parte Havlidge (otherwise Gruswitz)** [1969] 1 109, QBD.

Jurisdiction—Jurisdiction to order alien to enter into recognisance to leave United Kingdom after conviction for breach of condition—Aliens Restriction Act 1914, s 1(2)—Aliens Order 1953 (SI 1953 No 1671), art 26(2). **R v East Grinstead Justices, Ex parte Doeve** [1968] 3 666, QBD.

British nationality—

Acquisition—

Lineal descendants of Electress Sophia—Persons included 4 & 5 Anne c 4 or c 16—British Nationality Act 1948, s 12. **Attorney-General v HRH Prince Ernest Augustus of Hanover** [1957] 1 49, HL.

ALIEN (cont)

British nationality (cont)—

Acquisition—

Mandated territory—Turkish subject resident in Palestine—In possession of passport marked 'British passport, Palestine—British Nationality and Status of Aliens Act 1914, s 27.—Treaty of Peace with Turkey signed at Lausanne on July 24, 1923, art 30.—Palestinian Citizenship Order 1925 (SR & O 1925 No 777). *R v Ketter* [1939] 1 729, CCA.

Deportation—

Order—

Validity—Alien, convicted of non-extraditable offence in USA and in transit back to USA, landed at airport in United Kingdom for medical reasons—Leave to land refused—Directions to carrier to remove alien from United Kingdom not complied with—Deportation order served on alien—Executive act—Validity of deportation order—Aliens Restriction Act 1914, s 1, as amended by Aliens Restriction (Amendment) Act 1919, s 1(1), and as extended—Aliens Order 1953 (SI 1953 No 1671) art 8 (4) art 20(2)(b). *R v Brixton Prison (Governor)*, *Ex parte Soblen* [1962] 3 641, CA.

Validity—Order that alien 'shall be deported'—Aliens Order 1920 (SR & O 1920 No 448), art 12(1). *R v Governor of Brixton Prison*, *Ex parte Pawel Sliwa* [1952] 1 187, CA.

Recommendation—

Conviction of offence—Conditional discharge—Effect of discharge—Conviction to be disregarded for purpose of enactment imposing disqualification or disability on convicted persons—Disqualification or disability—Whether recommendation for deportation a disqualification or disability—Whether court having power to recommend deportation where convicted alien granted conditional discharge—Criminal Justice Act 1948, s 12(2)—Aliens Order 1953, (SI 1953 No 1671), art 20(2). *R v Akan* [1972] 3 285, CA.

Domicile—

Acquisition of domicile of choice—

Residence. *See* **Domicile** (Acquisition of domicile of choice—Residence—Alien).

Enemy alien—

Action commenced by enemy alien before outbreak of hostilities—

Right of defendant to dismissal of action during war—Claim barred by lapse of time. *Eichengruen v Mond* [1940] 3 148, CA.

Right to proceed with action suspended—Security for costs—Safeguarding of enemy's claim. *Geiringer v Swiss Bank Corpn*, *Oesterreichische Creditanstalt v Geiringer* [1940] 1 406, ChD.

Action for false imprisonment against Home Secretary—

Statement of claim containing arguable point. *See* **Statement of claim** (Striking out—Action for false imprisonment brought by enemy aliens against Home Secretary).

Administration of estate on intestacy. *See* **Intestacy** (Grant of administration—Estate of enemy alien).

Business carried on by enemy alien—

Winding-up—Control of winding-up by Board of Trade—No right of creditor to refer questions to the court—Trading with the Enemy Act 1939, s 3A(3), (8), (9). *Re Banca Commerciale Italiana* [1943] 1 480, ChD.

Deportation—

Act of State—Licence allowing enemy alien to remain in United Kingdom—Subsequent order for deportation—Whether ultra vires. *Netz v Rt Hon Chuter Ede PC*, *HM Secretary of State for Home Affairs* [1946] 1 628, ChD.

Deprivation of nationality—

Generally. *See* **Nationality** (Enemy alien—Deprivation of nationality).

Recognition by English courts—Double taxation relief. *See* **Income tax** (Double taxation relief—Nationality).

Forfeiture of lease. *See* **Landlord and tenant** (Forfeiture of lease—Lessee enemy alien abroad).Naturalisation during war. *See* **Nationality** (Enemy alien—Naturalisation during war).

Persons who may be enemy aliens—

Company incorporated and carrying on business in enemy-occupied territory—Whether company enemy alien. *V/O Sovfracht v Gebr van Udens Scheepvaart en Agentuur Maatschappij* [1943] 1 76, HL.

Company transferring business from enemy-occupied territory to neutral country—Whether company enemy alien—Whether proceedings commenced before enemy occupation should be stayed. *Owners of the motor vessel Lubrafal v Owners of the steamship Pamia, The Pamia* [1943] 1 269, Adm.

Extension of period of stay—

Refusal—

Jurisdiction—Application for extension refused—General policy decision—Scientology—Aliens harmful to country—Discretion of Home Secretary—Whether refusal invalid or contrary to natural justice—Statement of claim struck out. *Schmidt v Secretary of State for Home Affairs* [1969] 1 904, CA.

Immigration. *See* **Immigration**.

Interned enemy alien—

Availability of writ of habeas corpus. *See* **Habeas Corpus** (Interned enemy alien—Availability of writ).

Leave to land—

Refusal—

Communication to alien—Time for communication—Refusal communicated to alien at earliest reasonably practicable time—Whether detention lawful under Aliens Order 1953 (SI 1953 No 1671), art 8(4). *R v Secretary of State for Home Affairs*, *Ex parte Soblen* [1962] 3 373, QBD.

Detention of alien—Absence of request by alien for leave to land—Whether refusal of leave requires antecedent request for leave—Aliens Restriction Acts 1914—1919—Aliens Order 1920 (SR & O 1920 No 448), arts 1(3), (3), 3(4)(a), (b), 5(a), 5A. *Re Lanny* [1942] 2 232, CA.

ALIEN (cont)

Leave to land (cont)—

Refusal (cont)—

Meaning of 'to land'—Alien in transit to USA landed at airport in United Kingdom for sole reason of saving his life—Alien taken to hospital on doctor's orders with approval of immigration authorities—Notice of refusal of leave to land communicated to alien two days later, the earliest date reasonably practicable for medical reasons—Whether leave to land validity refused—Aliens Order 1953 (SI 1953 No 1671), art 1(1). **R v Secretary of State for Home Affairs, Ex parte Soblen** [1962] 3 373, QBD.

National of EEC member state—

Freedom of movement—

Worker. *See Immigration (Workers)*—Freedom of movement—Nationals of member states of European Economic Community).

Naturalisation—

Child—

Certificate granted to applicant's father—Certificate granted to applicant's father under local Act in Burma—Whether father became a British subject by naturalisation—Burma Independence Act 1947, Sch 1, para 2(2). **Bulmer v Attorney-General** [1955] 2 718, ChD.

Certificate granted to applicant's father—Children included in the certificate—Applicant over 21 years of age when father naturalised—Whether applicant deemed to be a naturalised British subject—Meaning of 'child' determined by context in section and by cross-heading preceding section—Naturalisation Act 1870, s 10(5). **Re Carlton** [1945] 2 370, CA.

Passport—

Offence—

Unlawful possession of altered passport—Ingredients of offence—Whether mens rea must be proved—Aliens Order 1920 (SR & O 1920 No 448), art 18(4)(d). **Chajutin v Whitehead** [1938] 1 159, KBD.

Registration—

Lodger—

Signed statement of alien—Duty to submit to keeper of premises—All rooms in house let to tenants—Some tenants aliens—Premises not managed by or on behalf of owner—Premises visited only for rent collecting—Whether aliens 'lodgers'—Aliens Order 1920 (SR & O 1920 No 448), art 7(1), (2) (as amended by Aliens (No 2) Order 1945 (SR & O 1945 No 1535)). **Honig v Redfern** [1949] 2 15, KBD.

Stateless person—

Holder of travel document issued by Home Office—

Right of re-entry—Allegiance temporarily owed to Crown during absence abroad—Parental jurisdiction of Crown over infant abroad—Convention relating to Status of Stateless Persons 1954, art 28, Sch para 13. **Re P (GE) (An infant)** [1964] 3 977, CA.

Wardship proceedings—

Jurisdiction. *See Ward of court* (Jurisdiction—Alien).

ALIENATION

Native lands in Lagos. *See Nigeria* (Native lands in Lagos—Alienation of land).

Restraint on alienation. *See Restraint on alienation*.

ALIMONY

Administration action. *See Administration of estates* (Administration action—Right to bring—Debt due from estate—Arrears of alimony due to plaintiff).

Alimony pendente lite—

Nullity suit. *See Nullity* (Alimony pendente lite).

Divorce. *See Divorce* (Alimony).

ALL RISKS

Insurance. *See Insurance* (All risks insurance).

ALLOCUTUS

Criminal proceedings. *See Criminal law* (Trial—Allocutus).

ALLOTMENT

Allotment garden—

Termination of tenancy—

Notice to quit—Date of termination and period of notice—Contractual date replaced by Allotments Act 1922, s 1(1)(a), as amended by Allotments Act 1950, s 1. **Wombwell Urban District Council v Burke** [1966] 1 911, CA.

ALLOTMENT ASSOCIATION

Dissolution—

Distribution of surplus assets among members. *See Unincorporated association* (Dissolution—Distribution of surplus assets among members—Allotment association).

ALLOWANCE

Attendance allowance. *See National insurance* (Attendance allowance).

Estate duty. *See Estate duty* (Allowance).

Family allowance. *See Family allowance*

Income tax—

Capital allowances. *See Income tax* (Capital allowances).

Special hardship allowance—

Industrial injury. *See Industrial injury* (Disablement benefit—Special hardship allowance).

ALLUREMENT

Children—

Negligence. *See Negligence* (Children—Allurement).



ALPHABET

- Reform of alphabet—
 - Charitable purpose—
 - Advancement of education. *See* **Charity** (Education—Alphabet—Research into and propaganda on advantages of reform of alphabet).
 - Benefit to community. *See* **Charity** (Benefit to community—Reform of alphabet).

ALTERATION

- Articles of association. *See* **Company** (Articles of association—Alteration).
- Covenant—
 - Lease—
 - Breach of covenant against alterations. *See* **Landlord and tenant** (Covenant—Alterations—Breach of covenant against alterations).
- Memorandum of association—
 - Capital clause. *See* **Company** (Memorandum of association—Capital clause—Alteration).
 - Objects clause. *See* **Company** (Objects clause—Alteration).
- Will. *See* **Will** (Alteration).

ALTERNATIVE ACCOMMODATION

- Rent restriction—
 - Offer of alternative accommodation. *See* **Rent restriction** (Alternative accommodation).

ALTERNATIVE OFFENCE

- Autrefois acquit. *See* **Criminal law** (Autrefois acquit—Alternative offence).
- Substitution of verdict on appeal. *See* **Criminal law** (Appeal—Substitution of verdict—Alternative offence).
- Verdict. *See* **Criminal law** (Verdict—Alternative offence).

AMALGAMATION

- Charities. *See* **Charity** (Amalgamation).

AMBIGUITY

- Indictment—
 - Uncertainty or ambiguity. *See* **Indictment** (Uncertainty or ambiguity).
- Verdict in criminal proceedings. *See* **Criminal law** (Verdict—Ambiguity).
- Will—
 - Gift—
 - Latent ambiguity. *See* **Will** (Gift—Latent ambiguity).

AMBULANCE

- Collision—
 - Contributory negligence—
 - Ambulance with left-hand drive. *See* **Negligence** (Contributory negligence—Collision between vehicles on road—Ambulance with left-hand drive).
- Trade licence. *See* **Road traffic** (Trade licence—General trade licence—Motor ambulance).

AMENDMENT

- Adoption order. *See* **Adoption** (Order—Amendment).
- Answer—
 - Divorce proceedings. *See* **Divorce** (Practice—Answer—Amendment).
- Application—
 - Application for new tenancy—
 - Business premises. *See* **Landlord and tenant** (Business premises—Application for new tenancy—Amendment).
 - Application to quash compulsory purchase order—
 - Jurisdiction to allow amendment. *See* **Compulsory purchase** (Compulsory purchase order—Application to quash order—Amendment of application—Jurisdiction).
- Decree absolute. *See* **Divorce** (Decree absolute—Amendment).
- Divorce petition. *See* **Divorce** (Petition—Amendment).
- Enforcement notice. *See* **Town and country planning** (Enforcement notice—Correction of informality, defect or error).
- Indictment. *See* **Indictment** (Amendment).
- Indorsement. *See* **Writ** (Indorsement).
- Information—
 - Generally. *See* **Magistrates** (Information—Amendment).
 - Jurisdiction of Crown Court to allow amendment. *See* **Crown Court** (Appeal to Crown Court—Appeal against conviction by magistrates—Jurisdiction to allow amendment).
- Judgment—
 - Restrictive Practices Court. *See* **Restrictive trade practices** (Appeal to Court of Appeal by way of case stated—Application after judgment for judgment to be amplified or amended).
- Judgment and orders—
 - Correction of clerical mistakes or accidental slips or omission. *See* **Judgment** (Order—Correction—Accidental slip or omission).
 - Generally. *See* **Judgment** (Order—Amendment).
- Legal aid certificate. *See* **Legal aid** (Certificate—Amendment).
- Notice of appeal—
 - Court of Appeal. *See* **Court of Appeal** (Notice of appeal—Amendment).
- Order—
 - Crown Court. *See* **Crown Court** (Order—Amendment).
 - Renewal of writ. *See* **Writ** (Extension of validity—Order for renewal—Amendment of order).
- Originating summons. *See* **Originating summons** (Amendment).
- Petition—
 - Bankruptcy. *See* **Bankruptcy** (Petition—Amendment).
 - Divorce. *See* **Divorce** (Petition—Amendment).
- Pleading. *See* **Pleading** (Amendment).

AMENDMENT (cont)

Rules—

Life assurance society. *See* **Friendly society** (Life assurance society—Amendment of rules).
 Unincorporated association. *See* **Unincorporated association** (Rules—Amendment).

Statement of claim. *See* **Statement of claim** (Amendment).

Statute—

Construction. *See* **Statute** (Construction—Amendment).
 Retrospective operation of amendment. *See* **Statute** (Retrospective operation).

Title of action—

Amendment after judgment. *See* **Practice** (Parties—Substitution—Substitution after judgment).

Writ—

Adding defendant. *See* **Practice** (Parties—Adding defendant—Amendment of writ).
 Admiralty action in rem. *See* **Admiralty** (Practice—Action in rem—Writ—Amendment).
 Generally. *See* **Writ** (Amendment).

AMENITIES OF LIFE

Loss—

Personal injury—
 Damages. *See* **Damages** (Personal injury—Loss of amenities of life).

AMENITY

Town and country planning. *See* **Town and country planning** (Amenity).

AMNESIA

Criminal proceedings. *See* **Criminal law** (Insanity—Amnesia).

AMORTISATION

Income tax—

Amortisation of capital—
 Capital or income receipts. *See* **Income tax** (Capital or income—Amortisation of capital).

AMUSEMENTS

Amusements with prizes. *See* **Gaming** (Amusements with prizes).
See **Gaming** (Amusements with prizes).

ANCIENT MONUMENTS

Preservation order—

Compensation—

Injurious affection—Person's interest in monument injuriously affected by making of preservation order—Causation—Loss of right to exploit site for commercial purposes—Loss as a consequence of preservation order—Relevance of planning permission—Power of planning authority to refuse permission for development on ground of archaeological importance of site—Permission refused in past on that ground—No reasonable likelihood of permission being granted under planning legislation even though no preservation order made under ancient monuments legislation—Whether owner's interest in monument injuriously affected by preservation order—Historic Buildings and Ancient Monuments Act 1953, s 12(2)—Town and Country Planning Act 1971, ss29(1), 289. *Hoveringham Gravels Ltd v Secretary of State for the Environment* [1975] 2 Q31, CA.

ANCILLARY RELIEF

Certiorari—

Jurisdiction. *See* **Certiorari** (Jurisdiction—Ancillary relief).

ANGUILLA

See **St Christopher, Nevis and Anguilla**.

ANIMAL

Bees—

Property in bees. *See* **Property in animals**—Bees, *post*.

Bird—

Protection. *See* **Protection**—Bird, *post*.

Breeding—

Selective employment tax—

Right to refund. *See* **Selective employment tax** (Refund—Right to refund—Activities falling with statutory definition of agriculture—Breeding of cats and dogs for sale for research).

Captive animal—

Protection. *See* **Protection**—Animal in captivity or confinement, *post*.

Cattle—

Trespass. *See* **Trespass**—Cattle, *post*.

Cruelty—

Offence. *See* **Protection**—Cruelty, *post*.

Dangerous animal—

Damage—

Liability—Dog known to attack people—Injury to customer at public house—Customer acting reasonably—Invitee—Duty of person keeping dangerous animal. *Gould v McAuliffe* [1941] 2 Q37, CA.

Liability—Elephants—Burmese circus elephants frightened by barking dog—Dog illicitly brought into fun fair booth by licensee without knowledge of circus owners—Both knocked down by elephants—Midgets inside booth injured—Elephants not acting viciously—Whether circus owners liable for damages. *Behrens v Bertram Mills Circus Ltd* [1957] 1 Q38, QBD.

ANIMAL (cont)**Dangerous animal (cont)—****Damage (cont)—**

Liability—Exceptions from liability—Trespasser—Animal kept for protection of persons or property—Damage caused by animal to person trespassing on property—Keeping animal for protection of persons or property not unreasonable—Reasonableness—Yard used for storing and breaking up old cars—Owner keeping untrained and ferocious Alsatian dog as guard dog for yard—Dog allowed to roam free in yard at night—Dog attacking and injuring trespasser—Whether keeping of dog for protection of yard reasonable—Animals Act 1971, s 5(3). *Cumming v Grainger* [1975] 2 1129, QBD.

Liability—Lion—Injury to child—Invitee—Child visiting circus—Entering adjoining 'zoo' by unauthorised way—Need to relieve herself—No lavatory provided—Child acting reasonably—Insufficient indication of prohibited area. *Pearson v Coleman* [1948] 2 274, CA.

Dangerous dog. *See* Dog—Dangerous dog, *post*.

Safe system of working. *See* Safe system of working (Reasonable care not to expose employee to unnecessary risk—Farming—Fierce bull owned by master).

Dangerous dogs—

Proceedings under the Dogs Acts. *See* Dog—Dangerous dog, *post*.

Deer—

Wilfully killing during close season. *See* Game (Deer—Offence—Wilfully killing deer during close season).

Distress damage feasant—**Lien of distrainor—**

Cattle straying—Inappropriate claim by distrainor—Claim for '£2 for salvage'—Duty of owner to estimate and tender proper compensation. *Sorrell v Paget* [1949] 2 609, CA.

Dog—**Chasing cattle or sheep—**

Injury to cattle. *See* Dog—Injury to cattle, *post*.

Right to kill—Onus of proof. *Cresswell v Sirl* [1947] 2 730, CA.

Chasing chickens—

Right of poultry-owner to kill—Test to be applied—Reasonableness. *Goodway v Becher* [1951] 2 349, QBD.

Chasing game—

Rights of owner of sporting rights—Malicious Damage Act 1861, s 41. *Gott v Measures* [1947] 2 609, QBD.

Dangerous dog—

Complaint—Validity—Dog attacking boy—Complaint preferred by police officer investigating case against owner of dog—Whether valid—Dogs Act 1871, s 2. *Smith v Baker* [1960] 3 653, QBD.

Dangerous—Dog with propensity to bite children—Finding on complaint that dog was dangerous was not inconsistent with dismissal of information on same evidence that dog was ferocious—Dogs Act 1871, s 2—Metropolitan Police Act 1839, s 54, para 2. *Keddie v Payne* [1964] 1 189, QBD.

Information—Whether proceedings were validly instituted or validated—Dogs Act 1871, s 2—Magistrates' Courts Act 1952, s 42, s 100(1). *R v Nottingham Justices, Ex parte Brown* [1960] 3 625, QBD.

Order—Destruction—Jurisdiction—Gift of dog by owner to another person—Summons subsequently issued against donor for not keeping dog under proper control when hers—Jurisdiction of justices to order dog to be destroyed—Dogs Act 1871, s 2. *R v Jones, Ex parte Dauntton* [1963] 1 368, QBD.

Order—Destruction—Order made on summons for non-compliance with order to keep under control—Validity—Dogs Act 1871, s 2. *Rhodes v Heritage* [1951] 1 904, QBD.

Order—Destruction—Orders for destruction of dangerous dogs made on proceedings by information—Conviction also of being owner of dogs worrying livestock—Proceedings heard together—Validity of orders and conviction—Dangerous Dogs Act 1871, s 2—Dogs (Protection of Livestock) Act 1953, s 1. *R v Dunmow Justices, ex parte Anderson* [1964] 2 943, QBD.

Order—Person subject to order—Dog dangerous at a time when not kept under proper control—Sale of dog by owner to another person—Validity of order made subsequently, in respect of original occasion, against buyer of dog—Dogs Act 1871, s 2. *R v Leicester Justices, Ex parte Workman* [1964] 2 346, QBD.

Dog known to attack people—

Injury to customer at public house—Liability of keeper of dog. *See* Dangerous animal—Damage—Liability—Dog known to attack people, *ante*.

Ferocious dog—

Offence—Suffering unmuzzled ferocious dog to be at large in a thoroughfare. *See* Dog—Offence—Suffering unmuzzled ferocious dog to be at large in a thoroughfare, *post*.

Injury to cattle—

Liability of owner—Damage to rabbits—Whether rabbits kept for commercial purposes 'cattle'—Dogs Act 1906, ss 1, 7. *Tallents v Bell & Goddard* [1944] 2 474, CA.

Killing of dog—

Defence—Alleged justification protection of other people's property—Foxhound living wild—Foxhound shot dead when asleep by person believing himself unable to catch it—No lawful excuse for shooting—Malicious Damage Act 1861, s 41. *Workman v Cowper* [1961] 1 683, QBD.

Negligence—

Liability of owner or keeper. *See* Negligence—Domestic animal—Liability of owner or keeper, *post*.

ANIMAL (cont)

Dog (cont)—

Offence—

Suffering unmuzzled ferocious dog to be at large in a thoroughfare—Passer-by bitten by greyhound on lead—Whether greyhound 'at large'—Metropolitan Police Act 1839, s 54(2). **Ross v Evans** [1959] 2 222, QBD.

Order for destruction of dangerous dog. *See* Dog—Dangerous dog—Order—Destruction, *ante*.

Right to kill—

Dog chasing cattle or sheep. *See* Dog—Chasing cattle or sheep—Right to kill, *ante*.

Domestic animal—

Animal not known in wild state—

Camel—Onus of proof of vicious propensity—Functions of judge and jury. **McQuaker v Goddard** [1940] 1 471, CA.

Negligence—

Liability of owner or keeper. *See* Negligence—Domestic animal—Liability of owner or keeper, *post*.

Gift for animal—

Charitable purpose. *See* **Charity** (Benefit to community—Animals).

Highway—

Straying animals—

Negligence. *See* Negligence—Highway—Animal straying on to highway, *post*.

Offence. *See* **Highway** (Straying animals—Offence).

Horse—

Safe system of working—

Unmanageable horse. *See* **Safe system of working** (Reasonable care not to expose employee to unnecessary risk—Servant provided with unmanageable horse).

Maintenance of animals—

Lien for cost of maintenance. *See* **Lien** (Maintenance of animals).

Negligence—

Domestic animal—

Liability of owner or keeper—Liability for damage caused by animal—Owner bringing dog on to highway—Dog not under control—Collision with van—Negligence of owner. **Gomberg v Smith** [1962] 1 725, CA.

Liability of owner or keeper—Liability in negligence for personal injuries caused by animal—Bull—Bull of known fierce disposition—Attack on owner's employee—Duty of owner. **Rands v McNeil** [1954] 3 593, CA.

Liability of owner or keeper—Liability in negligence for personal injuries caused by animal—Bullock—Ordinary consequences of negligence—Scienter—Bullock being unloaded from lorry escaping on to highway—Deliberate attack on human being. **Lathall v A Joyce & Son** [1939] 3 854, KBD.

Liability of owner or keeper—Liability in negligence for personal injuries caused by animal—Dog—Dog loose in street with long lead trailing—Pedestrian thrown—Negligence of owner. **Pitcher v Martin** [1937] 3 918, KBD.

Liability of owner or keeper—Liability in negligence for personal injuries caused by animal—Dog—Dog not known to have propensity to attack humans—Defendant breeder of Jack Russell terriers—Defendant allowing pack of seven terriers to escape from premises—Terriers attacking and severely injuring infant plaintiff—Expert evidence that Jack Russell terriers dangerous when in a pack and allowed to roam free—No evidence that any of defendant's terriers had attacked or bitten humans before—Whether defendant negligent in failing to take steps to prevent terriers escaping from his land. **Draper v Hodder** [1972] 2 210, CA.

Liability of owner or keeper—Liability in negligence for personal injuries caused by animal—Dog—Racing greyhounds—Animals not on highway—Animals under control of two boys. **Toogood v Wright** [1940] 2 306, CA.

Liability of owner or keeper—Liability in negligence for personal injuries caused by animal—Horse—Playful filly not likely to attack people—Fillies in field through which there was an unfenced public footpath—Natural propensity to gallop up to and gather round users of footpath—Plaintiff accidentally knocked down by filly—Whether filly's owner was liable in damages. **Fitzgerald v E D and A D Cooke Bourne (Farms) Ltd** [1963] 3 36, CA.

Liability of owner or keeper—Liability in negligence for personal injuries caused by animal—Horse—Scienter—Horse left unattended attacking passer-by. **Aldham v United Dairies (London) Ltd** [1939] 4 522, CA.

Highway—

Animal straying on to highway—Defence—Common land—Owner having right to place animal on common land—Owner licensing third party to place third party's animals on land—Third party's animals straying on to highway and causing damage—Whether third party having right to place animals on common land—Whether third party liable for damage—Animals Act 1971, s 8(2). **Davies v Davies** [1974] 3 817, CA.

Animal straying on to highway—Domestic animal—Liability of owner or keeper—Dog dashing across highway from owner's adjoining house on to common—Entrance to highway from house concealed—Nearby bend in highway—Owner knowing dog's propensity to cross highway unaccompanied—Collision with passing car—Driver of car driving carefully—Whether special circumstances—Whether owner of dog liable to driver of car. **Ellis v Johnstone** [1963] 1 286, CA.

Animal straying on to highway—Domestic animal—Liability of owner or keeper—Horse escaping through gap in fence of field adjoining highway—Collision with cyclist—Duty so to maintain gates and fences that escape of animals impossible—Duty to take reasonable care to prevent escape. **Searle v Wallbank** [1947] 1 12, HL.

ANIMAL (cont)

Negligence (cont)—

Highway (cont)—

Animal straying on to highway—Domestic animal—Liability of owner or keeper—Horse straying on to highway—Horse known to have propensity to stray—Injury caused by horse on highway. **Brock v Richards** [1951] 1 261, CA.

Animal straying on to highway—Domestic animal—Liability of owner or keeper—Horses leaving stable yard and escaping to highway through open gate—Horses causing damage—No evidence of vice or negligence. **Hughes v Williams** [1943] 1 535, CA.

Animal straying on to highway—Domestic animal—Market—Animal escaping from pen provided by local authority at cattle market for cattle waiting to be certified for subsidy—Liability of local authority as owner of market—Livestock Industry Act 1937—Cattle Subsidy Scheme (Approval) Order 1937 (SR & O 1937 No 659), Sch, para 1. **Brackenborough v Spalding Urban District Council** [1942] 1 34, HL.

Animal straying on to highway—Domestic animal—Special circumstances—Pony bolting from gymkhana on to highway. **Bativale v West (trading as Westways Riding Academy)** [1970] 1 332, QBD.

Owner or keeper of domestic animal—

Liability in negligence for damage caused by animal. *See* Negligence—Domestic animal—

Liability of owner or keeper, *ante*.

Pigeon—

Spoiling crops—

Right to kill—Homing pigeon—Property in pigeons. **Hamps v Darby** [1948] 2 474, CA.

Poultry—

Poultry dealer—

Keeping of records—Poultry purchased to be resold for slaughter—Poultry already fattened for slaughter when bought, but fed before being resold—Whether poultry 'fed' for slaughter—Live Poultry (Movement Records) Order 1954 (SI 1954 No 122), art 2(1). **Wernick v Green** [1958] 1 59, QBD.

Property in animals—

Bees—

Swarming and escaping on to stranger's land—Right to pursue—When bees are ferae—*naturae*. **Kearry v Pattinson** [1939] 1 65, CA.

Progeny of animals hired. *See* Hire-purchase (Livestock—Progeny—Property in progeny).

Protection—

Animal in captivity or confinement—

Stag—Hunted stag fell under parked vehicle in roadway—Removed by members of hunt, partly dragged and partly carried into enclosure nearby and killed with a knife—Whether stag in captivity or confinement—Protection of Animals Act 1911, s 1(1)(a), (3), s 15(c). **Rowley v Murphy** [1964] 1 50, QBD.

Bird—

Restriction on sale or offer for sale of live wild bird—'Offer for sale'—Advertisement of Bramblefinch hens, at 25s each, in periodical under classified advertisements—No words saying offer for sale—Whether the advertisement constituted an 'offer for sale'—Bird's ring could be removed without breaking or damaging it—Inference that bird not close-ringed and bred in captivity—Protection of Birds Act 1954, s 6(1), Sch 4. **Partridge v Crittenden** [1968] 2 421, QBD.

Cruelty—

Disqualification order—Order disqualifying accused from having custody of 'cattle'—Accused having custody of sheep—Whether breach of order—Protection of Animals Act 1911, s 15(e)—Protection of Animals (Amendment) Act 1954, ss 1(1), 4(1). **Wastie v Phillips** [1972] 3 302, QBD.

Sale of live wild birds—

Restriction on. *See* Protection—Bird—Restriction on sale or offer for sale of live wild bird, *ante*.

Straying onto highway—

Damage caused by animal—

Liability of owner or keeper. *See* Negligence—Highway—Animal straying on to highway, *ante*.

Trespass—

Cattle—

Defence—Duty to fence—Allotments—Damaged fence—Leave and licence—Obligation of allotment-holder to fence—Liability of owners of animals. **Park v J Jobson & Son** [1945] 1 222, CA.

Defence—Duty to fence—Breach of duty to repair hedge. **Jones v Price** [1965] 2 625, CA.

Defence—Duty to fence—Duty deriving from custom—Common land—Duty to fence against common land—Whether possible for duty to fence to arise from custom. **Egerton v Harding** [1974] 3 6@9, CA.

Defence—Duty to fence—Farms adjoining moor—Duty in nature of an easement, or an 'advantage', passing on sale of one of farms by common owner—Law of Property Act 1925, s 62. **Crow v Wood** [1970] 3 425, CA.

Defence—Duty to fence—Proof—Immemorial usage—Lawful origin. **Egerton v Harding** [1974] 3 689, CA.

Defence—Enclosure of common land—Wrongful act of third party. **Sutcliffe v Holmes** [1946] 2 599, CA.

Personal injury to occupier of land—No vice or negligence—Liability of owner. **Wormald v Cole** [1954] 1 683, CA.

ANKLE

Injury to ankle—

Damages. *See* Damages (Personal injury—Ankle and leg).

ANNUAL INTEREST

Income tax. *See* **Income tax** (Annual interest).

ANNUAL PAYMENT

Income tax. *See* **Income tax** (Annual payment).

ANNUAL RETURN

Company—

Default—

Officer. *See* **Company** (Officer—Default—Annual return).

ANNUITY

Administration of estates—

Estate insufficient. *See* **Administration of estates** (Annuity—Estate insufficient).

Annuity fund—

Administration of trust—

Annuity never payable. *See* **Trust and trustee** (Administration of trust—Annuity fund—

Annuity never payable).

Annuity to trustee. *See* **Trust and trustee** (Annuity—Annuity to trustee).

Arrears—

Interest—

Right to interest—Annuities not paid for many years owing to financial position of estate—

Arrears paid when financial position improved—Whether interest payable on arrears **Re Berkeley (decd)** [1968] 3 364, CA.

Payment—

Source from which payable—Deficiency of income—Whether arrears payable out of income of subsequent years or out of capital—Rate of income tax. **Re Lord Westbury's Settlement** [1943] 2 463, ChD.

Bequest—

Cumulative or repetitive. *See* **Will** (Codicil—Cumulative or repetitive bequests).

Capital and income—

Apportionment—

Annuity payable to widow under covenant by husband in marriage settlement—Covenanted sum a debt from husband's estate—No provision in will sufficient to impose liability entirely on income of estate—Annuity apportionable as between capital and income of husband's estate. **Re Berkeley (decd)** [1968] 3 364.

Continuing charge on income—

Rights as to property charged. *See* **Rights as to property charged, post**.

Deductions—

Social security contributions—

Right to make deductions—Annuity given free of all deductions—Right to deduct. New Zealand social security contribution. **Re Hirst** [1941] 3 466, ChD.

Duration—

Bond inter vivos—

Grant for life of grantor—Grantee predeceasing grantor—Duration of annuity. **Reid v Coggans or Reid** [1944] 1 134, HL.

Estate duty—

Continuing annuity. *See* **Estate duty** (Passing of property—Annuity—Continuing annuity).

Incidence—

Cesser of annuity. *See* **Estate duty** (Incidence—Cesser of annuity).

New Zealand. *See* **New Zealand** (Estate duty—Annuity).

Free of income tax—

Annuitant entitled to relief—

Recovery of tax—Compelling annuitant to recover tax. **Re Kingcome's Will Trusts** [1936] 1 173, ChD.

Annuity to married woman—

Surtax—Free of income tax 'and of every other tax on income for the time being in force'—Amount of surtax to be provided. **Re Horlick's Settlement Trusts** [1938] 4 802, CA.

Assessment on annuitant—

Maintenance order—Payments made by divorced husband under maintenance order—Husband resident abroad—No evidence of deduction of tax—No evidence of husband's receipt of taxed income—Income Tax Act 1918, All Schedules Rules, r 21(1). **Stokes v Bennett (Inspector of Taxes)** [1953] 2 313, ChD.

Business loss by annuitant—

Relief—Repayment to annuitant of tax paid on annuity—Liability of annuitant to account to trustees—Income Tax Act 1918, s 34(2). **Re Lyons** [1952] 1 34, CA.

Clear sum after deduction of income tax—

Rates of tax—Annuity of clear sum after 'deduction of income tax'—No reference to standard or current rate of tax—Rate computed in relation to reliefs and allowances. **Re Maclellan** [1939] 3 81, CA.

Life interest—

Direction by the testator to pay tax during life of beneficiary—Tax payable after death of beneficiary—Liability of estate. **Re Sharman's Settlement** [1942] 2 553, ChD.

Net income of stated amount—

'Net income of £10 per week'—Annuitant not entitled to £10 free of tax. **Re Wright (decd)** [1952] 2 698, ChD.

Payment—

Deduction of tax—Variation of provision—Setting aside fund for annuities—Finance Act 1941, s 25. **Re Westrik** [1942] 2 544, ChD.

Stated amount—Accumulation—Direction by will to set aside annually £1,500 free of tax and accumulate—Finance Act 1941, s 25(1). **Re Banbury (decd)** [1950] 2 250, ChD.

ANNUITY (cont)

Free of income tax (cont)—

Rate of tax—

Clear sum after deduction of tax—Annuity of clear sum after 'deduction of income tax for the time being payable in respect thereof'—No reference to standard rate of tax—Rate computed in relation to reliefs and allowances—Post-war credits—Finance Act 1941, ss 6(2)(3)(4), 7. **Re Tatham** [1945] 1 29, ChD.

Reliefs and allowances—

Liability of annuitant to account for reliefs—Annuity of one-third of total income of fund after payment of income tax—Whether annuitant liable to account to trustees for any repayment of income tax attributable to her annuity. **Re Batley (decd)** [1952] 2 562, CA.

Upper limit—Annuity free of income tax 'up to a maximum of 5s in the £'—Reliefs and allowances—Whether annuitant accountable to trustees. **Re Arno** [1947] 1 64, CA.

Upper limit—Annuity free of income tax 'up to but not exceeding 5s 6d in the £'—Principle of **Re Pettit** applicable—Proportion of repayment to be accounted for—Sums recorded under Finance Act 1941, s 7(1), included—Finance Act 1941, s 7(1). **Re Bates' Will Trusts** [1945] 2 688, ChD.

Separation agreement—

Allowance to wife—£35 monthly free of tax—Whether net payment—Income Tax Act 1952, Sch D, Case III, s 506(2). **Ferguson v Inland Revenue Comrs** [1969] 1 1025, HL.

Annuity secured by separation deed—Variation—What amounts to variation—Agreement by wife not to reclaim tax—Finance Act 1941, ss 25(1), 27(1). **Dudley v Dudley** [1944] 1 29, CA.

Statutory variation of tax burden—

Clear yearly sum—Computation of capital sum—Finance Act 1941, s 25(1). **Re John Powell (decd)** [1944] 2 528, ChD.

Limitation of deduction—Stated sum—Stated sum per week for dogs and horses—Sum paid as outgoings in respect of property—Finance Act 1941, s 25. **Re Hawkins** [1943] 1 39, ChD.

Stated amount—Income of trust fund payable to widow and deficiency below stated sum payable out of capital—Finance Act 1941, s 25. **Re Bird (decd)** [1944] 1 132, ChD.

Supplemental deed made after Act—Principal deed to have effect as if statutory provision had never become law—Variation after Act came into force—Whether includes a variation made after the Act—Finance Act 1941, s 25. **Fitzgerald v Inland Revenue Comrs** [1944] 2 153, KBD.

Variation—What amounts to variation. **Cobbold v Davenport** [1942] 2 291, ChD.

When 'provision' made—Codicil confirming will—Codicil increasing amount of annuity—When provision 'made'—Whether provision 'varied'—Finance Act 1941, s 25. **Re Sebag-Montefiore** [1944] 1 672, CA.

When 'provision' made—Deed—Benefit contingent and future on Sept 3, 1939—Income Tax Act 1952, s 486(1). **Re Duke of Westminster (decd)** [1959] 1 442, CA.

When 'provision' made—Will and codicil—Annuity given by codicil dated 3rd December 1938—Will and earlier codicils confirmed by codicil made in 1940—Death of testator in January 1942—When provision is made—Finance Act 1941, s 25(1). **Berkeley (Countess) v Berkeley** [1946] 2 154, HL.

When 'provision' made—Will and codicil—Codicil not expressly varying annuity—Codicil confirming will—Finance Act 1941, s 25. **Re Tredgold** [1943] 1 120, ChD.

When 'provision' made—Will and codicil—Will 'made' before 3rd September 1939—Death of testator must be before that date and will in operation at that date—Finance Act 1941, s 25. **Re Waring** [1942] 2 250, CA.

When 'provision' made—Will and codicil—Will made before 3rd September 1939 giving annuity of £78 free of income tax—Codicil made after that date substituting annuity of £104 for annuity of £78 given by will—Provision made by codicil—Finance Act 1941, s 25(1). **Re Dixon** [1945] 2 208, ChD.

Surtax—

Total income—Computation—Annuity 'free of income tax and surtax'—Computation of annuitant's total income for surtax purposes—Inclusion of amount of repaid income tax returned by annuitant to trustees—Income Tax Act 1918, s 27, All Schedules Rules, r 19. **Inland Revenue Comrs v Duncanson** [1949] 2 846, KBD.

Income tax—

Annual payment. *See* **Income tax** (Annuity).

Annuity free of all deductions—

Bequest of annuity 'free of all deductions including income tax'—Annuitant's total income below taxable limit—Annuity paid by trustees in full out of income brought into charge to tax—Claim by annuitant for repayment of tax—Income Tax Act 1918, All Schedules Rules, rr 19, 21. **Inland Revenue Comrs v Cook** [1945] 2 377, HL.

'Clear of all deductions'—Assessment on gross amount. **Shrewsbury and Talbot (Countess) v Inland Revenue Comrs** [1936] 2 101, KBD.

Deduction of income tax—Whether sufficient direction to contrary. **Re Skinner** [1942] 1 32, ChD.

Net sum—Annuity 'free of all deductions'—Whether annuity payable as net sum after income tax accounted for. **Re Hooper (decd)** [1944] 1 227, ChD.

Public Trustee appointed trustee of will—Whether free of deduction for income tax. **Re Wells** [1940] 2 68, ChD.

Right to deduct income tax. **Re Best's Marriage Settlement** [1941] 3 315, ChD.

Annuity payments—

Capital or income receipts—Contract to make annual payments in consideration of single premium—Aggregate of annual payments not to amount to less than amount of premium—Annuitant dying before receiving payments to amount of premium—Annuity payments continued to third person—Whether capital or income in hands of third person—Income Tax Act 1918, Sch D, Case III, No 1. **Sothorn-Smith v Clancy** [1941] 1 111, CA.

ANNUITY (cont)

Income tax (cont)—

Insufficiency of estate—

Payments made before estate found to be insufficient—Whether payments on account of annuity or of capital value of annuity. **Inland Revenue Comrs v Lady Castlemaine** [1943] 2 471, KBD.

Relief—

Liability of annuitant to account to trustees—Reliefs recovered—Whether annuitant liable to account for reliefs to trustees. **Re Batley (decd)** [1952] 2 562, CA.

Repayment of tax—

Apportioned part of annuity received by executor after death of annuitant—Testator entitled to repayment of tax deducted—No right in executor to repayment. **Bryan (Inspector of Taxes) v Cassin** [1942] 2 262, KBD.

Perpetual annuity—

Gift to unincorporated body—

Validity. **Re Jones (decd)** [1950] 2 239, ChD.

Rights as to property charged—

Continuing charge on income—

Continuing charge on income of trust fund or payable solely out of income of the year or partially cumulative as regards arrears—Income of residuary estate given 'subject to' payment of annuities—Direction excluding recourse to capital—Income of trust fund at time of payment of annuities available for satisfaction of arrears. **Re Chance (decd)** [1962] 1 942, ChD.

Gift of share of income of trust fund to be made up to minimum sum—**Re Cameron (decd)** [1955] 1 424, CA.

Gift over of surplus income during life of annuitant—Whether charge on capital or continuing charge on income. **Re Coller's Deed Trusts** [1937] 3 292, CA.

Tithe and tithe rentcharge. *See* **Tithe and tithe rentcharge** (Annuity).

Tithe annuity—

Enforcement—

Recovery by action—Tithe Act 1918, s 4.—Law of Property Act 1925, s 121. **Public Trustee v Scarr** [1939] 1 188, KBD.

Variation of settlement—

Immediate annuity to husband. *See* **Variation of settlement** (Immediate annuity to husband).

Will—

Forfeiture clause—

Income vesting in another. *See* **Will** (Forfeiture clause—Income vesting in another—Annuity payable to Custodian of Enemy Property by operation of law).

Generally. *See* **Will** (Annuity).

Residue—

Intermediate income—Surplus income after gift of annuity. *See* **Will** (Residue—Intermediate income—Surplus income after gift of annuity).

ANNULMENT

Bankruptcy. *See* **Bankruptcy** (Annulment).

Marriage. *See* **Nullity**.

ANSWER

Divorce petition, to. *See* **Divorce** (Practice—Answer).

ANTE-NUPTIAL SETTLEMENT

Variation of settlement. *See* **Variation of settlement** (Ante-nuptial settlement).

ANTIGUA

Fundamental rights and freedoms—

Freedom of expression—

Right not to be hindered in enjoyment of freedom of expression—Laws making provision reasonably required for specified purposes not to be treated as contravention of right—Presumption that laws reasonably required—Newspaper publisher—Laws requiring publisher to pay annual sum of \$600 and deposit of \$10,000—Whether infringement of publisher's right to freedom of expression—Antigua Constitution Order 1967 (SI 1967 No 225), Sch 2, s 10—Newspapers Registration (Amendment) Act (Antigua) 1971, s 1B—Newspaper Surety Ordinance (Amendment) Act (Antigua) 1971, s 3(2). **Attorney-General v Antigua Times Ltd** [1975] 3 81, PC.

Infringement—

Redress—Application for redress by person who alleges his rights have been infringed—Person—Meaning—Body corporate—Contrary intention—Certain rights not capable of being enjoyed by body corporate—Whether intention to include body corporate from right to apply for redress—Interpretation Act 1889, s 19—Antigua Constitution Order 1967 (SI 1967 No 225), Sch 2, ss 15(1), 115(15). **Attorney-General v Antigua Times Ltd** [1975] 3 81, PC.

ANXIETY STATE

War service injury—

Causation—

Fear of overseas service. *See* **War pension** (Attributability of injury to war service—Proximate or effective cause of disability—Anxiety state resulting from fear of overseas service).

APOLOGY

Libel. *See* **Libel and slander** (Apology).

APPEAL

Abandonment—

Appeal from court-martial. *See* **Court-Martial** (Appeal—Abandonment of appeal).

Criminal appeal. *See* **Criminal law** (Appeal—Abandonment of appeal).

APPEAL (cont)

Abatement—

What constitutes abatement—

Leave to appeal granted—Conditional stay of execution—Condition not complied with and order executed—Whether causing lis to end or appeal to abate. **Baker v Turner** [1950] 1 834, HL.Administration action. *See* **Administration of estates** (Administration action—Appeal).Adoption proceedings. *See* **Adoption** (Appeal).

Allowing appeal by consent—

Income tax appeal. *See* **Income tax** (Appeal—Allowing—Consent).

Alteration of law pending appeal—

Jurisdiction of Court of Appeal. *See* **Court of Appeal** (Jurisdiction—Alteration of law pending appeal).Application for leave to appeal. *See* **Leave, post**.

Arbitration award—

Time for appeal—

Date of delivery of award. *See* **Arbitration** (Award—Delivery of award—Date of delivery).

Assessment of damages—

Principle on which appellate court will intervene. *See* **Damages** (Assessment—Principle on which appellate court will intervene).Bankruptcy. *See* **Bankruptcy** (Appeal).

Canada—

Privy Council. *See* **Canada** (Appeals to Privy Council).

Case stated—

Bail. *See* **Criminal law** (Bail—Case stated for the High Court).Expedited hearing. *See* **Divisional Court** (Practice—Expedited hearings—Cases stated).Generally. *See* **Case stated**.Income tax. *See* **Income tax** (Case stated).

Chancellor of diocese, from—

Faculty proceedings. *See* **Ecclesiastical law** (Faculty—Appeal—Appeal from decision of chancellor exercising his discretion).

Charity—

Appeal against order of commissioners. *See* **Charity** (Appeal—Appeal against order of commissioners).

Scheme—

Appeal against order establishing scheme. *See* **Charity** (Scheme—Power of commissioners or of Secretary of State for Education and Science to establish scheme—Appeal against order establishing scheme).

Comment prejudicial to fair hearing of appeal—

Contempt of court. *See* **Contempt of court** (Publications concerning legal proceedings—Pending proceedings—Criminal appeal).Commonwealth immigrant. *See* **Commonwealth immigrant** (Appeal).

Compromise of appeal—

Court of Appeal. *See* **Court of Appeal** (Appeal—Compromise of appeal).

Concession of fact by party at trial—

Withdrawal of concession on appeal—

Withdrawal with consent of other party—Whether proper for appellate court to allow withdrawal of concession. **Snow v Snow** [1971] 3 833, CA.

Consistory court—

Faculty proceedings. *See* **Ecclesiastical law** (Faculty—Appeal—Appeal from Consistory Court).

Contempt of court—

Appeal against committal. *See* **Contempt of court** (Committal—Appeal against committal).

Contributory negligence—

Generally. *See* **Negligence** (Contributory negligence—Appeal).Judge's reasons. *See* **Negligence** (Contributory negligence—Judge's reasons—Appeal).Principle on which appellate court will interfere with apportionment of liability. *See* **Negligence** (Contributory negligence—Principle on which appellate court will interfere with apportionment of liability).

Costs—

Appeal to Court of Appeal—

Divorce suit—Jurisdiction. *See* **Divorce** (Costs—Appeal—Jurisdiction of Court of Appeal).Generally. *See* **Costs** (Appeal to Court of Appeal).Bankruptcy. *See* **Bankruptcy** (Appeal—Costs).Divorce. *See* **Divorce** (Appeal—Costs).

Interlocutory appeal—

Form of order. *See* **Costs** (Order for costs—Interlocutory appeal).Legal aid. *See* **Legal aid** (Costs—Appeal).Liability of legally aided person. *See* **Legal aid** (Assisted person's liability to pay costs—Assessment—Costs of appeal).

Magistrates' court—

Information or complaint not proceeded with—Payment of costs by prosecutor. *See* **Criminal law** (Costs—Magistrates' courts—Information or complaint not proceeded with—Payment of costs by prosecutor—Appeal).

Security for costs—

Appeal by company against winding-up order. *See* **Company** (Compulsory winding-up—Security for costs—Appeal by company against winding-up order).

Taxation—

Legal aid in criminal proceedings. *See* **Legal aid** (Taxation of costs—Criminal proceedings—Appeal from decision of taxing master).Unassisted party. *See* **Legal aid** (Unassisted person's costs out of legal aid fund).

APPEAL (cont)

- County court. *See* **County court** (Appeal).
- Court of Appeal—
 - Appeal to Court of Appeal—
 - Appeal from Patents Appeal Tribunal. *See* **Patent** (Appeal to Court of Appeal).
 - Generally. *See* **Court of Appeal**.
- Court of Arches—
 - Appeal to Court of Arches—
 - Function of Court of Arches—Faculty proceedings. *See* **Ecclesiastical law** (Faculty—Appeal—Appeal from Consistory Court—Function of Court of Arches).
- Court-martial. *See* **Court-martial** (Appeal).
- Criminal appeal—
 - Comment prejudicial to fair hearing—
 - Contempt of court. *See* **Contempt of court** (Publications concerning legal proceedings—Pending proceedings—Criminal appeal).
 - Generally. *See* **Criminal law** (Appeal).
 - Legal aid. *See* **Legal aid** (Criminal cases).
- Somaliland—
 - Lack of representation by counsel. *See* **Somaliland** (Criminal law—Representation by counsel—Appeal).
- Crown Court—
 - Appeal from Crown Court—
 - Case stated. *See* **Case stated** (Appeal from Crown Court).
 - Appeal to Crown Court. *See* **Crown Court** (Appeal to Crown Court).
 - Generally. *See* **Crown Court** (Appeal from Crown Court).
- Custody—
 - Divorce proceedings, in. *See* **Divorce** (Custody—Appeal).
- Customs—
 - Condemnation of goods by magistrates. *See* **Customs** (Forfeiture—Condemnation—Appeal).
- Damages—
 - Assessment of damages—
 - Principle on which appellate court will intervene. *See* **Damages** (Assessment—Principle on which appellate court will intervene).
 - Libel action. *See* **Libel and slander** (Damages—Appeal).
- Disciplinary committee of the Law Society, from. *See* **Solicitor** (Disciplinary proceedings—Appeal).
- Discretion—
 - Review of exercise of discretion. *See* **Review of exercise of discretion, post**.
 - Wrongful exercise—
 - Tribunal—Point of law. *See* **Tribunal** (Appeal to Divisional Court on point of law—Point of law—Exercise of a judicial discretion).
- Dismissal—
 - Consent—
 - Court of Appeal. *See* **Court of Appeal** (Dismissal—Consent).
- Disqualification for holding driving licence. *See* **Road traffic** (Disqualification for holding licence—Sentence—Appeal).
- District registrar, from—
 - Nature of appeal—
 - Powers of court—Appeal from order giving leave to sign interlocutory judgment—Appeal a rehearing—Judge not fettered by exercise of registrar's discretion. **Blundell v Rimmer** [1971] 1 1072, QBD.
- Divorce proceedings. *See* **Divorce** (Appeal).
- Eastern Africa Court of Appeal. *See* **East Africa** (Court of Appeal).
- Ecclesiastical courts—
 - Faculty proceedings. *See* **Ecclesiastical law** (Faculty—Appeal).
- Enforcement notice—
 - Appeal against notice. *See* **Town and country planning** (Enforcement notice—Appeal against notice).
 - Appeal from Minister to High Court. *See* **Town and country planning** (Enforcement notice—Appeal from Minister to High Court).
- Estate duty—
 - Compromise of appeal against striking out of proceedings. *See* **Estate duty** (Practice—Disputed claim—Crown proceeding by originating summons—Whether proper procedure where accountability not admitted—Crown's appeal against striking out of proceedings co
- Procedure—
 - Condition of appealing from decision of commissioner—Hong Kong. *See* **Privy Council** (Hong Kong—Estate duty).
- Evidence—
 - Election to call no evidence at trial—
 - Appeal—Order for new trial. *See* **Court of Appeal** (New trial—Election to call no evidence).
 - Finding of fact of trial judge—
 - Interference with finding of fact—Principles on which appellate court acts. **Watt (or Thomas) v Thomas** [1947] 1 582, HL.
 - Interference with finding of fact—Principles on which appellate court acts—Distinction between perception and evaluation of facts. **Benmax v Austin Motor Co Ltd** [1955] 1 326, HL.

APPEAL (cont)

Evidence (cont)—

Further evidence—

Adoption proceedings—Dispensing with consent to adoption. *See* **Adoption** (Dispensing with consent to adoption—Consent unreasonably withheld—Relevant date for purpose of determining reasonableness—Appeal—Facts established by fresh evidence at hearing of appeal).

Case stated—Income tax appeal. *See* **Income tax** (Case stated—Further evidence).

Court of Appeal. *See* **Court of Appeal** (Evidence—Further evidence).

Power in appellate court to receive—Australia. *See* **Australia** (Appeal—Further evidence—Power in appellate court to receive).

Power in appellate court to receive—Principles on which court will act—Appeal from judge sitting alone—RSC, Ord 58, r 4. *Leeder v Ellis* [1952] 2 814, PC.

Extension of time for appeal—

Court of Appeal. *See* **Court of Appeal** (Time for appeal—Extension of time for appeal).

Fact—

Trial before judge alone—

Pure question of fact—Functions of appellate court. *Caldeira v Gray* [1936] 1 540, PC.

Tribunal's determination—

Selective employment tax. *See* **Selective employment tax** (Appeal).

Family provision—

Appeal as to quantum of award—

When appellate court will intervene. *See* **Family provision** (Appeal—Appeal as to quantum of award—When appellate court will intervene).

Firearms—

Refusal to grant certificate. *See* **Firearms** (Certificate—Refusal—Appeal).

Gaming—

Appeal against refusal of permit for provision of amusements with prizes. *See* **Gaming** (Amusements with prizes—Permit for provision of amusements with prizes—Application—Refusal—Appeal).

General Medical Council disciplinary committee. *See* **Medical practitioner** (Appeal against determination of disciplinary committee).

Ground of appeal—

County court. *See* **County court** (Appeal—Ground of appeal).

House of Lords—

Civil proceedings. *See* **House of Lords** (Appeal).

Criminal appeal. *See* **Criminal law** (House of Lords).

Leave to appeal. *See* **House of Lords** (Leave to appeal).

Housing—

Appeal against improvement notice. *See* **Housing** (Improvement notice—Appeal against improvement notice).

Notice from local authority. *See* **Housing** (Notice from local authority—Validity—Challenge to validity—Appeal).

Immigration. *See* **Immigration** (Appeal).

Income tax—

Generally. *See* **Income tax** (Appeal).

Summary award of penalty. *See* **Income tax** (Penalty—Summary award of penalty—Appeal).

Industrial injuries commissioner. *See* **Industrial injury** (Appeal to industrial injuries commissioner).

Industrial training levy assessment. *See* **Industrial training** (Levy—Assessment—Appeal).

Injunction. *See* **Injunction** (Appeal).

Interlocutory—

Criminal cases. *See* **Criminal law** (Court of Appeal—Jurisdiction—Interlocutory appeal).

Interlocutory or final—

Judgment on admission of facts. *See* **Judgment** (Judgment on admission of facts—Interlocutory or final judgment—Appeal).

Interpleader. *See* **Interpleader** (Appeal).

Joint tortfeasors—

Contribution. *See* **Tort** (Contribution between joint tortfeasors—No appeal against one tortfeasor).

Jurisdiction—

Divisional Court—

Appeal from master's order for trial of preliminary point of law. *Kronstein v Korda* [1937] 1 357, CA.

Justices' licence—

On-licence—

Disqualification. *See* **Licensing** (On-licence—Disqualification—Conviction of offence—Appeal).

Land registration. *See* **Land registration** (Appeal).

Law reports—

List of authorities—

House of Lords. *See* **House of Lords** (Procedure—Law reports—List of authorities).

Leave—

Appeal from county court. *See* **County court** (Appeal—Leave).

Appeal from order of registrar. *See* **Judgment** (Consent order—Appeal).

Appeal out of time—

Interlocutory appeal. *See* **Court of Appeal** (Interlocutory appeal—Time—Leave to extend time to appeal).

APPEAL (cont)

Leave (cont)—

Application for leave to appeal—

Court of Appeal, Criminal Division, to House of Lords. *See* **House of Lords** (Leave to appeal—Application—Court of Appeal, Criminal Division).

Court of Appeal to House of Lords. *See* **House of Lords** (Leave to appeal—Application to Court of Appeal).

Courts-Martial Appeal Court. *See* **Court-martial** (Appeal—Application for leave to appeal).

High Court to House of Lords. *See* **House of Lords** (Appeal from High Court—Application for leave to appeal).

Condition—

Leave granted subject to undertaking to pay costs of appeal in any event—**Propriety Starkey v Railway Executive** [1951] 2 902, CA.

Costs—

Appeal against order as to costs only. *See* **Costs** (Appeal to Court of Appeal—Leave—Requirement of leave—Appeal as to costs only).

Divorce—

Decree absolute. *See* **Divorce** (Appeal—Decree absolute—Leave to appeal).

House of Lords—

Criminal appeal. *See* **Criminal law** (House of Lords—Leave to appeal).

House of Lords. *See* **House of Lords** (Leave to appeal).

Interlocutory proceedings. *See* **Court of Appeal** (Interlocutory appeal—Leave to appeal).

Jurisdiction of Supreme Court of Ceylon to grant leave to appeal to Privy Council. *See* **Ceylon** (Appeals to Privy Council—Leave—Jurisdiction of Supreme Court of Ceylon to grant leave).

Licensing application. *See* **Licensing** (Appeal).

Petition—

House of Lords. *See* **House of Lords** (Leave to appeal—Petition for leave to appeal).

Special leave—

Appeal to Privy Council. *See* **Privy Council** (Leave to appeal—Special leave).

Legal aid. *See* **Legal aid**.

Licensing—

Intoxicating liquor. *See* **Licensing** (Appeal).

Liverpool Court of Passage—

Jurisdiction of Court of Appeal. *See* **Court of Appeal** (Jurisdiction—Appeal from Liverpool Court of Passage).

Local authority—

Appeal to quarter sessions. *See* **Local authority** (Appeal to quarter sessions).

Local government—

Audit—

Surcharge. *See* **Local government** (Audit—Surcharge—Appeal).

Magistrates—

Adoption proceedings. *See* **Adoption** (Practice—Appeal—Appeal from magistrates' court to Divisional Court of Family Division).

Criminal cases—

Jurisdiction to state a case. *See* **Case stated** (Magistrates' courts—Jurisdiction—Power of examining justices to state a case).

Magistrates' court—

Case stated. *See* **Case stated** (Magistrates' courts).

Matrimonial causes—

Appeal to Divisional Court. *See* **Husband and wife** (Summary proceedings—Appeal to Divisional Court).

Master of Queen's Bench Division—

Appeal against decision of master—

Court of Appeal—Appeal lying to court against order etc made on hearing of any cause matter etc tried before master—Charging order against judgment debtor—Decision of master to make order absolute—Whether a 'decision on the hearing...of any...matter...tried before him'—Whether appeal lying to Court of Appeal or to judge in chambers—RSC Ord 58, rr 1, 2(1). **Rainbow v Moorgate Properties Ltd** [1975] 2 821, CA.

Matrimonial causes. *See* **Divorce** (Appeal).

Mayor's and City of London Court—

Jurisdiction of Court of Appeal. *See* **Court of Appeal** (Jurisdiction—Appeal from Mayor's and City of London Court).

Medical appeal tribunal—

Appeal to tribunal. *See* **Industrial injury** (Medical appeal tribunal).

National Industrial Relations Court—

Appeal to court—

Jurisdiction. *See* **Industrial relations** (National Industrial Relations Court—Jurisdiction).

National insurance. *See* **National insurance** (Appeal).

Native tribunal—

West Africa. *See* **West Africa** (Practice—Appeal from high native tribunal).

New point. *See* **Court of Appeal** (Ground of appeal—Contention not pressed in court of first instance).

New trial. *See* **Court of Appeal** (New trial).

Notice of appeal—

Bankruptcy appeal from county court. *See* **Bankruptcy** (Appeal—Appeal from county court—Notice of appeal).

Committal for contempt of court. *See* **Contempt of court** (Committal—Appeal against committal—Notice of appeal).

Generally. *See* **Court of Appeal** (Notice of appeal).

Matrimonial proceedings—

Appeal to Divisional Court. *See* **Husband and wife** (Summary proceedings—Appeal to Divisional Court—Notice of appeal).

APPEAL (cont)

Notice of appeal (cont)—

Service—

Divorce proceedings. *See* **Divorce** (Practice—Service—Notice of appeal).

Nullity—

Decree absolute—

Time limit for appeal against decree absolute. *See* **Nullity** (Appeal—Time limit).

Official referee—

Leave—

Appeal on point of law to Court of Appeal—Appeal against decision of an official referee—Whether necessary to obtain leave to appeal—RSC Ord 58, r 5. **Technistudy Ltd v Kelland** [1976] 3 632, CA.

Official Solicitor—

Authority to apply to Court of Appeal by way of appeal against committal for contempt. *See* **Official Solicitor** (Powers and duties—Contempt of court).

Order for indemnity. *See* **Indemnity** (Court order for indemnity—Appeal).

Order for new trial—

Court of Appeal. *See* **Court of Appeal** (Order for new trial).

Patent appeal—

Appeal from High Court to House of Lords—

Procedure. *See* **House of Lords** (Appeal from High Court—Patent appeal).

Time for appeal—

Appeal to Court of Appeal. *See* **Patent** (Appeal to Court of Appeal).

Point of law—

Judicial discretion—

Wrongful exercise. *See* **Tribunal** (Appeal to Divisional Court on point of law—Point of law—Exercise of a judicial discretion).

Natural justice—

Right to legal representation. *See* **Natural justice** (Domestic tribunal—Legal representation—Appeal to tribunal on point of law).

Proper industrial classification—

Selective employment tax. *See* **Selective employment tax** (Appeal—Decision of tribunal on question of proper industrial classification).

Practice—

Prior reading of judgment or decision appealed against and cases cited therein. *See* **Court of Appeal** (Practice—Prior reading of judgment or decision and cases cited therein).

Privy Council—

Appeal as of right—

Money limit—Appropriate currency. *See* **Money** (Currency—Currency to which amount referable—Appeal as of right to Privy Council).

Canada—

Abolition of right of appeal to Privy Council. *See* **Canada** (Appeals to Privy Council—Abolition).

Ceylon—

Jurisdiction. *See* **Ceylon** (Appeals to Privy Council—Jurisdiction).

Exclusion of right to appeal. *See* **Privy Council** (Exclusion of right to appeal).

Generally. *See* **Privy Council**.

Quarter sessions—

Appeal from quarter sessions. *See* **Quarter sessions** (Appeal from).

Appeal to quarter sessions. *See* **Quarter sessions** (Appeal to).

Case stated. *See* **Case stated** (Quarter sessions).

Refusal of planning permission—

Appeal pending—

Validity of enforcement notice. *See* **Town and country planning** (Enforcement notice—Validity—Notice served at time when appeal to the Minister against condition in planning permission pending).

Appeal to Minister. *See* **Town and country planning** (Appeal to Minister against refusal of permission for development).

Refusal to grant driving licence. *See* **Road traffic** (Driving licence—Refusal to grant—Appeal).

Rent assessment committee—

Determination of fair rent—

Jurisdiction. *See* **Rent restriction** (Rent—Determination of fair rent—Rent assessment committee—Jurisdiction—Appeal).

Restrictive trade practices. *See* **Restrictive trade practices** (Appeal to Court of Appeal by way of case stated).

Revenue appeals—

Chancery Division—

Practice. *See* **Practice** (Chancery Division—Revenue list).

Review of decision below—

Adoption proceedings—

Review of justices' decision. *See* **Adoption** (Appeal—Review of justices' decision).

Review of exercise of discretion—

Circumstances in which appellate court will interfere—

Pleading—Amendment—Appeal against refusal of leave to amend writ—Judge not shown to have erred in principle—Circumstances in which appellate court may interfere with exercise of discretion by trial judge—RSC Ord 20, r 5(1). **Beck v Value Capital Ltd (No 2)** [1976] 2 102, CA.

Duty of appellate court—

Extent of duty. **Re O (infants)** [1971] 2 744, CA.

Infant—Care and control order—Judge taking all relevant factors into consideration—No error of law—Whether appellate court having power to interfere with exercise of judge's discretion. **Re F (a minor) (wardship : appeal)** [1976] 1 417, CA.

APPEAL (cont)

Right of appeal—

Appeal from Minister to whom determination referred by statute—

No right of appeal unless conferred by statute. *Healey v Ministry of Health* [1954] 3 449, CA.

Appeal to Privy Council—

Ontario. *See* **Canada** (Appeals to Privy Council—Ontario—Appeal as of right).Case stated. *See* **Case stated** (Right of appeal by).County court. *See* **County court** (Appeal—Right of appeal).Expulsion from trade union. *See* **Trade union** (Expulsion of member—Appeal).

Right of appeal to Privy Council—

Generally. *See* **Privy Council** (Right of appeal).Malaysia. *See* **Malaysia** (Appeal).

Right where 'matter in dispute amounts to or is of value of £500 or upwards'—

Calculation of value. *Meghji Lakhamshi & Bros v Furniture Workshop* [1954] 1 273, PC.Security for costs. *See* **Costs** (Security for costs—Appeal).

Sentence—

Magistrates' court—

Person not legally represented. *See* **Sentence** (Imprisonment—Magistrates' court—Person not legally represented—Appeal).

Separate appeals—

Hearing together—

Income tax. *See* **Income tax** (Appeal—Hearing—Separate appeals).

Special case—

Arbitration. *See* **Arbitration** (Special case).

Statement of reasons for decision appealed against—

Appeal to Privy Council. *See* **Privy Council** (Reasons for decision—Statement of reasons).Stay of execution pending appeal. *See* **Execution** (Stay—Stay of execution pending appeal).

Supreme Court of Canada—

Appeal from 'final judgment'. *See* **Canada** (Supreme Court of Canada—Appeal from 'final judgment').

Third party—

Appeal by third party. *See* **Court of Appeal** (Third party).

Time for appealing—

Court of Appeal. *See* **Court of Appeal** (Time for appeal).Selective employment tax. *See* **Selective employment tax** (Appeal—Time for appealing).

Transport tribunal—

Jurisdiction of Court of Appeal. *See* **Court of Appeal** (Jurisdiction—Appeal from order of transport tribunal).

Tribunal—

Point of law. *See* **Tribunal** (Appeal to Divisional Court on point of law).

War pension—

Appeal against assessment of extent of disablement. *See* **War pension** (Appeal—Appeal against assessment of extent of disablement).

Wardship—

Appeal against order determining or continuing wardship. *See* **Ward of court** (Appeal—Appeal against order determining or continuing wardship).

Winding-up of company—

Stay pending appeal against winding-up order. *See* **Company** (Compulsory winding-up—Winding-up order—Stay pending appeal).

Witness summons—

County court. *See* **County court** (Witness summons—Appeal).Workmen's compensation. *See* **Workmen's compensation** (Appeal).**APPEARANCE**

Default—

Judgment in default of appearance—

Possession—Rent controlled premises. *See* **Rent restriction** (Possession—Procedure—Court—Judgment for possession signed in High Court by landlord in default of appearance).Mortgagor. *See* **Mortgage** (Payment—Leave—Action to recover principal moneys and interest due under second mortgage).Entry of. *See* **Practice** (Appearance).

Privy Council—

Withdrawal of appearance. *See* **Privy Council** (Appearance).Restrictive trade practice proceedings. *See* **Restrictive trade practices** (Court—Practice—Appearance).

Time for appearance—

Disruption of postal deliveries. *See* **Practice** (Post—Postal delay—Time limited for entry of appearance).Writ in rem. *See* **Admiralty** (Practice—Appearance).**APPLICATION**Adoption. *See* **Adoption** (Application).Affiliation order. *See* **Affiliation** (Application for order).Appraisal and sale of ship. *See* **Admiralty** (Appraisal and sale—Application for order).Bail. *See* **Criminal law** (Bail—Application).Case stated. *See* **Case stated** (Application to state a case).

Committal order—

Contempt of court. *See* **Contempt of court** (Committal—Application).

Grant of administration—

Intestacy. *See* **Intestacy** (Grant of administration).

APPLICATION (cont)

Grant of administration (cont)—

Practice. *See* **Administration of estates** (Grant of administration—Practice—Application).

Industrial tribunal—

Originating application. *See* **Industrial tribunal** (Procedure—Originating application).

Injunction—

Matrimonial cases—

Ex parte application. *See* **Injunction** (Husband and wife—Ex parte applications).

Judge in chambers—

Queen's Bench Division. *See* **Practice** (Chambers proceedings—Queen's Bench Division—Chambers applications).

Leave to appeal—

Courts-Martial Appeal Court. *See* **Court-martial** (Appeal—Application for leave to appeal).Criminal appeal. *See* **Criminal law** (Appeal—Leave to appeal—Application).

New tenancy—

Business premises. *See* **Landlord and tenant** (Business premises—Application for new tenancy).

Rehearing—

Divorce. *See* **Divorce** (Rehearing—Application for).Variation of settlement. *See* **Variation of settlement** (Application for variation).

Wardship proceedings—

Leave to remove ward from jurisdiction. *See* **Ward of court** (Removal of ward from jurisdiction—Leave).**APPOINTED DAY**

Planning permission—

Generally. *See* **Town and country planning** (Permission for development—Permissions before and after appointed day).Land unoccupied on appointed day. *See* **Town and country planning** (Permission for development—Land unoccupied on appointed day).**APPOINTMENT**

Administrator—

Special circumstances. *See* **Executor and administrator** (Administrator—Appointment in special circumstances).Arbitrator. *See* **Arbitration** (Arbitrator—Appointment).

During pleasure—

Public office—

Statutory protection—Right to be heard before dismissal. *See* **Natural justice** (Public authority—Dismissal of employee).Executor. *See* **Executor and administrator** (Executor).

Judicial trustee—

Power of court to appoint judicial trustee. *See* **Trust and trustee** (Judicial trustee—Power to appoint—Power of court to appoint judicial trustee for purposes of Settled Land Act).New trustee. *See* **Trust and trustee** (Appointment of new trustee).Power of appointment. *See* **Power of appointment**.

Receiver—

Company—

Debenture. *See* **Company** (Debenture—Receiver—Appointment).Property. *See* **Company** (Receiver—Appointment).

Trustees—

Friendly society. *See* **Friendly society** (Trustees—Appointment).

Umpire—

Arbitration. *See* **Arbitration** (Umpire—Appointment).**APPORTIONMENT**Administration of estates. *See* **Administration of estates** (Apportionment).

Close company—

Apportionment of income among participators. *See* **Income tax** (Close company—Apportionment of income).

Collision at sea—

Apportionment of liability. *See* **Shipping** (Negligence in collision cases—Apportionment of liability).Compensation for goodwill in respect of business premises. *See* **Landlord and tenant** (Compensation for goodwill in respect of business premises—Apportionment).

Contributory negligence—

Apportionment of liability. *See* **Negligence** (Contributory negligence—Apportionment of liability).Costs. *See* **Costs** (Apportionment).

Damages—

Fatal accident claim. *See* **Fatal accident** (Damages—Apportionment).Generally. *See* **Damages** (Apportionment).

Expenses—

Private street works. *See* **Highway** (Private street works—Apportionment of cost).

Family provision—

Award—

Apportionment of award between beneficiaries. *See* **Family provision** (Award—Burden of award—Whether power to apportion burden unequally between beneficiaries in the same class).

APPORTIONMENT (cont)

Income—

Apportionment in respect of time—

Class gift—Trust for grandchildren contingent on attaining 21—Whether income of trust fund to be apportioned on birth of additional grandchild—Application of accumulations of income to which grandchild contingently entitled but dying without obtaining vested interest—Apportionment Act 1870, s 2. *Re Joel's Will Trusts* [1966] 2 482, ChD.

Sale of land—

Apportionment of outgoings. *See* **Sale of land** (Condition—Apportionment of outgoings).

Settlement—

Capital or income. *See* **Settlement** (Capital or income—Apportionment).

Will. *See* **Will** (Apportionment).

APPRAISEMENT

Ship. *See* **Admiralty** (Appraisement and sale).

APPRENTICESHIP

Generally. *See* **Master and servant** (Apprenticeship).

Redundancy payment—

Period of service—

Apprentice serving different masters. *See* **Employment** (Continuity—Change of employer—Apprenticeship—Apprentice serving different masters).

APPROBATION

Estoppel—

Cannot both approbate and reprobate. *See* **Acquiescence** (Estoppel—Acquiescence in expenditure being made in reliance on right over land of another).

Unconsummated marriage. *See* **Nullity** (Bar to relief—Approbation of unconsummated marriage).

APPROPRIATION

Income—

Appropriation to annual payment for income tax purposes. *See* **Income tax** (Annual payment—Appropriation to taxed profits).

Land—

Power of local authority to appropriate land. *See* **Local authority** (Land—Power to appropriate land).

Proceeds of sale—

Appropriation of payment to particular debt. *See* **Mortgage** (Sale—Appropriation of proceeds of sale).

Salary or income of bankrupt. *See* **Bankruptcy** (Appropriation of salary or income).

APPROVED SCHOOL ORDER

See **Children and young persons** (Approved school order).

ARBITRATION

Agreement—

Arbitration clause—

Assignment—Whether clause assignable. *Shayler v Woolf* [1946] 2 54, CA.

Scope—Agreement providing for reference of disputes to arbitration—Dispute as to whether contract frustrated—Jurisdiction of arbitrator to determine issue. *v Questier & Co Ltd* [1953] 1 954, QBD.

Scope—Clause in charterparty—Charterers buying goods f o b from shippers—Risk passing and payment due on delivery of bill of lading to charterers—Dispute between charterers and shipowners as to alleged short cargo—Whether dispute governed by charterparty or bill of lading. *President of India v Metcalfe Shipping Co Ltd* [1969] 3 1549, CA.

Scope—Contract for services—Contract providing for disputes arising out of or under agreement to be referred to arbitration—Claim on a quantum meruit and under Law Reform (Frustrated Contracts) Act 1943—Whether claims 'arising out of' or 'under' the contract. *Government of Gibraltar v Kenney* [1956] 3 22, QBD.

Scope—Salvage agreement—Agreement providing for disputes regarding salvors' remuneration to be referred to arbitration—Agreement containing details of procedure to be followed on reference—Provision that 'any other difference arising out of this agreement shall be referred to arbitration in the same way'—Ship in need of salvaging following collision—Salvage agreement between salvors and ship-owner—Loss occurring during salvage operations—Claim by ship-owner against salvors for negligence in salvage operation—Whether within scope of arbitration clause—*Lloyd's Standard Form of Salvage Agreement* cl 1. *The Eschersheim* [1974] 3 307, QBD.

Stay of court proceedings. *See* **Stay of court proceedings, post**.

Building contract. *See* **Building contract** (Arbitration clause).

Limitation clause—

Claim within time fixed by agreement—Claim to be made within fourteen days from final discharge of goods—Breach by beneficiary of fundamental term of contract—Goods delivered of kind specified in contract, but short in measure and substantially undergrade. *Smeaton Hanscomb & Co Ltd v Sassoon I Setty Son & Co* [1953] 2 1471, QBD.

What amounts to arbitration agreement—

Characteristics—Clause of Burnham report—Any question relating to the interpretation of the provisions of the report brought forward by a local education authority to be considered and determined by the joint committee—Want of mutuality—Stay of action by schoolmaster for remuneration on Burnham scale set aside. *Baron v Sunderland Corp* [1966] 1 349, CA.

Agricultural holding. *See* **Agricultural holding** (Arbitration).

Appointment of arbitrator. *See* **Arbitrator**—Appointment, *post*.

Appointment of umpire. *See* **Umpire**—Appointment, *post*.

ARBITRATION (cont)

Arbitration clause—

Charterparty—

Centrocon arbitration clause. *See Shipping* (Charterparty—Incorporation of amended Centrocon arbitration clause).

Incorporation in bill of lading. *See Shipping* (Bill of lading—Incorporation of terms of charterparty—Arbitration clause).

Time for bringing claims under arbitration clause. *See Shipping* (Charterparty—Time for bringing claims under arbitration clause).

Arbitrator—

Appointment—

Failure of one side to appoint—Notice requiring appointment within seven days—Necessity for appointment of sole arbitrator after default—Arbitration Act 1889, s 6(b). *Drummond v Hamer* [1942] 1 398, KBD.

Jurisdiction of court—Provision for reference to single arbitrator—Parties failing to concur in appointment—Arbitration agreement providing for reference of disputes to arbitrator to be appointed by third party—Dispute arising—Third party declining to appoint arbitrator—Whether court having jurisdiction to appoint arbitrator—Arbitration Act 1950, s 10(a). *National Enterprises Ltd v Racial Communications Ltd* [1974] 3 1010, CA.

Notice to parties—Appointment of third arbitrator—Necessity for notice—Whether third arbitrator umpire—Arbitration Act 1934, s 4(1). *Re An Arbitration Between British Metal Corp Ltd and Ludlow Bros* (1913) Ltd [1938] 1 135, CA.

Qualification—Commercial man—Arbitration clause in charterparty—Arbitrator required by charterparty to be a 'commercial man'—Full-time maritime arbitrator and non-executive director of shipping companies appointed as arbitrator—Validity of appointment—Whether arbitrator a 'commercial man'. *Pando Compania Naviera SA v Filmo SAS* [1975] 2 515, QBD.

Time of appointment—Appointment within three months of final discharge—Centrocon arbitration clause—Other side told of appointment—Appointment not complete until arbitrator himself told of his nomination. *Tradex Export SA v Volkswagenwerk AG* [1970] 1 420, CA.

Architect—

Refusal to act under arbitration clause in building contract. *See Building contract* (Architect—Arbitration clause appointing architect as arbitrator—Architect's decision to be binding in cases of disputes—Refusal of architect to issue certificate or to act as arbitrator).

Authority—

Revocation—Leave of court—Grounds for—Current action in court—Building contract—Action by prospective tenants against building owners and against nominated sub-contractors—Third party proceedings by owners against contractors and sub-contractors—Arbitrator appointed, pursuant to building contract and sub-contract, on application by contractors on behalf of sub-contractors to decide whether owners had to pay contractors for sub-contractors' work—Application by owners to revoke appointment of arbitrator—Arbitration Act 1950 (c 27), s 1, s 4(1). *City Centre Properties (ITC Pensions) Ltd v Tersons Ltd* [1969] 2 1121, CA.

Award. *See Award, post.*

Failure of one side to appoint—

Appointment of sole arbitrator. *See Arbitrator—Appointment—Failure of one side to appoint, ante.*

Fees—

Taxation. *See Umpire—Duty—Fees—Fees of umpire and arbitrators—Duty of umpire to tax or settle fees, post.*

Findings of fact by—

Conclusiveness. *See Special case—Conclusiveness of arbitrator's findings, post.*

Immunity from suit—

Negligence. *See Negligence* (Immunity from suit—Arbitrator).

Jurisdiction—

Agreement providing for reference of disputes to arbitration—Dispute as to whether contract frustrated. *See Agreement—Arbitration clause—Scope—Agreement providing for reference of disputes to arbitration, ante.*

Agricultural holding. *See Agricultural holding* (Arbitration—Question as to jurisdiction of an arbitrator).

Building contract. *See Building contract* (Arbitration clause—Arbitrator—Extent of arbitrator's jurisdiction).

Jurisdiction to consider questions as to own jurisdiction. *See Award—Ambiguity in award, post.*

Misconduct—

Setting aside award. *See Award—Setting aside award—Misconduct, post.*

Scottish arbitrator—

Jurisdiction to state case. *See Special case—Jurisdiction—Scottish arbitrator, post.*

Status and power—

Status of arbitrators appearing at commercial arbitration before umpire—London Cattle Food Trade Association—Arbitrators becoming advocates for parties who appointed them—Judicial notice of practice—Power of arbitrator, in capacity of advocate, to waive irregularity in procedure before umpire. *Wessanen's Koninklijke Fabrieken NV v Isaac Modiano Brother & Sons Ltd* [1960] 3 617, QBD.

Supervisory jurisdiction of court—

Certiorari. *See Certiorari* (Arbitrator—Jurisdiction of court to issue orders addressed to private arbitrator).

ARBITRATION (cont)

Award—

Ambiguity in award—

Evidence—Presumption of validity of submission—Ambiguity in award raising doubt as to jurisdiction—Admissibility of extrinsic evidence as to dispute—Right of arbitrators to consider questions as to their jurisdiction. **Christopher Brown Ltd v Genossenschaft Oesterreichischer Waldbesitzer Holzwirtschaftsbertriebe Registrierte Genossenschaft mit Beschränkter Haftung** [1953] 2 1039, QBD.

Costs—

Discretion of arbitrator. *See* Costs—Discretion of arbitrator, *post*.

Reasons—No need to state reasons for award of costs. **Perry v Stophor** [1959] 1 713, CA.

Delivery of award—

Date of delivery—Award taken up on one day by one party and posted to other party who received it on following day—Award in difference between building owner and adjoining owner—Time within which to appeal—London Building Acts (Amendment) Act 1939, s 55(n). **Riley Gowler Ltd v National Heart Hospital Board of Governors** [1969] 3 1401, CA.

Enforcement—

Foreign award—Final award—Danish award—Enforceable in Denmark only after court order—Whether award 'final'—Arbitration Act 1950, s 26, s 36(1), s 37(1)(c), (d). **Union Nationale des Co-operatives Agricoles de Cereales v Robert Catterall & Co Ltd** [1959] 1 721, CA.

Foreign award—Meaning—Parties subject to different powers declared by Order in Council to be parties to convention—Different powers—India and Pakistan—Order declaring His Majesty to be party to convention in relation to the territory of British India—Order continuing in force after independence of India and Pakistan—Whether effect of independence legislation to substitute heads of state of India and Pakistan as powers declared to be parties of convention—Indian Independence Act 1947, s 18(1)—India (Consequential Provision) Act 1949, s 1(1)—Arbitration Act 1950, ss 35(1), 36—Pakistan (Consequential Provision) Act 1956, s 1(1). **Dalmia Cement Ltd v National Bank of Pakistan** [1974] 3 189, QBD.

Leave—Enforcement in same manner as judgment or order to same effect—Award for payment of sum expressed in foreign currency—Judgment for sum in foreign currency not enforceable—Award expressed in foreign currency enforceable—Sterling equivalent—Need to file affidavit showing rate of exchange at date of award and amount converted into sterling—Arbitration Act 1950, s 26. **Jugoslavenska Oceanska Plovidba v Castle Investment Co Inc** [1973] 3 498, CA.

Leave—Enforcement in same manner as judgment or order to same effect—Award made abroad—Arbitration procedure not governed by English law—Award not foreign award within meaning of statutory definition—Award directing defendants to pay certain sum to plaintiffs in India—Defendants failing to comply with award—Whether procedure for summary enforcement only available in respect of English awards—Whether award in favour of plaintiffs enforceable in England—Arbitration Act 1950, s 26. **Dalmia Cement Ltd v National Bank of Pakistan** [1974] 3 189, QBD.

Leave—Refusal—Circumstances in which leave may be refused—Doubt as to validity of award—Point specifically referred to arbitrator by respondents—Award not expressly dealing with point—Award in favour of claimants—Point to be taken as decided by implication—No application to set aside award within six week time limit—Award final and binding—Wrong decision on point of law by arbitrator not invalidating award—Claimants entitled to leave to enforce award as a judgment—Arbitration Act 1950, s 26. **Middlemiss & Gould (a firm) v Hartlepool Corp** [1973] 1 172, CA.

Error of law on face of award—

Setting aside award. *See* Award—Setting aside award—Error of law on face of award, *post*.

Foreign award—

Enforcement. *See* Award—Enforcement—Foreign award, *ante*.

Form of award—

Agricultural holding. *See* Agricultural holding (Arbitration—Award).

Interest—

Contract providing for submission of disputes to arbitration—Contract also providing for interest on all moneys payable but unpaid on date due—Parties submitting dispute to arbitration—Award by arbitrator in favour of plaintiffs—Plaintiffs claiming interest on amount of award—Whether interest payable on award under terms of contract—Whether rights of parties under the contract superseded by award. **F J Bloemen Pty Ltd (formerly Canterbury Pipelines (Aust) Pty Ltd) v The Council of the City of Gold Coast** [1972] 3 357, PC.

Damages—Power of arbitrator to award interest—Law Reform (Miscellaneous Provisions) Act 1934, s 3(1). **Chandris v Isbrandtsen Moller Co Inc** [1950] 2 618, CA.

Interest as from date of award—Power to award—Arbitration Act 1934, s 11—Law Reform (Miscellaneous Provisions) Act 1934, s 3(1). **Podar Trading Co Ltd, Bombay v Tagher, Barcelona** [1949] 2 62, KBD.

Interest as from date of award—Power to award—Dispute as to assessment of compensation for compulsory acquisition of land. *See* Compulsory purchase (Compensation)—Assessment—Dispute as to assessment—Arbitration—Award—Power of arbitrator to award interest from date of award).

Interest as from date of award—Rate—Power of arbitrator to direct that award itself carry interest at rate in excess of that prescribed for judgments. **Myron (Owners) v Tradax Export SA Panama City RP** [1969] 2 1263, QBD.

Interest as from date of award—Rate—Power to award at rate exceeding interest rate on judgment debts—Arbitration Act 1950, s 20. **London & Overseas Freighters Ltd v Timber Shipping Co SA** [1971] 2 599, HL.

ARBITRATION (cont)

Award (cont)—

Interim award—

Estoppel—Issue estoppel—Exclusion of demurrage claim by cesser clause—Waiver of cesser clause—Question of waiver not raised in interim award—Whether parties estopped from raising it thereafter—Arbitration Act 1950, s 14, s 21(1), (2). **Fidelitas Shipping Co Ltd v V/O Exportchleb** [1965] 2 4, CA.

Payment of sum of money—

Failure to specify sum—Power of court to remit award. *See* Award—Remission—Jurisdiction, *post*.

Foreign currency—Enforcement of award. *See* Award—Enforcement—Leave—Enforcement in same manner as judgment or order to same effect—Award for payment of sum expressed in foreign currency, *ante*.

Foreign currency—Jurisdiction of arbitrators to make award for payment of sum expressed in foreign currency—Circumstances in which award should be expressed in foreign currency. **Jugoslavenska Oceanska Plovidba v Castle Investment Co Inc** [1973] 3 498, CA.

Remission—

Grounds for remission—Alternative awards to cover all possible combinations of answers not made—Whether appropriate to request that case be remitted for award to be made in accordance with court's decision. **Government of Ceylon v Chandris** [1965] 3 48, QBD.

Grounds for remission—Award in form of special case—Further point raised before court—Not argued before arbitrator—Grounds for remission and extension of time—Sufficiency—Strong case on merits and explanation of delay—RSC Ord 64, r 14. **Universal Cargo Carriers Corp v Citati** [1957] 3 234, CA.

Grounds for remission—Error of law on face of award—Remission to arbitrators to cure apparent defect—Admission of evidence on question whether award should be remitted. **Kiril Mischeff Ltd v Constant, Smith & Co** [1950] 1 890, KBD.

Grounds for remission—Fresh evidence since award—Not sufficient to disturb award. **N V Arnold Otto Meyer v Aune** [1939] 3 168, KBD.

Grounds for remission—Legal representation not allowed on arbitration appeal leading to award—Remission for further finding of fact. **Aruna Mills Ltd v Dhanrajmal Gobindram** [1968] 1 113, QBD.

Grounds for remission—Natural justice—New point taken by umpire but not made clear to parties—Power to determine point of law otherwise than as agreed by parties. **société Franco-Tunisienne D'Armement-Tunis v Government of Ceylon** [1959] 3 25, CA.

Jurisdiction—Award for payment of money—Award not specifying sum to be paid and therefore not enforceable as judgment—Remission sought for purpose of calculating sum—Jurisdiction of court to remit—Counterclaim—Arbitration Act 1950, s 26. **Margulies Bros Ltd v Dafnis Thomaidis & Co (UK) Ltd** [1958] 1 777, QBD.

Second award—

Validity. *See* Award—Validity—Second award, *post*.

Setting aside award—

Application—Time limit—Extension—Application for leave to extend time—Practice—Notice of motion including both application for extension of time and application for substantive relief—RSC Ord 73, r 5. **Prodexport State Company for Foreign Trade v E D & F Man Ltd** [1973] 1 355, QBD.

County court. *See* County court (Arbitration—Reference of proceedings to arbitration—Award—Setting aside award).

Error on face of award—Arbitration on term of tenancy of agricultural holding. *See* Agricultural holding (Arbitration—Award—Setting aside award—Arbitration on term of tenancy as to rent).

Error on face of award—Construction of clause in charterparty—Relevant clause not set out in award—Whether court entitled to look at charterparty—Proper course to raise point of construction by way of special case stated and not on motion to set aside award. **Nippon Yusen Kaish v Acme Shipping Corporation** [1972] 1 35, CA.

Error on face of award—Incorporation of contract—When court entitled to look at contract. **Giacomo Costa Fui Andrea v British Italian Trading Co Ltd** [1962] 2 53, CA.

Error on face of award—Reference to pleadings in award—Incorporation in award. **Belsfield Court Construction Co Ltd v Pywell** [1970] 1 453, QBD.

error on face of award—Reference to pleadings in award—Incorporation in award. **Hitchins v British Coal Refining Processes Ltd** [1936] 2 191, KBD.

Jurisdiction—Award in respect of agricultural holding. *See* Agricultural holding (Arbitration—Award—Setting aside award—Jurisdiction).

Jurisdiction—Award made without jurisdiction—Illegal contract—Contract legal at inception—Performance subsequently becoming illegal—English law proper law of contract—Contract to be performed in foreign country—Performance becoming illegal under foreign law after contract made—Arbitrator awarding damages for non-performance—Non-speaking award—Whether arbitrator having jurisdiction to award damages for breach of illegal obligation—Whether grounds for setting aside award—Arbitration Act 1950, s 23(2). **Prodexport State Company for Foreign Trade v E D & F Man Ltd** [1973] 1 355, QBD.

Jurisdiction—Discretion—Power of court to remit award of its own volition—Delay by arbitrator exceeding four years in stating award—Sums of money involved small—Justice best served by remitting award for reconsideration by same arbitrator—Matters for reconsideration to be agreed by parties and submitted in writing to arbitrator. **S J & M M Price Ltd v Milner** [1966] 2 780, QBD.

Misconduct—Award enforcing illegal contract—Arbitration Act 1950, s 22(1), s 23(2). **David Taylor & Son Ltd v Barnett** [1953] 1 843, CA.

ARBITRATION (cont)

Award (cont)—

Setting aside award (cont)—

Misconduct—Counterclaim in action on award—Whether counterclaim to have award set aside for misconduct can be raised by way, in effect, of defence. *Birtley District Co-operative Society Ltd v Windy Nook & District Industrial Co-operative Society Ltd* [1959] 1 43, QBD.

Misconduct—Procedure of board of appeal—Custom of trade contrary to implied term of agreement—Approach to question of setting aside award on grounds of irregularity in procedure or infringement of the rules of natural justice. *London Export Corp Ltd v Jubilee Coffee Roasting Co Ltd* [1958] 2 411, CA.

Misconduct—Umpire—Award of board of appeal superseding award of umpire—Misconduct alleged against umpire but not against board—No ground for setting aside award of board—Arbitration Act 1950, s 23(2). *Giacomo Costa Fu Andrea v British Italian Trading Co Ltd* [1962] 2 53, CA.

Settlement of differences between building owner and adjoining owner. *See* Building (London—

Adjoining lands—Settlement of difference between building owner and adjoining owner—Arbitration—Award).

Validity—

Arbitrator not qualified to act—Put forward by party seeking to have award declared invalid—Estoppel. *Oakland Metal Co Ltd v D. Benaim & Co Ltd* [1953] 2 650, QBD.

Damages—Mercantile contract—Breach of contract—Claim for price of goods—Arbitrator appointed with special knowledge of subject-matter—Arbitrator awarding damages—No expert evidence called. *Mediterranean and Eastern Export Co Ltd v Fortress Fabrics (Manchester) Ltd* [1948] 2 186, KBD.

Second award—Two separate disputes arising out of one contract—Validity of second award. *H E Daniels Ltd v Carmel Exporters and Importers Ltd* [1953] 2 401, QBD.

Breach of contract for sale of goods—

Time limit for reference. *See* Sale of goods (Breach of contract—Time limit for reference to arbitration).

Commencement—

Charterparty—

Time-bar—Incorporation of Hague Rules requiring arbitration in respect of loss or damage to goods to be brought within one year of delivery of goods—When arbitration 'brought'—Notice requiring submission of dispute to arbitration—Charterers submitting detailed claim to shipowners in respect of damage to goods—Charterers writing to shipowners 'Please advise your proposals to settle matter, or name your arbitrators'—Whether sufficient notice to commence arbitration—Whether unequivocal request for arbitration—Carriage of Goods by Sea Act 1924, Sch, art III, r 6—Limitation Act 1939, s 27(3). *Nea Agrex SA v Baltic Shipping Co Ltd* [1976] 2 842, CA.

Extension of time fixed by agreement—

Application to Divisional Court of Queen's Bench Division—Arbitration Act 1950, s 27. *Raymond & Reid v Granger* [1952] 2 152, QBD.

Charterparty in Centrocon form—Cross-claims—Parties negotiating for a settlement and unaware of expiry of time limit—Substantial claim by owners—Meeting with a view to settlement on day after expiry of time limit—No settlement reached—Nine days after expiry of time limit owners sought extension of time by consent—Charterers had not contributed to delay, but were not prejudiced by it—Whether 'undue hardship' would be caused to owners if time were not extended—Arbitration Act 1950, s 27. *Liberian Shipping Corp v A King & Sons Ltd* [1967] 1 934, CA.

Power of court to extend time—Time limit imposed by incorporation of Hague Rules into charterparty—Whether court having power to extend time limit imposed by Hague Rules—Circumstances in which discretion to extend time should be exercised—Carriage of Goods by Sea Act 1924, Sch, art III, r 6—Arbitration Act 1950, s 27. *Nea Agrex SA v Baltic Shipping Co Ltd* [1976] 2 842, CA.

'Undue hardship'—Delay due to fault of applicants for extension—Loss on sub-contracts—Arbitration Act 1934, s 16(6). *F E Hookway & Co v H W Hooper & Co* [1950] 2 842, CA.

Period of limitation—

Date from which time runs—Application for compensation for worsening of conditions of employment—Limitation Act 1939, s 27. *Layen v London Passenger Transport Board* [1944] 1 432, KBD.

Date from which time runs—Date of commencement of arbitration proceedings where no arbitrator named by either party. *Naamlöze Vennootschap Handels-en-Transport Maatschappij 'Vulcaan' v A/SJ Ludwig Mowinckels Rederi* [1938] 2 152, HL.

Date from which time runs—Statutory arbitration—Railways Act 1921, Sch III, para 4. *Pegler v Railway Executive* [1948] 1 559, HL.

Date from which time runs—Statutory arbitration—Arbitration under Local Government Act 1933, s 151(3)—Claims by one local authority against another for financial adjustment in respect of alteration of areas—Claims presented more than six years after alteration of areas—Whether within limitation period—Limitation Act 1939, s 2(1)(d), s 27(1)(6). *West Riding of Yorkshire County Council v Huddersfield Corp* [1957] 1 669, QBD.

Time limit for reference—

Breach of contract for sale of goods. *See* Sale of goods (Breach of contract—Time limit for reference to arbitration).

ARBITRATION (cont)

Compulsory purchase—

Compensation—

Dispute as to assessment of compensation. *See* **Compulsory purchase** (Compensation—Assessment—Dispute as to assessment—Arbitration).

Conflict of laws—

Arbitration clause—

Effect of arbitration clause on determining proper law of contract—Charterparty. *See* **Conflict of laws** (Contract—Proper law of contract—Charterparty—Adapted standard form—Law of flag of vessels carrying goods—Arbitration clause providing for arbitration in London).

Arbitration clause. *See* **Conflict of laws** (Contract—Arbitration).

Continuation of proceedings—

Continuation after territory occupied by enemy—

Claimant in enemy-occupied territory—Proceedings commenced before enemy occupation—Effect of enemy occupation on proceedings—Whether solicitors' retainer determined. *V/O Sovfracht v Gebr van Udens Scheepvaart en Agentuur Maatschappij* [1943] 1 76, HL.

Costs—

Discretion of arbitrator—

Exercise of discretion—Existence of reasons for not giving successful party full costs—Acquisition of Land (Assessment of Compensation) Act 1919, s 5(4), (5), (6). *P Rosen & Co Ltd v Dowley and Selby* [1943] 2 172, KBD.

Exercise of discretion—Plaintiff partly successful ordered to pay costs—Whether arbitrator need state reasons. *Perry v Stopher* [1959] 1 713, CA.

Exercise of discretion—Special case stated by arbitrator—Costs awarded to buyers however questions of law answered—Decision in favour of sellers—Whether award to be set aside—Arbitration Act 1950, s 18(1). *Smeaton Hanscomb & Co Ltd v Sassoon I Setty, Son & Co (No 2)* [1953] 2 1588, QBD.

Exercise of discretion—Successful party deprived of costs—String of contracts—Counterclaim by ultimate buyer that goods not of contract quality—Suppliers added by seller as third party and by third party as fourth party—Counter-claim failed—Seller ordered to pay costs incurred by third and fourth parties but not awarded their amount against buyer. *L E Cattin Ltd v A Michaelides & Co (a firm) (Turkie third party, George (trading as Yarns & Fibres Co) fourth party)* [1958] 2 125, QBD.

Exercise of discretion—Successful party deprived of costs—Each party ordered to pay own costs—No serious effort to settle claim—Arbitration Act 1950, s 18(1). *Lewis v Haverfordwest Rural District Council* [1953] 2 1599, QBD.

Exercise of discretion—Successful party ordered to pay total costs of reference—Discretion judicially exercised although founded on mistake in law—Misconduct. *Heaven & Kesterton Ltd v Sven Widaeus A/B* [1958] 1 420, QBD.

Reasons for award of costs. *See* **Award**—Costs—Reasons, *ante*.

Security for costs—

Claimant ordinarily resident out of the jurisdiction—Claimants a foreign corporation without assets within the jurisdiction—Application by respondent English company for security for costs—Court will act on same principles as on like application in High Court action—Arbitration Act 1950, s 12(6)(a)—RSC Ord 65, r 6. *Hudson Strumpffabrik GmbH v Bentley Engineering Co Ltd* [1962] 3 460, QBD.

Claimant ordinarily resident out of the jurisdiction—Just in all the circumstances to order security—Arbitration proceeding on basis of written documents—General practice not to order security unless oral hearing—Circumstances in which security should be ordered—Arbitration Act 1950, s 19(b)(a)—RSC Ord 23, r 1. *Mavani v Ralli Brothers Ltd* [1973] 1 555, QBD.

Claimant ordinarily resident out of the jurisdiction—Residence—Deemed residence under contract for purposes of arbitration—Claimant resident in Pakistan—Contract subject to trade association rules—Contract providing that party resident outside United Kingdom to be considered as resident in London—Whether court's jurisdiction to order security for costs may be ousted by agreement—Arbitration Act 1950, s 12(b)(a)—RSC Ord 23, r 1. *Mavani v Ralli Brothers Ltd* [1973] 1 555, QBD.

Jurisdiction—Claimants an insolvent company—Application by respondents for security for costs—Jurisdiction of the court to order security—Arbitration Act 1950, s 12(6)(a)—Companies Act 1948, s 447—RSC Ord 23 r 1, r 3. *Bilcon Ltd v Fegmay Investments Ltd* [1966] 2 513, QBD.

Taxation—

Discretion of arbitrator—Award directing costs to be taxed 'in the High Court'—Discretion of taxing master—Appropriate scale of costs—Discretion of arbitrator to award costs on any basis he regards as proper—Taxing master acting as delegate of arbitrator in taxing costs—Direction in award to be construed as direction to tax costs on High Court scale. *H G Perkins Ltd v Best-Shaw* [1973] 2 924, QBD.

Workmen's compensation. *See* **Workmen's compensation** (Costs of arbitration and proceedings connected therewith).

County court—

Reference of proceedings to arbitration. *See* **County court** (Arbitration—Reference of proceedings to arbitration).

Delay—

Dismissal of claim for want of prosecution. *See* **Practice**—Want of prosecution, *post*.

Enforcement of award. *See* **Award**—Enforcement, *ante*.

ARBITRATION (cont)**Estoppel—**

Party acting on basis arbitrator qualified to act. *See* **Estoppel** (Arbitration—Party acting on basis arbitrator qualified to act).

Res judicata. See *Res judicata, post.*

Extension of time—

Commencement of arbitration—

Agreement to extend time. *See* **Commencement—Extension of time fixed by agreement, ante.**

Conflict of laws. *See* **Conflict of laws** (Contract—Arbitration—Time-bar—Extension of time).

Fees—

Arbitrator's or umpire's fees. *See* **Umpire—Duty—Fees, post.**

Foreign award—

Enforcement. *See* **Award—Enforcement—Foreign award, ante.**

Immunity of arbitrator from suit—

Negligence. *See* **Negligence** (Immunity from suit—Arbitrator).

Industrial and provident societies. See **Industrial and provident societies** (Determination of disputes—Arbitration).**Interim award. See** **Award—Interim award, ante.****Interpleader proceedings—**

Reference of interpleader issues to arbitration—

Discretion of court—Arbitration clause in contract—Exercise of court's discretion—Arbitration Act 1950, s 5. *Re Phoenix Timber Co Ltd's Application* [1958] 1 815, CA.

Issue estoppel—

Res judicata. See *Res judicata, post.*

Jurisdiction—

Award made without jurisdiction. *See* **Award—Setting aside award—Jurisdiction, ante.**

Supervisory jurisdiction of court—

Certiorari. See **Certiorari** (Arbitrator—Jurisdiction of court to issue orders addressed to private arbitrator).

Misconduct—

Setting aside award. *See* **Award—Setting aside award—Misconduct, ante.**

Ouster of jurisdiction of court—

Term of contract that award condition precedent to proceedings—

Dispute as to right of appeal against award—Action for declaration as to right—Competency—Service of notice of appeal—London Corn Trade Association contract—Foreign party 'considered as ordinarily resident' in London—Validity of service at office abroad—Power of court to order provision making award condition precedent to bringing action to be of no effect—Exercise of discretion—Arbitration Act 1950, s 25(4). *Getreide-Import-Gesellschaft mbH v Contimar SA Compania Industrial Comercial Y-Maritima* [1953] 2 223, CA.

Practice—

Application for order that arbitration clause should cease to have effect—

Court to which application to be made—Arbitration Act 1950, s 24(2). *Kruger Townwear Ltd v Northern Assurance Co Ltd* [1953] 2 727, QBD.

Application to set aside award. *See* **Award—Setting aside award—Application, ante.**

Extension of time for commencing arbitration proceedings. *See* **Commencement—Extension of time fixed by agreement, ante.**

Leave to enforce award. *See* **Award—Enforcement—Leave, ante.**

Special case—

Form. *See* **Special case—Form, post.**

Stay of court proceedings. *See* **Stay of court proceedings, post.**

Want of prosecution—

Dismissal of claim—Power of arbitrator to dismiss claim for want of prosecution—Prolonged and unwarranted delay by claimants to prosecute claim—No failure by claimants to comply with order of arbitrator to take interlocutory step before a given date. *Crawford v A E A Prowling Ltd* [1972] 1 1199, QBD.

Procedure—

Arbitration conducted on informal lines—

Right of party to rely on both arbitrators for information on any issue of fact or law raised by other party which he may not have anticipated. *Myron (Owners) v Tradax Export SA Panama City RP* [1969] 2 1263, QBD.

Proceedings—

Application of rules of law. *See* **Rules of law—Application, post.**

Commencement. *See* **Commencement, ante.**

Continuation of proceedings after territory occupied by enemy. *See* **Continuation of proceedings—Continuation after territory occupied by enemy, ante.**

Nature of proceedings—

Decision of legal issues—Whether appropriate for the decision of questions of law or construction of documents. *Fairclough Dodd & Jones Ltd v J H Vantol Ltd* [1956] 3 921, HL.

Proceedings of General Claims Tribunal—Whether proceedings constitute arbitration—Arbitration Act 1889, s 24—Compensation (Defence) Act 1939, ss 2(1)(a), 7, 9(3), 17(1). *Racecourse Betting Control Board v Secretary of State for Air, Epsom Grand Stand Assn Ltd v Secretary of State for War* [1944] 1 60, CA.

Proper law. *See* **Special case—Jurisdiction—Scottish arbitrator, post.**

Status of arbitrators appearing at commercial arbitration before umpire. *See* **Arbitrator—Status and power, ante.**

Reference to arbitration—

Declaration regarding scope of reference. *See* **Declaration** (Discretion to grant—Declaration regarding scope of reference to arbitration).

ARBITRATION (cont)

Reference to court—

Extra *cursum curiae*—Order for account—Master dealing with questions outside order at request of counsel on both sides—Whether master's certificate may be treated as an award. **Wyndham v Jackson** [1938] 2 109, CA.Remission of award. *See* Award—Remission, *ante*.

Res judicata—

Arbitration based on same cause of action as earlier arbitration—

Issue not included in terms of reference of earlier arbitration—Breach of warranty—Building contract—Warranty to build house in good and workmanlike fashion—Contract providing for reference of disputes as to alleged defects to arbitration—Disputes as to certain defects referred to arbitration by purchaser—Terms of reference not including any reference to alleged defects in construction of roof—Dispute as to alleged roof defects existing at time of first arbitration—Whether purchaser estopped from referring disputes as to roof defects to arbitration by reason of award made in first arbitration. **Purser & Co (Hillingdon) Ltd v Jackson** [1976] 3 641, QBD.Revocation of authority of arbitrator. *See* Arbitrator—Authority—Revocation, *ante*.

Rules of law—

Application—

Exclusion by contract—Custom—Mercantile reference. **E E & Brian Smith (1928) Ltd v Wheatsheaf Mills Ltd** [1939] 2 251, KBD.Security for costs. *See* Costs—Security for costs, *ante*.

Setting aside award—

Agricultural holding. *See* Agricultural holding (Arbitration—Award—Setting aside award).Generally. *See* Award—Setting aside award, *ante*.

Special case—

Agricultural holding. *See* Agricultural holding (Arbitration—Special case for county court).

Conclusiveness of arbitrators' findings—

Appeal—Questions of law—Whether court having jurisdiction to amend questions of law in special case—Whether jurisdiction limited to arbitrators' findings. **Ismail v Polish Ocean Lines** [1976] 1 902, CA.

Conclusiveness of arbitrator's findings—

Construction of a document—Construction a matter of law for the court—Court not bound by arbitrator's findings as to the meaning of document. **Woodhouse AC Israel Cocoa Ltd SA v Nigerian Produce Marketing Co Ltd** [1972] 2 271, HL.Facts found in special case—Frustration—Sale of goods—Normal shipping route via Suez—Finding in Case that shipping by route via Cape of Good Hope would not render contract commercially or fundamentally different—Whether appeal tribunal can review finding. **Tsakiroglou & Co Ltd v Noblee & Thorl GmbH** [1961] 2 179, HL, **Albert D Gaon & Co v Société Interprofessionnelle des Oleagineux Fluides Alimentaires** [1960] 2 160, CA.

Direction by court—

Direction to arbitrator to state question of law or award in form of a special case—Discretion of court—Exercise of discretion—Issue involving question of law—Discretion of court to refuse to direct statement of special case—Factors governing exercise of discretion—Arbitration Act 1950, s 21(1), (2). **Halfdan Grieg & Co, A/S v Sterling Coal & Navigation Corp** [1973] 1 545, QBD.Direction to arbitrator to state question of law or award in form of a special case—Discretion of court—Exercise of discretion—Issue involving question of law—When discretion to direct a special case should be exercised—Dispute as to construction of contract terminating time charter—Delay in bringing dispute to arbitration—Arbitration Act 1950, s 21(1). **Halfdan Grieg & Co, A/S v Sterling Coal & Navigation Corp** [1973] 2 1073, CA.

Form—

Defects—Effect—Award nevertheless regarded as being stated in form of special case. **S J & M M Price Ltd v Milner** [1966] 2 780, QBD.Evidence—Appending transcript of evidence to the case—Submission of no evidence to support finding of fact—Arbitrator's duty to summarise evidence relied on. **Tersons Ltd v Stevenage Development Corp** [1963] 3 863, CA.Findings of fact—Duty of parties to ensure arbitrator aware of points on which they want facts found. **The White Rose** [1969] 3 374, QBD.Form of question—Damages—Quantum of damages. **Government of Ceylon v Chandris** [1965] 3 48, QBD.Question of law—Details to be supplied by arbitrator—Arbitration Act 1950, s 21(1)(a). **Windsor Rural District Council v Otterway and Try Ltd** [1954] 3 721, QBD.

Jurisdiction—

Jurisdiction to consider point not raised before arbitrator. **Sinason-Teicher Inter-American Grain Corp v Oilcakes and Oilseeds Trading Co Ltd** [1954] 3 468, CA.Power of court to draw inferences of fact—Arbitration Act 1950, s 21—RSC Ord 34, r 1, r 7. **Universal Cargo Carriers Corp v Citati (No 2)** [1958] 2 563, CA.Scottish arbitrator—Contract governed by English law—Arbitrator required to state case—Arbitration governed by Scots law—No jurisdiction to state case. **James Miller and Partners Ltd v Whitworth Street Estates (Manchester) Ltd** [1970] 1 796, HL.

Remission to arbitrator—

Point taken but not argued—Discretion of judge—Arbitration Act 1950, s 22(1). **Universal Cargo Carriers Corp v Citati** [1957] 3 234, CA.

Statutory arbitration—

Commencement. *See* Commencement—Period of limitation—Date from which time runs—Statutory arbitration, *ante*.

Stay of arbitration—

Jurisdiction—

Admiralty—Collision action. *See* Admiralty (Jurisdiction—Stay of proceedings—Collision action).

ARBITRATION (cont)

Stay of court proceedings—

Admiralty—

Action in rem—Release of arrested ship. *See Admiralty*. (Jurisdiction—Action in rem—Arrest of ship—Stay of proceedings—Arbitration agreement).

Application—

Time of application—Application after repudiation of contract containing arbitration clause—Repudiation accepted by other party—Effect on arbitration clause—Arbitration Act 1889, s 4. *Heyman v Darwins Ltd* [1942] 1 337, HL.

Time of application—Necessity for application to be made prior to taking step in proceedings—Step in proceedings—Transfer of summons to counsel's list—Arbitration Act 1889, s 4. *Lane v Herman* [1939] 3 353, CA.

Time of application—Necessity for application to be made prior to taking step in proceedings—Action on contract containing arbitration clause—Opposition to summons under RSC Ord 14, for leave to sign judgment—Affidavit filed and appearance before master—Whether a step in the action—Arbitration Act 1889, s 4. *Pitchers Ltd v Plaza (Queensbury) Ltd* [1940] 1 151, CA.

Binding submission to arbitration—

Written submission—Contention that rules of a trade association applicable—Articles of association as contract between members of company—Companies Act 1929, s 20. *London Sack & Bag Co Ltd v Dixon & Lugton Ltd* [1943] 2 763, CA.

Dispute as to existence of arbitration agreement—

Determination of dispute on interlocutory motion for stay—Duty of court—Construction of contract—Question whether arbitration clause incorporated in contract—Duty of court to determine point of construction before defendant taking further steps in proceedings—Arbitration Act 1950, s 4(1). *Modern Buildings Wales Ltd v Limmer and Trinidad Co Ltd* [1975] 2 549, CA.

Legal aid—

Relevance—Legal aid not available in arbitration proceedings—Rights of person receiving legal aid not to affect rights or liabilities of other parties or principles on which court's discretion normally exercised—Plaintiff insolvent—Plaintiff granted legal aid for court proceedings—Application by defendant for stay—Defendant having no right to stay—No principles on which court's discretion exercised—Court not precluded from refusing stay on ground plaintiff having legal aid for court proceedings but unable to afford arbitration proceedings—Legal Aid and Advice Act 1949, s 1(7)(b). *Fakes v Taylor Woodrow Construction Ltd* [1973] 1 670, CA.

Partnership—

Dissolution. *See Partnership* (Dissolution—Arbitration).

Protocol agreement—

Contract for towage containing arbitration clause alleged to be a nullity—Action brought for negligence—Whether stay of action should be granted—Arbitration Act 1950, s 4. *The Tradesman* [1961] 3 661, Adm.

Enactment in United Kingdom statute to be read with protocol—Arbitration agreement for future differences incorporated in bill of lading—No actual submission of dispute to arbitrator within time limit of arbitration clause—Action for damages stayed—Arbitration Act 1950, s 4(2). *The Merak* [1965] 1 230, CA.

Foreign arbitration—Agreement containing arbitration clause—Submission—Action upon agreement—Discontinuance—Counterclaim by other party—Stay—Arbitration Clauses (Protocol) Act 1924, s 1—Arbitration (Foreign Awards) Act 1930, s 8—Arbitration Act 1934, s 14. *Radio Publicity (Universal) Ltd v Compagnie Luxembourgeoise De Radiodiffusion* [1936] 2 721, ChD.

Refusal of stay—

Grounds for refusal—Action for damages for negligence—Insolvency of defendant—Action by successful plaintiff against defendant's insurers—Arbitration clause in insurance contract—Poverty of plaintiff—Whether such poverty a ground for refusing to stay action brought under the Poor Persons Rules—Third Parties (Rights against Insurers) Act 1930, s 1(1)—Arbitration Act 1934, s 3(4). *Smith v Pearl Assurance Co Ltd* [1939] 1 95, CA.

Grounds for refusal—Fraud—Allegations akin to allegations of fraud—Arbitration clause in partnership agreement—Action by partner against fellow partners—Defendants' allegations of dishonesty impugning plaintiff's professional reputation—Right to hearing in open court—Arbitration Act 1950, s 4(1). *Radford v Hair* [1971] 2 1089, ChD.

Grounds for refusal—Insolvency of plaintiff—Availability of legal aid in court proceedings—Insolvency alleged to have been caused by defendant's breach of contract—Plaintiff unable to afford arbitration proceedings by reason of insolvency—Reasonable grounds for believing that insolvency caused by defendant's breach—Effect of granting stay a denial of justice to plaintiff. *Fakes v Taylor Woodrow Construction Ltd* [1973] 1 670, CA.

Grounds for refusal—Lack of jurisdiction—Insurance policy containing arbitration clause—Action on policy—Denial of existence of policy—Claim for arbitration—Repudiation. *Toller v Law Accident Insurance Society Ltd* [1936] 2 952, CA.

Grounds for refusal—Special reasons—Building contract—Action by building owner against architect—Architect blamed contractors—Contractors joined as co-defendants—Application for stay by contractors refused—Arbitration Act 1950, s 4(1). *Taunton-Collins v Cromie* [1964] 2 332, CA.

Grounds for refusal—Valid arbitration clause—Reason for refusing stay—Onus of proving good reason—Allegation that arbitration proceedings would be more expensive than action—Whether proper reason for refusing stay. *Ford v Clarksons Holidays Ltd* [1971] 3 454, CA.

Multiplicity of proceedings—Collision at sea—Owners of ship damaged in collision entering into salvage agreement—Agreement containing arbitration clause—Loss of ship in course of salvage operations—Actions by owners against other ship and against salvors—Grant of stay resulting in multiplicity of proceedings—Arbitration Act 1950, s 4(1). *The Jade, The Eschersheim* [1976] 1 441, CA.

ARBITRATION (cont)

Stay of court proceedings (cont)—

Refusal of stay (cont)—

Salvage agreement—Action in Turkish courts to set aside salvage agreement. *Turk Gemi Kurtama v Ithaka (Owners), The Ithaka* [1939] 3 630, CA.

Term of contract that award condition precedent to proceedings—

Action by sub-purchasers of goods the subject of the contract—Joinder of original buyer and seller as fourth and fifth parties—Failure by buyer to demand arbitration within time limit—Application for stay by seller—Arbitration Act 1950, s 4(1). *W Bruce Ltd v J Strong (a firm), Keril Mischeff Ltd (third party), F Abraham & Co (a firm) (fourth party), Bakirzis & Co Ltd (fifth party)* [1951] 1 1021, CA.

Deviation from terms of contract—Whether arbitration clause displaced—Application of clause to claim framed in tort—Arbitration Act 1889, s 4. *Woolf v Collis Removal Service* [1947] 2 260, CA.

Validity of arbitration clause—

Ouster of jurisdiction of court—Clause providing that arbitrator's decision should be 'accepted by all parties as final'—Whether clause purporting to oust jurisdiction of court. *Ford v Clarkson's Holidays Ltd* [1971] 3 454, CA.

Taxation of arbitrator's or umpire's fees. *See* Umpire—Duty—Fees—Fees of umpire and arbitrators—Duty of umpire to tax or settle fees, *post*.

Time for commencing arbitration. *See* Commencement, *ante*.

Umpire—

Appointment—

Validity—Umpire required by contract to be a commercial man and not a lawyer—Point in issue one of construction—Arbitrators, duly appointed, appointed lawyer as umpire—Umpire heard dispute and made two awards—Whether awards void—Uncertainty of description 'commercial man'—Whether objection waived. *Rahcassi Shipping Co, SA v Blue Star Line Ltd* [1967] 3 301, QBD.

Duty—

Fees—Fees of umpire and arbitrators—Duty of umpire to tax or settle fees—Duty of umpire to consider whether fees fair and reasonable—Arbitration Act 1950, s 18(1). *Government of Ceylon v Chandris* [1963] 2 1, QBD.

Misconduct—

Setting aside award. *See* Award—Setting aside award—Misconduct—Umpire, *ante*.

Status of arbitrators appearing at commercial arbitration before umpire. *See* Arbitrator—Status and power, *ante*.

Workmen's compensation. *See* Workmen's compensation (Arbitration).

ARBITRATOR

Generally. *See* Arbitration (Arbitrator).

Prohibition—

Power of court to issue order directed to private arbitrator. *See* Prohibition (Arbitrator).

Use of knowledge of local conditions—

Workmen's compensation. *See* Workmen's compensation (Arbitration—Use of knowledge of local conditions by arbitrator).

ARCHDEACON

Faculty proceedings—

Duty to instruct solicitors and counsel. *See* Ecclesiastical law (Faculty—Petition—Unopposed petition—Archdeacon to instruct solicitors and counsel).

ARCHITECT

Building licence—

Failure to obtain—

Effect on contractual obligations. *See* Building control (Building licence—Failure to obtain—Effect on contractual obligations—Building architect's failure to obtain).

Certificate—

Final certificate. *See* Building contract (Architect—Final certificate).

Interim certificate. *See* Building contract (Architect—Interim certificate).

Copyright—

Building plans—

Implied licence to allow use of plans for all purposes connected with the building. *See* Copyright (Licence—Implied licence—Architect's building plans).

Duty of care—

Contractual duty to exercise care and skill—

Degree of care—Factors to be considered—Scamped work—House built down to a price—Whether work so done that architect might pass it as done to his reasonable satisfaction. *Cotton v Wallis* [1955] 3 373, CA.

Failure to obtain building licence—

Effect on contractual obligations. *See* Building control (Building licence—Failure to obtain—Effect on contractual obligations—Building architect's failure to obtain).

Negligence—

Building contract. *See* Building contract (Architect—Negligence).

Notice. *See* Building contract (Architect—Architect's notice).

ARCHITECT (cont)

Registration—

Person practising as an architect—

Meaning—Test to be applied—Applicant in control of architectural work of local authority—Refusal by admission committee to enter applicant's name in register—Whether tribunal applying correct test—Architects (Registration) Act 1931, ss 6, 10—Architects Registration Act 1938, ss 2, 4. *R v Architects' Registration Tribunal, Ex parte Jaggat* [1945] 2 131, KBD.

Refusal—

Appeal—Natural justice—Duty of appeal tribunal—Appeal tribunal receiving evidence regarding appellant's case—Appeal tribunal declining to communicate substance of evidence to appellant—*Certiorari. R v Architects' Registration Tribunal, Ex parte Jaggat* [1945] 2 131, KBD.

Removal of name from register—

Disgraceful conduct—Nature of conduct—Appeal—Jurisdiction of appellate court—Architect acting as house agent both before and after registration—Whether conduct disgraceful to him as an architect—Architects (Registration) Act 1931, s 7(1), s 9. *Hughes v Architects' Registration Council of the United Kingdom* [1957] 2 436, QBD.

ARCHITECTURAL WORK

Copyright. *See* Copyright (Artistic work—Architectural work).

AREA

Local authority—

Alteration. *See* Local government (Alteration of area).

ARM

Injury to arm—

Damages. *See* Damages (Personal injury—Arm).

ARMED FORCES

Army. *See* Army, *post*.

Foreign state. *See* Constitutional law (Foreign sovereign state—Armed forces of foreign state).

Gift for armed forces—

Whether charitable purpose. *See* Charity (Benefit to community—Armed forces).

Libel—

Privilege—

Report to serviceman's commanding officer of serviceman's failure to pay debt. *See* Libel and slander (Qualified privilege—Duty and interest—Serviceman—Report to commanding officer).

ARMORIAL BEARINGS

Jurisdiction of Court of Chivalry. *See* Court of Chivalry (Jurisdiction—Armorial bearings).

ARMY

Court-martial. *See* Court-martial.

Exemption from payment of tolls—

Kenya Protectorate—

Franchise of pontage—Grant contained in agreement with bridge company—Exemption from tolls for 'military on duty'—Whether exemption extended to all soldiers of the Queen—Army Act, s 143—East Africa Order in Council 1902 (S R & O 1902 No 661), art 15 (as amended by S R & O 1911 No 243). *Nyali Ltd v Attorney-General* [1956] 2 689, HL.

Impressment—

Vehicles—

Motor vehicle subject to hire-purchase agreement—Payment to owner—Payment to person in possession of vehicle—Army Act, ss 113(4), 115. *Roadways Transport Development Ltd v Attorney-General* [1942] 1 52, CA.

Incitement to disaffection—

Indictment—

Duplicity. *See* Indictment (Duplicity—Incitement to disaffection).

Offence by person subject to military law—

Officer of regular forces on active list—

Accused granted emergency commission—Release from military duty during emergency subject to recall—Accused committing offence during release—Duration of subjection to military law—'Officer of regular forces'—'On active list'—Army Act, ss 158(1), 190(8)—Royal Warrant for Pay, Appointment, Promotion and Non-Effective Pay of the Army 1940, art 21—Army Order 83 of 1945. *R v Governor of Wormwood Scrubs Prison, Ex parte Boydell* [1948] 1 438, KBD.

Property of soldier—

Exemption from estate duty—

Death on war service. *See* Estate duty (Exemption—Death on war service).

ARRAIGNMENT

Criminal trial. *See* Criminal law (Trial—Arraignment).

Indictment—

Amendment—

Amendment after arraignment. *See* Indictment (Amendment—Amendment after arraignment).

ARRANGEMENT

Company. *See* Company (Scheme of arrangement).

Debtor. *See* Bankruptcy (Scheme of arrangement).

Settlement for tax purposes. *See* Income tax (Settlement—Meaning—Arrangement).

Variation of trusts. *See* Variation of trusts (Practice—Arrangements).

ARREARS

Alimony—

Divorce. *See* **Divorce** (Alimony—Arrears).

Maintenance—

Divorce. *See* **Divorce** (Maintenance—Arrears).*See* **Husband and wife** (Maintenance—Arrears).Magistrates. *See* **Husband and wife** (Maintenance—Arrears).

National insurance contributions—

Recovery. *See* **National insurance** (Arrears of contributions—Recovery).

Rent—

Forfeiture of lease—

Generally. *See* **Landlord and tenant** (Forfeiture of lease—Arrears of rent).Relief. *See* **Landlord and tenant** (Relief against forfeiture—Arrears of rent).

Tithe and titherecharge—

Recovery. *See* **Tithe and titherecharge** (Arrears—Recovery).**ARREST**Aircraft. *See* **Admiralty** (Jurisdiction—Action in rem—Aircraft).

Arrest without warrant—

Arrest on suspicion—

Direction to jury in action for false imprisonment. *See* **False imprisonment** (Arrest without warrant—Arrest on suspicion).

Conduct of arrest—

Communication to person being arrested—Arrest of deaf person unable to lip-read—Deaf person unaware that he is being arrested—Validity of arrest. **Wheatley v Lodge** [1971] 1 173, QBD.Communication to person being arrested—Arrest of person who cannot speak English—Unaware that he is being arrested—Validity of arrest. **Wheatley v Lodge** [1971] 1 173, QBD.Form of words to be used. **Alderson v Booth** [1969] 2 271, QBD.Information necessary to be given to arrested person—Acts constituting more than one offence—One offence justifying arrest without warrant—Arrest lawful although charge ultimately brought for other offence. **Gelberg v Miller** [1961] 1 291, QBD.

Constable—

Arrest erroneously stated to be by warrant—Validity of arrest. **R v Kulynycz** [1970] 3 881, CA.Arrested person taken to police station—Released from custody without being charged—Whether arrest rendered unlawful ab initio. **Wiltshire v Barrett** [1965] 2 271, CA.Failure to inform arrested person of reason of arrest—Reason given subsequently—Whether arrest lawful. **R v Kulynycz** [1970] 3 881, CA.Powers and duties—Duty to act reasonably—Power to take arrested person with him for reasonable investigation of suspected crime. **Dallison v Caffery** [1964] 2 610, CA.Powers and duties—Power to arrest without warrant for obstruction of police officer in execution of his duty—Arrest of car owner after persistent refusal to remove car from highway. **Gelberg v Miller** [1961] 1 291, QBD.Reason for arrest given to arrested person—Offence charged differing from reason given for arrest—Validity of arrest. **R v Kulynycz** [1970] 3 881, CA.

Need for person arrested to be taken before justice or police officer as soon as reasonably practicable—

Delay—Reasonableness—False imprisonment. *See* **False imprisonment** (Arrest without warrant—Need for person arrested to be taken before justice or police officer as soon as reasonably possible—Delay in bringing accused before justice or police officer).

Reasonable suspicion—

Stolen articles in any place—Trinidad and Tobago. *See* **Trinidad and Tobago** (Statute—Construction—Power to arrest without warrant a person having in his possession 'in any place' articles reasonably suspected of being stolen).

Statutory power—

Exercise of power—Validity—Action for false imprisonment. *See* **False imprisonment** (Arrest without warrant—Power to arrest without warrant—Statutory power).

Suspected person or reputed thief—

'Loose, idle or disorderly person'—Arrest of person suspected of loitering for purpose of committing crime—Validity of arrest—Vagrancy Act 1824, ss 4, 6—Liverpool Corporation Act 1921, s 513. **Ledwith v Roberts** [1936] 3 570, CA.

What constitutes arrest—

Suspect voluntarily visiting police station to assist police with enquiries into theft—Suspect informed after questioning that he would be charged—Police proceeding with appropriate formalities—Suspect deciding to leave police station—Police officers restraining suspect—Suspect charged with assaulting officers in execution of their duty—Issue whether suspect under arrest—Duty of police to make clear to suspect that he has been arrested—Issue whether made clear to him one of fact for jury. **R v Inwood** [1973] 2 645, CA.

Conduct of arrest—

Arrest without warrant. *See* **Arrest without warrant**—Conduct of arrest, *ante*.

Constable—

Arrest without warrant. *See* **Arrest without warrant**—Constable, *ante*.

Deaf person—

Conduct of arrest—

Arrest without warrant. *See* **Arrest without warrant**—Conduct of arrest—Communication to person being arrested—Arrest of deaf person unable to lip-read, *ante*.

Driver of motor vehicle—

Request for specimen for laboratory test to determine blood-alcohol proportion—

Conditions precedent to request. *See* **Road traffic** (Specimen for laboratory test to determine driver's blood-alcohol proportion—Conditions precedent to request for specimen—Arrest).

ARREST (cont)

Driving while unfit to drive. *See* **Road traffic** (Driving while unfit to drive through drink or drugs—Arrest without warrant).

Motorist—

Breath test—

Arrest following test. *See* **Road traffic** (Breath test—Arrest following test).

Obstruction—

Road traffic—

London. *See* **Road traffic** (Obstruction—London—Arrest).

Police—

Power to arrest—

Suspicion of possession of stolen property. *See* **Police** (Metropolitan Police Force—Power to arrest).

Privilege from arrest—

Diplomatic privilege. *See* **Constitutional law** (Diplomatic privilege—Immunity from legal process).

Peer of the realm—

Attachment—Application by wife for leave to issue writ of attachment—Purpose to compel performance of civil obligation rather than to punish—Application made while Parliament sitting. *Stourton (Baroness Mowbray, Segrave, and Stourton) v Stourton (Baron Mowbray, Segrave, and Stourton)* [1963] 1 606, Div.

Persons attending court—

Litigant in person arrested in court on order of court committing him to prison for contempt—Whether entitled to claim privilege from arrest. *Re Hunt* [1959] 2 252, CA.

Ship. *See* **Admiralty** (Arrest of vessel).

Suspected person or reputed thief—

Arrest without warrant. *See* **Arrest without warrant**—Suspected person or reputed thief, *ante*.

Unlawful arrest—

Defence to other charges—

Accused unlawfully arrested—Accused resisting arrest—Accused charged with affray—Whether defence to charge of affray that arrest unlawful. *R v Purdy* [1974] 3 465, CA.

Validity of arrest—

Arrest by constable without warrant. *See* **Arrest without warrant**—Constable, *ante*.

Warrant—

Constable having warrant in possession—

Warrant for arrest of person not charged with offence—Need for constable to have warrant in his possession at time of arrest—Meaning of 'possession'—Warrant for arrest of accused for non-payment of fine—Constable not having warrant on his person at time of arrest—Warrant in police car 60 yards away—Whether warrant 'in possession' of constable—Whether arrest lawful. *R v Purdy* [1974] 3 465, CA.

Execution. *See* **Magistrates** (Warrant—Execution).

Irish warrant backed in England—

Validity. *R v Comb of Police Ex parte Nalder* [1947] 2 611, KBD.

Provisional warrant—

Fugitive offender. *See* **Extradition** (Arrest—Provisional warrant).

ARSON

See **Criminal law** (Damage to property—Arson).

ARTICLED CLERK

National insurance contributions. *See* **National insurance** (Employed person—Person gainfully employed under contract of service—Solicitor's articled clerk).

Qualification for solicitor to take. *See* **Solicitor** (Articled clerk—Qualification for solicitor to take—Continuous practice for five years).

ARTICLES OF ASSOCIATION

See **Company** (Articles of association).

ARTICLES OF CLERKSHIP

Registration. *See* **Solicitor** (Articled clerk).

ARTICLES OF VERTU

Will—

Gift—

Specific bequests. *See* **Will** (Gift—Specific bequests—Articles of vertu).

ARTICULATED VEHICLE

See **Road traffic** (Articulated vehicle).

ARTISTIC WORK

Copyright. *See* **Copyright** (Artistic work).

ASPORTATION

Larceny. *See* **Criminal law** (Larceny—Asportation).

ASSAULT

Bailiff—

Execution of duty—

Assault on bailiff. *See* **County court** (Execution—Bailiff—Entry—Use of force—Respondent, knowing bailiff had come to levy execution, entered her house and tried to shut the door against the bailiff).

ASSAULT (cont)

Civil action—

Defence—

Criminal conviction of defendant—Judgment on admission of facts—Assault resulting in death—Availability of defence. *See Tort* (Availability of defence—Criminal conviction of defendant—Judgment on admission of facts—Assault resulting in death).

Constable—

Execution of duty. *See Police* (Assault on constable in execution of duty).

Criminal. *See Criminal law* (Assault).

Damages—

Exemplary damages—

Trespass to the person. *See Damages* (Exemplary damages—Trespass to the person).

Defence. *See Trespass to the person* (Defence).Indecent. *See Criminal law* (Indecent assault).Injunction. *See Injunction* (Assault).

Police officer—

Execution of duty. *See Police* (Assault on constable in execution of duty).

ASSEMBLY

Obstruction of street in neighbourhood of Parliament. *See Parliament* (Prevention of obstruction of streets in neighbourhood of Parliament).

ASSENT

Administration of estates. *See Administration of estates* (Assent).

Deed of assent. *See Deed* (Deed of assent).

Stamp duty. *See Stamp duty* (Conveyance on sale—Instrument whereby property or estate or interest in property on sale thereof transferred to or vested in purchaser—Assent).

ASSESSMENT

Alimony—

Divorce. *See Divorce* (Alimony—Assessment).

Capital gains tax. *See Capital gains tax* (Assessment).

Compensation—

Compulsory purchase—

Generally. *See Compulsory purchase* (Compensation—Assessment).

Time for assessment. *See Compulsory purchase* (Compensation—Time for assessment).

Contribution between joint tortfeasors. *See Tort* (Contribution between joint tortfeasors—Assessment).

Corn rents. *See Corn rents* (Assessment).

Costs—

Assessment in chambers. *See Costs* (Assessment in chambers).

Damages—

Fatal accident. *See Fatal accident* (Damages).

Generally. *See Damages* (Assessment).

Income tax. *See Income tax* (Assessment).Industrial training levy. *See Industrial training* (Levy—Assessment).

Maintenance—

Amount. *See Husband and wife* (Maintenance—Amount).

Divorce. *See Divorce* (Maintenance—Assessment).

Rates. *See Rates* (Assessment).

Rent—

Fair rent. *See Rent restriction* (Fair rent—Application for determination).

ASSESSOR

Admiralty proceedings. *See Admiralty* (Practice—Assessors).

Consistory court—

Questions by assessors. *See Ecclesiastical law* (Consistory court—Proceedings against priests or deacons—Chancellor sitting with assessors—Questions by assessors).

Insurance—

Appointment by broker. *See Insurance* (Broker—Appointment of assessor by broker at request of insurer).

ASSETS

Partnership. *See Partnership* (Partnership property).

Transfer of assets abroad—

Income tax avoidance. *See Income tax* (Avoidance—Transfer of assets abroad).

Interlocutory injunction. *See Injunction* (Interlocutory—Danger that defendant may transfer assets out of jurisdiction).

ASSIGNMENT

Administration bond. *See Administration of estates* (Administration bond—Assignment).

Chose in action. *See Chose in action* (Assignment).

Coal mining lease. *See Coal mining* (Mining lease—Assignment).

Contract containing arbitration clause. *See Arbitration* (Agreement—Arbitration clause—Assignment).

Copyright—

Assignment by minor. *See Minor* (Assignment of property—Copyright).

Generally. *See Copyright* (Assignment).

ASSIGNMENT (cont)

Copyright (cont)—

Validity—

Undue influence. *See* **Equity** (Undue influence—Inequality of bargaining power—Assignment of copyright).Covenant to pay rent. *See* **Landlord and tenant** (Assignment of lease—Obligation to pay rent—Assignee—Express covenant with assignor to pay rent—Assignment of benefit of covenant to landlord).Equitable. *See* **Equitable assignment**.

Lease—

Assignment by way of mortgage after 1925. *See* **Mortgage** (Leasehold—Assignment by way of mortgage after 1925).

Covenant against assignment—

Consent of landlord. *See* **Landlord and tenant** (Covenant against assignment without consent).Lease. *See* **Landlord and tenant** (Assignment of lease).Leasehold interest—Sale of land. *See* **Sale of land** (Leasehold interest—Assignment).

Licence to occupy premises—

Enforcement by assignees. *See* **Licence** (Licence to occupy premises—Contractual licence—Enforcement by assignees).Life insurance. *See* **Insurance** (Life insurance—Assignment).

Mining lease—

Coal. *See* **Coal mining** (Mining lease—Assignment).

Option—

Generally. *See* **Option** (Assignment).Lease. *See* **Option** (Option to purchase—Tenant's option conferred by lease).**ASSIGNMENT**

Sublease—

Consent. *See* **Landlord and tenant** (Covenant against assignment without consent—Enforcement by head lessor—Assignment of sublease).Trade mark. *See* **Trade mark** (Assignment).**ASSISTANT MILITARY ATTACHE**Diplomatic immunity from legal process. *See* **Constitutional law** (Diplomatic privilege—Immunity from legal process—Assistant military attache).**ASSISTING OFFENDER***See* **Criminal law** (Assisting offender).**ASSIZES**

Abolition—

Replacement by Crown Court. *See* **Crown Court**.

Committal for trial—

Assizes or quarter sessions. *See* **Criminal law** (Committal—Assizes or quarter sessions).Place of trial. *See* **Criminal law** (Trial—Place of trial—Assizes).Replacement by Crown Court. *See* **Crown Court**

Trial—

Crime—

Direction by quarter sessions for trial at assizes. *See* **Quarter sessions** (Jurisdiction—Direction for trial at assizes).**ASSOCIATION**

Libel—

Privilege—

Privilege of publication in official organ of association. *See* **Libel and slander** (Qualified privilege—Duty and interest—Official organ of body or association).Unincorporated association. *See* **Unincorporated association**.Value added tax. *See* **Value added tax** (Association).**ASTHMA**Damages. *See* **Damages** (Personal injury—Asthma).**ASYLUM OFFICER***See* **Mental health** (Asylum officer).**ATTACHMENT**

Debt—

Bankruptcy. *See* **Bankruptcy** (Attachment of debt).Generally. *See* **Execution** (Garnishee order).

Winding-up of company—

Restriction of creditor's rights as to attachment. *See* **Company** (Winding-up—Restriction of creditor's rights as to attachment).

Earnings—

Husband in receipt of pension under trust deed—

Attachment of earnings order—Forfeiture clause in pension trust. *See* **Trust and trustee** (Forfeiture clause—Attachment of earnings order made against husband—Order brought forfeiture clause in pension trust into operation).

Maintenance order—

Enforcement. *See* **Husband and wife** (Maintenance—Attachment of earnings).

ATTACHMENT (cont)

Master of vessel—

Breach of warrant of arrest of vessel. *See* **Admiralty** (Arrest of vessel—Breach of arrest—Contempt of court—Attachment or committal of master).**ATTEMPT**

Contempt of court—

Attempt to commit. *See* **Contempt of court** (Criminal contempt—Attempt to commit contempt).Crime. *See* **Criminal law** (Attempt).**ATTENDANCE ALLOWANCE***See* **National Insurance** (Attendance allowance).**ATTESTATION**Will. *See* **Will** (Attestation).**ATTORNEY ADMINISTRATOR**Appointment of trustees. *See* **Trust and trustee** (Appointment of trustees).Administration of estate. *See* **Administration of estates** (Distributions—Attorney-administrator).**ATTORNEY-GENERAL**

Appeal—

Reference of point of law following acquittal of accused. *See* **Criminal law** (Appeal—Reference of point of law following acquittal of accused).

Charity—

Ex gratia payment—

Power to authorise from legacy under will. *See* **Charity** (Ex gratia payment—Power of court and Attorney-General—Power to authorise trustees to make payment out of charity funds in pursuance of moral obligation).

Party to proceedings—

Action by local inhabitants for declaration that park held by local authority subject to charitable trust. *See* **Charity** (Proceedings—Parties—Attorney-General—Local charity). Practice. *See* **Practice** (Parties—Proceedings relating to charities—Attorney-General).

Colony—

Leave to appeal to Privy Council. *See* **Privy Council** (Leave to appeal—Person aggrieved—Attorney-General in colony).

Consent to institution of proceedings—

Prosecution for offence under Explosive Substances Act 1883. *See* **Explosives** (Offence—Prosecution for offence—Consent of Attorney-General).

Contempt of court—

Publications concerning legal proceedings—

Role of Attorney-General. *See* **Contempt of court** (Publications concerning legal proceedings—Attorney-General).Intervention in private suit. *See* **Practice** (Parties—Intervention by persons not parties—Attorney-General).

Locus standi—

Intervention in private suit. *See* **Practice** (Parties—Intervention by persons not parties—Attorney-General).

Relator action—

Dispensing with relator procedure—

Circumstances in which procedure may be dispensed with—Claim for injunction or declaration—Claim against statutory corporation—Claim that corporation in breach of statutory duty—Claim by member of public—Sufficiency of interest—Injunction to restrain breach of statutory duty—Unreasonable refusal by Attorney-General to give consent to relator proceedings—Insufficient time for procedural steps necessary for relator action—Aggrieved member of public entitled to bring action in own name as a last resort. **Attorney-General (on the relation of McWhirter v Independent Broadcasting Authority [1973] 1 689, CA.****ATTORNMENT CLAUSE***See* **Mortgage** (Attornment clause).**AUCTION**Auctioneer. *See* **Auctioneer**.

Bid—

Dispute—

When auctioneer may properly act on the footing that there is a 'dispute respecting a bid'—What constitutes a bid—Necessity for bid to be communicated to auctioneer—National Conditions of Sale (17th Edn) condition 2(3). **Richards v Phillips [1968] 2 859, CA.**

Conditions of sale—

Exclusion of liability—

Conditions in catalogue excluding warranty unless specially mentioned and appearing on account—Oral guarantee—Effect. **Harling v Eddy [1951] 2 212, CA.**

AUCTION (cont)

Conditions of sale (cont)—

Exclusion of liability (cont)—

Stipulations in catalogue and conditions of sale excluding auctioneer from responsibility for mis-descriptions—Verbal assurance of condition—Warranty—Breach—Right of buyer to damages. **Couchman v Hill** [1947] 1 103, CA.

Dispute in respect of a bid. *See* Bid—Dispute, *ante*.

Illegal bidding agreement—

Conspiracy—

Indictment—Proceedings on indictment—Competency. **R v Barnett** [1951] 1 917, CCA.

Knock-out agreement—

Agreement between potential bidders not to bid in competition—

Validity—Sale of property to one of bidders more cheaply—Whether agreement unenforceable as being in restraint of trade—Whether sale invalidated. **Harrop v Thompson** [1975] 2 94, ChD.

Motor vehicle—

Vehicle sold in unroadworthy condition—

Whether auctioneer guilty of 'offering to sell' vehicle in unroadworthy condition. *See* Road traffic (Motor vehicle)—Sale in unroadworthy condition—Offer to sell—Offence—Sale of vehicle by auction.

Passing of property—

Unconditional sale—

Representations made after fall of hammer—Subsequent undertaking that property should not pass until cheque honoured—Sale of Goods Act 1893, s 58(2). **Dennant v Skinner** [1948] 2 29, KBD.

Warranty. *See* Sale of goods (Warranty—Auction).

AUCTIONEER

Authority—

Duration of authority—

Deposit—Conditions of sale—Auctioneer authorising postponement of payment of deposit—Repudiation by vendor—Right of auctioneer to modify conditions of sale. **Phillips v Butler** [1945] 2 258, ChD

Ostensible authority—

Authority to sell at price named—Reserve price—Sale for less amount—Warranty of authority—Memorandum signed and deposit accepted. **Fay v Miller, Wilkins & Co** [1941] 2 18, CA.

Commission—

Right to commission—

Sale before auction—Contract providing for payment notwithstanding such sale—Instructions for auction from mortgagee—Sale before auction by mortgagor—Whether auctioneers entitled to commission. **John Meacock & Co (a firm) v Abrahams (Loescher third party)** [1956] 3 660, CA.

Exclusion of liability for misdescriptions. *See* Auction (Conditions of sale—Exclusion of liability—

Stipulations in catalogue and conditions of sale excluding auctioneer from responsibility for misdescriptions).

Lien—

Lien on deposit for commission and disbursements—

Deposit received as stakeholder—Vendors adjudicated bankrupt before completion—Encumbrances on property sold to which sale not made subject—Purchase money insufficient to discharge encumbrances—Purchaser affirming contract—Whether auctioneer entitled to deduct charges and disbursements from deposit as against purchaser. **Skinner v Trustee of the Property of Reed** [1967] 2 1286, ChD.

Memorandum—

Sale of land—

Signature. *See* Sale of land (Memorandum of contract—Signature of party to be charged—Auctioneer's signature).

Signature—

Duty to purchaser—Auctioneer signing on behalf of vendor—Whether auctioneer owed duty to purchaser to sign memorandum on behalf of vendor. **Richards v Phillips** [1968] 2 859, CA.

Ostensible authority—

Limitation by principal. *See* Agent (Authority—Ostensible authority—Limitation by principal—Authority to make representations on behalf of principal—Auctioneer).

Professional association—

Restrictions on members—

Rule of conduct—Members prohibited from establishing or joining, either as principal or assistant, any commercial firm—Circulars sent out by commercial firm inviting business—Work to be done by member of association from his own office—Remuneration to be divided between firm and member of association—Whether member in breach of association rules. **Faraday v Auctioneers' and Estate Agents' Institute of the United Kingdom** [1936] 1 496, CA.

Remuneration—

Sale of land by court. *See* Sale of land (Sale by court).

Rights against purchaser—

Action for price—

Right to sue in own name—Purchaser having paid deposit—Deposit sufficient to cover auctioneer's commission—Auctioneer having paid balance of deposit and sum representing balance of purchase price to vendor—Whether auctioneer entitled to sue purchaser in own name for balance of purchase price. **Chelmsford Auctions Ltd v Poole** [1973] 1 810, CA.

Right to sue purchaser on cheque. *See* Bill of exchange (Cheque—Consideration—Auctioneer).

AUDIENCE

- Magistrates—
 - New South Wales. *See* **New South Wales** (Magistrates—Audience).
- Right of audience—
 - Litigant in person—
 - Application for certiorari. *See* **Certiorari** (Application—Right of audience—Litigant in person).
- Right of audience—
 - Litigant in person—
 - Court of Appeal. *See* **Court of Appeal** (Right of audience—Litigant in person).
- Managing director of company—
 - Appearance on behalf of company—High Court. *See* **Practice** (Audience—Right of audience—High Court of Justice—Defendant a limited company—Right of managing director to appear on behalf of the company).
- Tribunal—
 - Party's right to be legally represented. *See* **Natural justice** (Domestic tribunal—Legal representation).

AUDIT

- Auditor's certificate—
 - Circumstances in which court having jurisdiction to interfere. *See* **Auditor** (Certificate—Circumstances in which court having jurisdiction to interfere).
- Company's accounts—
 - Duty of auditor. *See* **Company** (Auditor—Duty).
- Local government. *See* **Local government** (Audit).

AUDITOR

- Certificate—
 - Circumstances in which court having jurisdiction to interfere—
 - Partnership agreement providing for retirement of partner—Agreement providing for account to be taken by auditor of income and expenditure of partnership practice—Account to be taken 'in the manner and on the principles heretofore adopted'—Parties to procure from auditor certificate showing amount of undrawn profits due to each partner—Retiring partner to be paid such amount as shown by certificate to be due to him—Auditor taking account and producing certificate—Certificate showing that only £13 due to retiring partner—Certificate founded on mistaken interpretation of written agreement—Retiring partner claiming £2,237 due to him—Effect of certificate—Jurisdiction of court to give judgment for retiring partner in sum to which he is entitled on correct interpretation of written agreement—Circumstances in which jurisdiction exercisable. *Smith v Gale* [1974] 1 401, ChD.
- Negligence—
 - Audit of company's accounts. *See* **Company** (Auditor—Negligence).

AUSTRALIA

- Appeal—
 - Further evidence—
 - Power in appellate court to receive—Principles on which court will act—Appeal from judge sitting alone—RSC Ord 58, r 4. *Leeder v Ellis* [1952] 2 814, PC.
- Appeal to Privy Council—
 - Limits of constitutional powers—
 - Determination of question 'as to the limits inter se of the constitutional powers of the Commonwealth and those of any state or states'—No reference to inter se question in orders appealed from—Determination of inter se question necessary to give relief to appellants—Commonwealth of Australia Constitution Act 1900, Constitution, s 74. **Commonwealth of Australia v Bank of New South Wales** [1949] 2 755, PC.
 - Determination of question 'as to the limits inter se of the constitutional powers of the Commonwealth and those of any state or states'—Provisions in state Acts as to fees payable for victualler's licence—Validity—Commonwealth of Australia Constitution Act (1900), s 9, art 74, art 90. *Dennis Hotels Pty Ltd v State of Victoria, Attorney-General of the Commonwealth of Australia (Interveners), Whitehouse v State of Queensland, Attorney-General of the Commonwealth of Australia (Intervener)* [1961] 2 940, PC.
 - Inconsistency of federal law and state law—Whether a question as to the limits inter se of constitutional powers of Commonwealth and state—Constitution of the Commonwealth of Australia 1900, ss 9, 74, 109. *O'Sullivan v Noarlunga Meat Ltd and Commonwealth of Australia (Interveners)* [1956] 3 177, PC.
- Banking—
 - Freedom of inter-state 'trade, commerce, and intercourse'—
 - Prohibition of private banking—Invalidity of enactment—Commonwealth of Australia Constitution Act 1900, Constitution, s 92—Australian Banking Act 1947, s 46. **Commonwealth of Australia v Bank of New South Wales** [1949] 2 755, PC.
- Constitutional law—
 - Separation of judicial and executive power—
 - Combination of arbitral power and judicial power in Court of Conciliation and Arbitration—Validity—Commonwealth Conciliation and Arbitration Act 1904—1952, ss 29(1), 29A—Constitution of the Commonwealth of Australia 1900, ss 9, 51(xxxix), Chapter III. **Attorney-General of the Commonwealth of Australia v Reginam and the Boilermakers' Society of Australia** [1957] 2 45, PC.
 - Validity of statute—
 - Validity of Factories and Shops (Long Service Leave) Act 1953, (Victoria)—Whether inconsistent with Metal Trades Award 1952, made under Commonwealth Conciliation and Arbitration Act 1904—1952—Factories and Shops (Long Service Leave) Act 1953, (Victoria) s 7(2)(c)—Commonwealth Conciliation and Arbitration Act 1904—1952, ss 13, 25—Constitution of the Commonwealth of Australia 1900, ss 9, 109. *Charles Marshall Pty Ltd v Collins* [1957] 1 923, PC.

AUSTRALIA (cont)

Estate duty—

Estate of a deceased person—

Partnership—Options of surviving partners to purchase deceased's interest—Price to be ascertained excluding goodwill—Australian Estate Duty Assessment Act 1914—42 s 8(3) (b)(4)(e). **Perpetual Executors and Trustees Assn of Australia Ltd v Australia (Commonwealth) Comr of Taxation** [1954] 1 339, PC.

Settlement—

Bona fide possession and enjoyment assumed by donee—Entire exclusion of deceased—Gift to son to be transferred on the attainment of 21, son being maintained out of income—Stamp Duties Act (Australia) 1920, s 102(2)(d). **Comr for Stamp Duties of the State of New South Wales v Perpetual Trustee Co Ltd** [1943] 1 525, PC.

Federal powers—

Taxation—

Taxation part of scheme for encouraging wheat growing—Discrimination between states—Commonwealth of Australia Constitution, ss 51(ii),(iii), 96—Flour Tax (Wheat Industry Assistance) Assessment Act 1938—Flour Tax Act 1938—Flour Tax (Stocks) Act 1938—Flour Tax (Imports and Exports) Act 1938—Wheat Tax Act 1938—Wheat Industry Assistance Act 1938. **W R Moran Proprietary Ltd v New South Wales Deputy Comr of Taxation** [1940] 3 269, PC.

Freedom of inter-state trade—

Validity of statute—

Absolutely free—Validity of Dried Fruits Act 1928—1935, of the Commonwealth Parliament and regulations made thereunder—Commonwealth of Australia Constitution Act 1900, ss 51, 92. **James v Commonwealth of Australia and State of New South Wales** [1936] 2 1449, PC.

Income tax—

Avoidance—

Agreement or arrangement having purpose or effect of avoiding liability—Arrangement—Transactions which may be disregarded by commissioner—Sale by shareholders of shares having rights to special dividend—Commonwealth Income Tax and Social Services Contribution Assessment Act 1936—1951, Division 7, s 260(c). **Newton v Comr of Taxation of the Commonwealth of Australia** [1958] 2 759, PC.

Agreement or arrangement having purpose or effect of avoiding liability—Partnership of medical practitioners dissolved—Formation of group company and subsidiary family companies—Agreement to serve family company as medical practitioner at a salary—Agreement to serve group company—Validity of assessment—Income Tax and Social Services Contribution Assessment Act 1936—1960, s 6, s 260. **Peate v Commissioner of Taxation of the Commonwealth of Australia** [1966] 2 7, PC.

Return—

Currency—Income derived from English investments—Return made in Australia—Currency in which return must be expressed. **Payne v Deputy Federal Commissioner of Taxation** [1936] 2 793, PC.

Master and servant—

Industrial award or agreement—

Period of limitation of action—Industrial Arbitration Act (Western Australia) 1912—35, s 176. **True v Amalgamated Collieries of W A Ltd** [1940] 2 479, PC.

Mine—

Gold mine—

Tributer's agreement—Payment regulated by statute—Agreement for payment at less than statutory minimum—Illegality—Retrospective effect—Mining Acts (Western Australia) 1904—23, ss 152, 156. **Lake View & Star Ltd v Cominelli** [1937] 2 285, PC.

New South Wales. *See* New South Wales.

Transport—

Freedom of inter-state trade—

Charges made under New South Wales State Transport (Co-ordination) Act 1931—1952—Charges illegal—Recovery of money paid—Right of action extinguished by State Transport Co-ordination (Barring of Claims and Remedies) Act 1954—Validity of Act—Commonwealth of Australia Constitution Act 1900, Constitution, s 92. **Comr for Motor Transport v Antill Ranger & Co Pty Ltd, State of New South Wales v Edmund T Lennon Pty Ltd** [1956] 3 106, PC.

Licensing of public motor vehicles—Validity of licensing provisions of New South Wales State Transport (Co-ordination) Act 1931—1952—Commonwealth of Australia Constitution Act 1900, s 92. **Hughes and Vale Pty Ltd v State of New South Wales (The Commonwealth of Australia, Interveners)** [1954] 3 607, PC.

Road charge—Provision that owners of certain vehicles having more than a specified load capacity shall pay at a rate per ton per mile towards compensation for wear and tear to public highways—Validity of statute—Constitution of the Commonwealth of Australia 1900, ss 9, 92—Road Maintenance (Contribution) Act 1958—1965 (N S W). **Freightlines and Construction Holding Ltd v State of New South Wales and Commissioner of Motor Transport** [1967] 2 433, PC.

AUTHOR

Income tax—

Profession or vocation. *See* Income tax (Profits—Profession or vocation—Author).

AUTHORISATION

Compulsory acquisition of land—

Procedure. *See* Compulsory purchase (Authorisation—Procedure).

AUTHORITY

Agent. *See* Agent (Authority).

Broadcasting authority—

Television. *See* Broadcasting (Television—Authority).

AUTHORITY (cont)

Company director—

Implied authority. *See* **Company** (Director—Authority—Implied authority).Ostensible authority. *See* **Company** (Director—Authority—Ostensible authority).

Company secretary—

Ostensible authority. *See* **Company** (Secretary—Authority).Counsel. *See* **Counsel** (Authority).

Dealer—

Hire-purchase. *See* **Hire-purchase** (Dealer—Authority).Local education authority. *See* **Education** (Local education authority).Partner's authority to bind firm. *See* **Partnership** (Authority of partner to bind firm).**AUTHORSHIP**False attribution of authorship. *See* **Copyright** (False attribution of authorship).**AUTOMATISM**Dangerous driving. *See* **Road traffic** (Dangerous driving—Mens area—Automatism).Defence to criminal charge. *See* **Criminal law** (Automatism).**AUTREFOIS ACQUIT**Generally. *See* **Criminal law** (Autrefois acquit).Jurisdiction of quarter sessions to inquire into validity of justices' acquittal. *See* **Quarter sessions** (Jurisdiction—Autrefois acquit).**AUTREFOIS CONVICT***See* **Criminal law** (Autrefois convict).**AVIATION**Air navigation. *See* **Air traffic**.Carriage of goods by air. *See* **Carriage by air** (Carriage of goods).Insurance. *See* **Insurance** (Aviation insurance).**AVOIDANCE**Excess profits tax. *See* **Excess profits tax** (Avoidance).Income tax. *See* **Income tax** (Avoidance).Lease. *See* **Landlord and tenant** (Lease—Avoidance).

Settlement—

Bankruptcy. *See* **Bankruptcy** (Avoidance of settlement).**AWARD**

Arbitration—

Agricultural holding. *See* **Agricultural holding** (Arbitration—Award).Generally. *See* **Arbitration** (Award).

Compensation—

Criminal injuries. *See* **Compensation** (Criminal injuries).Family provision. *See* **Family provision** (Award).Workmen's compensation. *See* **Workmen's compensation** (Award).**BABY**

Damages—

Personal injuries—

Loss of amenities of life—Loss of future earning capacity. *See* **Damages** (Personal injury—

Loss of amenities of life—Loss of future earning capacity—Child aged 20 months).

BACKING

Licence—

Road service licence—

Express carriage. *See* **Road traffic** (Express carriage—Road service licence—Backing of licence).**BAD FAITH**

Compulsory purchase order—

Application to quash outside time limit. *See* **Compulsory purchase** (Compulsory purchase order—Application to quash order—Time limit—Bad faith alleged).**BADGES**

House to house collections—

Unauthorised use of badge. *See* **Charity** (House to house collection—Unauthorised use of badges etc).**BAGGAGE**

Carriage in ship—

Admiralty proceedings for damage to baggage. *See* **Admiralty** (Jurisdiction—Action in rem—Claim for loss of or damage to goods carried in ship—Goods' including baggage).**BAIL**Criminal proceedings. *See* **Criminal Law** (Bail).Recognisance. *See* **Criminal law** (Bail—Recognisance).

Vessel under arrest—

Release on bail. *See* **Admiralty** (Arrest of vessel—Release—Release on bail).**BAILIFF**

County court—

Execution. *See* **County court** (Execution—Bailiff).

BAILMENT

Bailee—

Fiduciary duty—

Purchaser of goods—Duty to account for proceeds of sub-sales—Vendor retaining property in goods. *See* **Sale of goods** (Passing of property—Vendor retaining property in goods—Duty of purchaser to account for proceeds of sub-sales—Fiduciary duty as agent and bailee of goods).

Bailment for reward—

Liability of bailee—

Delivery order—Sale of goods pledged to bank and held by warehousemen—Delivery order in favour of purchasers addressed to warehousemen—Failure of warehousemen to deliver—Whether bank liable to purchasers. *Alicia Hosiery Ltd v Brown Shipley & Co Ltd* [1969] 2 504, QBD.

Exception clause—Camping site—Parking of caravan on camping site—Caravan not in use and camping site closed—Theft of caravan. *Halbauer v Brighton Corp* [1954] 2 707, CA.

Exception clause—Car park—Car left by owner—Ticket exempting proprietors from liability—Delivery to third party without production of ticket—Liability of proprietors. *Ashby v Tolhurst* [1937] 2 837, CA.

Exception clause—Clause in document excepting liability 'for any damage howsoever arising' to bailed article—Innocent misrepresentation as to extent of exception clause—Exclusion of exception—Cleaner and dyer—Damage to garment. *Curtis v Chemical Cleaning and Dyeing Co Ltd* [1951] 1 631, CA.

Exception clause—Deck chair—Conditions on notice exhibited where chairs stacked—Further conditions on ticket. *Chapelton v Barry Urban District Council* [1940] 1 356, CA.

Exception clause—Deviation from terms. *v Normand Ltd* [1969] 2 1215, CA.

Exception clause—Railway cloak-room—Delivery to third party without production of tickets—Fundamental breach of contract—Right of Railway Executive to rely on conditions—'Misdelivery'. *Alexander v Railway Executive* [1951] 2 442, KBD.

Exception clause—Sub-bailment—Sub-bailment for reward—Liability of sub-bailees to owner of goods bailed—Exception clause in contract of bailment with sub-bailees—Whether sub-bailees entitled to avail themselves of exception clause as against owner of goods—Whether exception clause extended to liability to owner—'Customer' in exception clause referred to sub-bailor not to owner of goods—Fur sent to cleaners and stolen by employee. *Morris v C W Martin & Sons Ltd* [1965] 2 725, CA.

Hotel—Residential hotel—Theft of resident's clothing from room—Key left on board in office during absence—No proper system of control—Innkeepers Liability Act 1863, ss 1, 3. *Olley v Marlborough Court Ltd* [1949] 1 127, CA.

Implied term of contract—Independent contractor of bailee vicariously responsible for his servant's negligence—Whether bailee also liable by reason of such negligence. *British Road Services Ltd v Arthur V Crutchley & Co Ltd (Factory Guards Ltd Third Parties)* [1968] 1 811, CA.

Repair of goods bailed—Authority of bailee to give possession of goods to artificer in circumstances leading to creation of artificer's common law lien for payment for work done—Authority of hirer of chattel for use to have it repaired so as to fit it for ordinary use. *Tappenden (trading as English and American Autos) v Artus* [1963] 3 213, CA.

Storage of furniture—Damage to premises by bombing—Loss of goods—Reasonable care—Burden of proof. *Edwards v Newland (E Burchett Ltd, third parties)* [1950] 1 1072, CA.

Theft by servant of bailee—Liability of master—Burden of proof where goods bailed have been lost. *Morris v C W Martin & Sons Ltd* [1965] 2 725, CA.

Duty of bailee to take care of goods—

Bailee for reward. *See* **Negligence** (Duty to take care—Bailee for reward).

Contract—

Exception clause. *See* **Contract** (Exception clause—Bailment).

Exception clause. See Contract (Exception clause—Bailment).

Fraudulent conversion—

Bailee. *See* **Criminal law** (Fraudulent conversion—Bailee).

Gratuitous bailment—

Agency of necessity. *See* **Agent** (Agency of necessity—Gratuitous bailee).

Liability of bailee—

Agency of necessity—Sale of bailed goods—Instructions unobtainable. *Sachs v Miklos* [1948] 1 67, CA.

Cause of loss unexplained—Luggage locked in coach boot—Coach left unattended three hours in the dark—Subsequent transfer of luggage by passengers to second coach—No supervision of removal from first coach. *Houghland v R R Low (Luxury Coaches) Ltd* [1962] 2 159, CA.

Goods on bailee's premises—Irrelevance of whether bailor invitee or licensee—Licensee of public house—Motor bicycle left in covered yard, marked 'garage,' adjoining and forming part of premises. *Tinsley v Dudley* [1951] 1 252, CA.

Hospital—Patient's property deposited on admission—Liability of hospital for loss—Measure of damages. *Martin v London County Council* [1947] 1 783, KBD.

House requisitioned by War Office—Owner's property stored in strong room with consent of War Office—Requisition transferred to another authority—Theft of property from strong room—Liability of War Office—Defence (General) Regulations 1939, reg 51(1), (2). *Blount v The War Office* [1953] 1 1071, Assizes.

Infant—Loan of goods to—Parting with possession—Failure to return on demand—Liability in detinue. *Ballett v Mingay* [1943] 1 143, CA.

Service flats—Cabin trunk deposited in general baggage room—Trunk property of tenant's wife—No receipt given for deposit—Landlord's liability limited by terms of tenancy agreement—Loss of trunk due to landlord's negligence—Failure to provide a system of control preventing loss. *Andrews v Home Flats Ltd* [1945] 2 698, CA.

BAILMENT (cont)

Gratuitous bailment (cont)—

Limitation of action—

Entry of landlord into tenant's premises for non-payment of rent—Tenant's goods lost—Death of landlord—Claim by tenant that landlord bailee of goods—Cause of action—Whether in tort—Action commenced more than six months after death of bailee—Law Reform (Miscellaneous Provisions) Act 1934, s 1(3), as amended by Law Reform (Limitation of Actions &c) Act 1954, s 4. *Chesworth v Farrar* [1966] 2 107, QBD.

Sale of goods by bailee—

Damages—Conversion. *See* **Conversion** (Damages—Measure of damages—Sale of goods by bailee—Gratuitous bailee).

Hire-purchase. *See* **Hire-purchase**.

Larceny of bailed goods. *See* **Criminal law** (Larceny—Owner—Special property in goods—Bailee).

Sub-bailment for reward—

Liability of sub-bailee to owner of goods bailed—

Duty arising from assumption of possession—Nature of duty. *Gilchrist Watt & Sanderson Pty Ltd v York Products Pty Ltd* [1970] 3 825, PC.

BAKEHOUSE

Basement bakehouse—

Certificate for. *See* **Factory** (Basement bakehouse—Certificate of suitability).

BALANCE SHEET

Company—

Failure to annex to annual return. *See* **Company** (Officer—Default—Annual return—Documents to be annexed to annual return—Failure to annex documents to return).

BALANCING CHARGE

Income tax. *See* **Income tax** (Balancing charge).

BALLOT

Industrial action—

Application by Secretary of State for ballot order. *See* **Industrial relations** (Industrial action—Emergency proceedings—Application to Industrial Court for order for ballot).

Paper—

Local government elections. *See* **Elections** (Local government—Ballot papers).

BANK

Account—

Balance—

Effect of war on credit balance—Payment to Custodian of 'Absentee' Property—Right husband—Whether customer to recover from bank. *Arab Bank Ltd v Barclays Bank (Dominion, Colonial and Overseas)* [1954] 2 226, HL.

Foreign bank—Current account with branch of foreign bank—Dissolution of bank abroad—Balance due. *Re Russian Commercial and Industrial Bank* [1955] 1 75, ChD.

Proof of balance—Demand by customer for payment of credit balance—Onus of proof of balance. *Bank of New South Wales v Laing* [1954] 1 213, PC.

Fictitious name—

Cheque drawn on account. *See* **Criminal law** (Forgery—Cheque—Bank account opened in fictitious name).

Joint account—

Husband and wife—Account operated solely by husband—Death of husband—Whether balances belonged to wife. *See* **Husband and wife** (Presumption of advancement—Joint bank account—Current and deposit accounts—Each spouse having authority to draw on account but account operated in fact solely by husband).

Mandate to honour drawings signed by joint customers—Forgery by one customer of other customer's signature—Action by innocent customer for declaration of bank's liability—Guilty customer joined as defendant—Competency—No implied term that both customers act honestly—No duty to supervise joint customer—Bank not discharged by paying forged cheques. *Brewer v Westminster Bank Ltd* [1952] 2 650, QBD.

Separate accounts—

Right to combine or set-off—Company—Winding-up—Several accounts of company—One frozen account, a current account and a wages account—Current and wages accounts inter-dependent, credit balance on one limiting debit balance on the other—Whether bank entitled to combine the three accounts on the winding-up of the company—Whether bank entitled to rank as preferential creditor for the debit on the wages account—Mutual dealings, credit and set-off—Companies Act 1948, s 319(4), s 317—Bankruptcy Act 1914, s 31. *Re E J Morel (1934) Ltd* [1961] 1 796, ChD.

Right to combine or set-off—Company—Winding-up—Agreement between bank and company to keep separate frozen and active accounts—Existing current account of company substantially in debt—Agreement to freeze account at existing figure and to open new account to be maintained on a credit basis—Purpose of agreement to keep company on its feet as a going concern—Agreement to remain in operation for four months—Resolution for voluntary winding-up after two months—Credit account substantially in credit at date of winding-up—Whether agreement precluding bank from setting-off balance on credit account against debit on frozen account—Whether 'mutual credits' and 'mutual dealings'—Companies Act 1948, s 31—Bankruptcy Act 1914, s 31. *National Westminster Bank Ltd v Halesowen Presswork & Assemblies Ltd* [1972] 1 641, HL.

BANK (cont)

Account (cont)—

Separate account—

Trust—Money lent to company for specific purpose, viz, to pay a declared dividend—Loan applicable only for such purpose and to be repaid if not so applied—Bank's knowledge of condition of loan—Money paid into separate account—Voluntary winding-up supervening before dividend paid—Company indebted to bank in sum exceeding loan—Bank setting-off amount credited to separate account against company's indebtedness to bank—Lender seeking to recover money lent as being money subject to a trust for repayment—Whether trust created and co-existed with contractual obligation of company under the loan—Whether bank had notice making trust binding on them. **Barclays Bank Ltd v Quistclose Investments Ltd** [1968] 3 651, HL.

Set-off—

Separate accounts. *See* Account—Separate accounts—Right to combine or set-off, *ante*.

Advances—

Advances for wages—

Preferential payment—Winding up of company. *See* Company (Winding-up—Preferential payments—Wages—Advancements for payment of wages—Bank).

Advances secured by trust receipts—

Nature of charge—Produce in warehouse purchased with money advanced to be held as agent for or in trust for bank—Whether equitable charge or declaration of trust. **Mercantile Bank of India Ltd v Chartered Bank of India, Australia & China, and Strauss & Co Ltd (in liquidation)** (No 2), **Chartered Bank of India, Australia & China v Mercantile Bank of India Ltd, and Strauss & Co Ltd (in liquidation)** (No 2) [1937] 4 651, KBD.

Books—

Evidence in criminal proceedings. *See* Criminal evidence (Bankers' books).

Branch bank—

Position vis-a-vis head office—

Deposit of securities by customer at branch bank—Transfer to head office—Right of customer to delivery of securities without reference to branch—Enemy occupation of country in which branch situated. **Isaacs v Barclays Bank Ltd and Barclays Bank (France) Ltd** [1943] 2 682, KBD.

Business of banking—

Activities essential to or within business of banking—

Test to be applied—Current accounts mostly traders' current accounts—Loans by way of stocking finance made to traders on security only of bills of exchange—Genuineness of business the test whether 'bona fide' carrying on the business of banking—Motive considered only in borderline cases—Moneylenders Act 1900, s 6(d). **United Dominions Trust Ltd v Kirkwood** [1966] 1 968, CA.

Characteristics of banking—

Accepting money from customers—Collecting and honouring cheques—Current accounts kept for customers—Reputation of carrying on business of banking—Factor of reputation in determining whether a concern was 'bona fide' carrying on the business of banking—Moneylenders Act 1900, s 6(d). **United Dominions Trust Ltd v Kirkwood** [1966] 1 968, CA.

Document implying moneylender carries on business of banking. *See* Moneylender (Document issued by moneylender for purpose of his business—Document which implies that moneylender carries on banking account).

See Moneylender (Document issued by moneylender for purpose of his business—Document which implies that moneylender carries on banking business).

Cheque—

Banker's lien on cheque presented for collection. *See* Lien—Cheque—Banker's lien on cheque presented for collection, *post*.

Condition restricting use—

Variation—New cheque book on bank's change to computer mechanisation—Cheque book bearing on cover notice that it was only to be used for account for which issued—Cheque altered by customer for use for account with another branch, which was later instructed by customer not to pay cheque—Ink alterations not capable of being read by computer—Cheque met by branch issuing cheque book—Whether notice on cover and use of cheque book by customer varied pre-existing contract between bank and customer. **Burnett v Westminster Bank Ltd** [1965] 3 81, QBD.

Conversion—

Property in bank cheque—Cheque fraudulently drawn by one partner on partnership account—Partnership assets belonging to other partner—Bank cheque issued in exchange for cheque fraudulently drawn—Bank cheque cashed with another bank—Whether bank cheque was the property of the partner defrauded—Whether collecting bank liable in conversion. **Commercial Banking Co of Sydney Ltd v Mann** [1960] 3 482, PC.

Protection of bank acting in good faith and without negligence—Cheque drawn by agent on behalf of principal but without authority—Notice that cheque drawn by agent—No inquiry as to agent's authority—Proceeds of cheque collected and credited to agent's own account—Negligence on part of bank—Bills of Exchange Act 1882, s 82—Revenue Act 1883, s 17—Cheques Act 1957, s 4(1)(a), (2)(b), s 5. **Orbit Mining & Trading Co Ltd v Westminster Bank Ltd** [1962] 3 565, CA.

Protection of bank acting in good faith and without negligence—New customer opening account using assumed name of payee of cheque—Reference of trustworthiness given to bank—Passport not required—Sufficiency of bank's enquiries and practice—Cheques Act 1957, s 4(1). **Marfani & Co Ltd v Midland Bank Ltd** [1968] 2 573, CA.

Protection of bank acting in good faith and without negligence—Partnership cheques appropriated by one partner, handed over to a customer of bank, and paid into customer's account—Sufficiency of bank's enquiries—Bills of Exchange Act 1882, s 29(1)(b), s 30(2), s 82. **Baker v Barclays Bank Ltd** [1955] 2 571, Assizes.

Waiver of tort—Previous action against indorsee. **United Australia Ltd v Barclays Bank Ltd** [1940] 4 20, HL.

BANK (cont)**Cheque (cont)—****Dishonour—**

Mistake—Mistake in keeping account—Cheque marked 'not sufficient' when sufficient money in account—Duty of bank to make communication—Qualified privilege. **Davidson v Barclays Bank Ltd** [1940] 1 316, KBD.

Wrongful dishonour—Client's account—Garnishee order. **Plunkett v Barclays Bank Ltd** [1936] 1 653, KBD.

Wrongful dishonour—Non-trader—Proof of damage. **Gibbons v Westminster Bank Ltd** [1939] 3 577, KBD.

Endorsement—

Rubber stamp—Various names—Intention of indorser. **Bird & Co (London) Ltd v Thos Cook & Son Ltd and Thos Cook & Son (Bankers) Ltd** [1937] 2 227, KBD.

Forgery—

Criminal proceedings. *See* **Criminal law** (Forgery—Cheque).

Duty of paying bank—Fictitious payee—Forged indorsement—Cheques credited to drawer's account—Employee fraudulently substituting them for cash payable to employer's account—Whether bank liable or put on enquiry. **Universal Guarantee Pty Ltd v National Bank of Australasia Ltd** [1965] 2 98, PC.

Duty of paying bank—Fictitious payee—Forged indorsement—Accounts of company and employee at same bank—Bank having no branches—Statutory protection—Stamp Act 1853, s 19—Bills of Exchange Act 1882, ss 60, 79(2), 82. **Carpenters' Co of the City of London v British Mutual Banking Co Ltd** [1937] 3 811, CA.

Duty of paying bank—Paying bank honouring cheque—Estoppel—Implied representation that cheque genuine—Undetectable forgery—Paying bank having no reason to suspect cheque not genuine—Payee acting to his detriment in reliance on fact cheque honoured—Action by paying bank against payee for recovery of money as money paid under mistake of fact—Whether honouring of cheque carrying implied representation that cheque genuine—Whether paying bank estopped from pursuing claim for recovery of money. **National Westminster Bank Ltd v Barclays Bank International Ltd** [1974] 3 834, QBD.

Duty of paying bank—Third party cheque indorsed by customer to himself—Forged indorsement—Extent of bank's inquiry—How far bank bound to observe its own regulations. **Motor Traders Guarantee Corp Ltd v Midland Bank Ltd** [1937] 4 90, KBD.

Holder for value. *See* **Bill of exchange** (Cheque—Holder for value—Collecting bank).

Holder in due course. *See* **Bill of exchange** (Cheque—Holder in due course—Collecting bank).

Lien on. *See* **Lien**—Cheque, *post*.

Payment—

Duty of care to customer. *See* **Duty of care**—Contractual duty to exercise care and skill—Cheque, *post*.

Post dated cheque—

Certification—Post dated cheque marked 'Good for Payment'—No ostensible authority of manager to certify post-dated cheques—Certification not an acceptance—Estoppel—Custom—Bills of Exchange Act 1882, s 13(2)—Negotiable Instruments Act (India) 1881 (No 26 of 1881), s 7. **Bank of Baroda Ltd v Punjab National Bank Ltd** [1944] 2 83, PC.

Customer—**Negligence—**

Availability as defence by bank—Estoppel—Ratification of forged signature—Government Stock Regulations 1943 (SR & O 1943 No 1), reg 9(b). **Welch v Bank of England (Francis & Praed, third parties)** [1955] 1 811, ChD.

Documentary credit—**Confirmed credit—**

Duty of bank—Credit available on presentation inter alia of bills of lading—Duty of bank in relation to evidence of fulfilment of conditions of bills of lading before payment under letter of credit. **British Imex Industries Ltd v Midland Bank Ltd** [1958] 1 264, QBD.

Obligation of bank—Payment—Established practice regarding payment irrespective of dispute as to the quality of goods sold. **Malas v British Imex Industries Ltd** [1958] 1 262, CA.

Irrevocable credit—

Circumstances in which court may restrain bank from paying on presentation of draft—Interlocutory injunction—Need to show sufficiently grave cause—Bank instructed by purchasers of goods to provide irrevocable confirmed credit—Allegation by purchasers that goods supplied not in accordance with order—Allegation of fraud—Whether court should restrain bank from paying on presentation of draft. **Discount Records Ltd v Barclays Bank Ltd** [1975] 1 1071, ChD.

Duty of bank to ensure requirements of credit complied with—Special requirements of letter of credit—Credit opened on application of company—Payment to be made to beneficiary against presentation of sight draft drawn on company—Special condition—Draft to be accompanied by certificate signed by person named holder of specified passport—Certificate and passport presented to bank—Signatory described on certificate as managing director of company—Signature in representative rather than personal capacity—Payment made by bank—Signature on certificate forgery—Whether certificate appearing on its face to conform with requirements of letter of credit—Whether issuing bank entitled to rely on certificate. **Gian Singh & Co Ltd v Banque de l'Indochine** [1974] 2 754, PC.

BANK (cont)

Documentary credit (cont)—

Irrevocable credit (cont)—

Undertaking to provide funds to meet drafts—Selling agents opening for their foreign principals, timber exporters, an irrevocable credit with merchant bankers on sale of a shipment to foreign buyers—Application for the credit included an undertaking by selling agents to provide funds to meet drafts on the credit—Draft accepted by merchant bankers—Documents of title to timber shipment delivered by merchant bankers to selling agents to enable them to collect price—Trust receipt given by selling agents—Merchant bankers went into liquidation and ceased to honour acceptances—Selling agents collected purchase price but did not provide funds for merchant bankers—Selling agents bought dishonoured draft from exporters for its face value—Whether liquidator of merchant bankers entitled to recover amount of draft from selling agents. **Sale Continuation Ltd v Austin Taylor & Co Ltd** [1967] 2 1092, QBD.

Proper law. *See* **Conflict of laws** (Contract—Proper law—Commercial credit).

Rights of bank—

Right of banker to insist on documents in same form as instructions for credit—Discrepancy in bill of lading—Trade custom. **J H Rayner & Co Ltd, and Oilseeds Trading Co Ltd v Hambros Bank Ltd** [1942] 2 694, CA.

Duty of care—

Advice—

Bank offering advice on all financial matters—Negligent advice given by bank manager in regard to investments—Liability to customer for loss suffered—When relationship of banker and customer established. **Woods v Martins Bank Ltd** [1958] 3 166, Assizes.

Contractual duty to exercise care and skill—

Cheque—Enquiries—Mandate from company to pay cheques signed by directors does not relieve bank from duty of care in respect of such cheques—Whether conviction that answer given to enquiry would be false excuses making enquiry—Take-over bids—Absence of instructions to branch officials regarding transactions connected with take-over bids—Knowledge attributable to bank of misapplication of company's funds in acquisition of its own shares in a take-over transaction. **Selangor United Rubber Estates Ltd v Cradock (a bankrupt)** (No 3) [1968] 2 1073, ChD.

Cheque—Payment—Duty of bank to make enquiry before paying cheque in proper form—Company's cheque signed by authorised signatories—Circumstances in which bank bound to make enquiry—Reasonable ground for believing that authorised signatories misusing authority to defraud principal—Company's assets being used for the purchase of company's shares. **Karak Rubber Co Ltd v Burden** (No 2) [1972] 1 1210, ChD.

Collection of bills—Implied authority to realise foreign dividend warrant in England—Customer only resident in England—Customer liable to United Kingdom income tax on realisation in England—Realisation in England only available method to bank of crediting customer in sterling—Whether bank required to confer with customer before realising warrant in England. **Schioler v Westminster Bank Ltd** [1970] 3 177, QBD.

Enquiries—

Justifiable assumption of honesty of explanation given—Whether bank liable in equity as constructive trustee or at common law for not making further enquiry. **Selangor United Rubber Estates Ltd v Cradock (a bankrupt)** (No 3) [1968] 2 1073, ChD.

Statement in answer to enquiry—

Financial references given honestly but without due care—Bank giving references to other bank—Use by second bank's customer expected—First bank financing customer whose reference given—Whether first bank liable to second bank's customer. **Hedley Byrne & Co Ltd v Heller & Partners Ltd** [1961] 3 891, CA, [1963] 2 575, HL.

Equitable charge—

National development bonds, over—

Enforcement. *See* **National savings** (National development bonds).

Foreign central bank—

Immunity from suit. *See* **Constitutional law** (Foreign sovereign state—Immunity from suit—Central bank of foreign state).

Forged documents—

Liability insurance. *See* **Insurance** (Liability insurance—Forged documents—Bank).

Guarantee—

Disclosure of information to guarantor by bank—

Surety for married woman's banking account—Husband undischarged bankrupt—Husband authorised by wife to draw on her account—Non-disclosure of information by bank—No obligation on part of bank to disclose. **Cooper v National Provincial Bank Ltd** [1945] 2 641, KBD.

Interest—

Tax relief. *See* **Income tax** (Relief—Bank interest).

Libel—

Privilege—

Duty of bank to make communication. *See* **Libel and slander** (Qualified privilege—Duty and interest—Bank).

Lien—

Cheque—

Banker's lien on cheque presented for collection—Customer having two accounts—Accounts both overdrawn—Amount of cheque credited to current account—Receiving order made against customer on the following day—Bank secured creditor in respect of proceeds of cheque to the extent of both overdrafts. **Re Keever (a bankrupt), Ex parte The Trustee of the Property of the Bankrupt v Midland Bank Ltd** [1966] 3 631, ChD.

BANK (cont)

Lien (cont)—

Cheque (cont)—

Banker's lien on cheque presented for collection—Customer having two accounts—Agreement that account in debit be frozen for four months in absence of materially changed circumstances—Voluntary liquidation after two months—Cheque received for credit of current account few hours before liquidation—Proceeds credited next day—Whether bank entitled to set-off credit balance in current account against account in debit. **National Westminster Bank Ltd v Halesowen Presswork & Assemblies Ltd** [1972] 1 641, HL.

Limitation of action—

Action on charge—

Charge to secure account—Legal charge—Payment under charge to be made on demand—Limitation of action on charge—Accrual of cause of action—Limitation Act 1939, s 4(3), s 18(4). **Lloyds Bank Ltd v Margolis** [1954] 1 734, ChD.

Negligence—

Paying cheques etc—

Contractual duty of care. *See* Duty of care—Contractual duty to exercise care and skill, *ante*.

Payment—

Time of payment—

Payment order—London Currency Clearance Scheme—On payer's instruction bank delivering payment order to payee's bank for credit to payee's account—Payment orders treated by banks as equivalent to cash—Payment order received by payee's bank—Internal processing of order at payee's bank liable to take up to 24 hours before sum credited to payee's account—Whether payment made when order received and accepted by payee's bank or when payee's account credited with sum. **Mardorf Peach & Co Ltd v Attica Sea Carriers Corp of Liberia** [1976] 2 249, CA.

Payment order—Payment to be made on 'value' day—Computerised accounts not produced until morning following value day—Whether 'value' day extended until following morning—Whether 'day' ending at close of working hours. **Momm v Barclays Bank International Ltd** [1976] 3 588, QBD.

Transfer order—Payer and payee both having accounts with bank—Payer sending order to transfer money from his account to payee's account—Bank making transfer—Accounts not produced by computer until following morning—Payer having gone into liquidation—Bank not sending out advice notes—Bank reversing ledger entries—Whether transfer ineffective until advice notes despatched—Whether bank entitled to reverse entries and debit payee's account. **Momm v Barclays Bank International Ltd** [1976] 3 588, QBD.

Transfer order—Payer and payee both having accounts with bank—Payer sending order to transfer money from his account to payee's account—Whether time of payment moment when transfer order received by bank or moment when decision to credit and debit accounts made by bank. **The Brimnes** [1974] 3 88, CA.

Pension—

Payment of pension through bank—

Fraud—Pension collected from bank after death of pensioner—Liability of bank. **Gowers v Lloyds & National Provincial Foreign Bank Ltd** [1938] 1 766, CA.

Securities—

Deposit of securities—

Release—Canadian securities held by Czech bank in safe custody for customer—Deposit by Czech bank with London bank—Right of customer of Czech bank to demand delivery from London bank without consent of Czech bank—Release, or transfer into another name, of foreign securities in safe custody prohibited by Czechoslovak exchange control regulations. **Kahler v Midland Bank Ltd** [1949] 2 621, HL.

Release—Deposit of debentures at London branch of Czech bank—Condition that deposits be 'subject to the legal measures' of country where deposited—Customer's claim for return of debentures—Re-delivery illegal under Czech law—Right of bank to refuse re-delivery. **Zivnostenska Banka National Corp v Frankman** [1949] 2 671, HL.

Forged transfer—

Removal of name—Bank acting on forged transfers—Forgery by one of two joint tenants of stock—Liability of bank to second joint tenant—Necessity to join transferees of stock—Negligence of second joint tenant—Limitation of action—Limitation Act 1939, s 2 and s 21(1), since repealed. **Welch v Bank of England (Francis & Praed, third parties)** [1955] 1 811, ChD.

Trust—

Money credited to separate account. *See* Account—Separate account—Trust, *ante*.

Trustee—

Appointment of bank—

Customers of bank. *See* Trust and trustee (Appointment of trustees—Appointment of bank—Beneficiaries customers of bank).

Remuneration as trustee. *See* Trust and trustee (Remuneration of trustee—Bank).

Trustee savings bank. *See* Trustee savings bank.

Undue influence. *See* Equity (Undue influence—Presumption of undue influence—Banker and customer).

Value added tax—

Exemptions—

Financial services. *See* Value added tax (Exemptions—Financial services).

BANK OF ENGLAND

Act done in pursuance of public duty or authority—

Limitation of action. *See* Public authority (Limitation of action).

BANKERS' BOOKS

Evidence in criminal proceedings. *See* Criminal evidence (Bankers' books).

BANKING

Australia. *See* Australia (Banking).

Generally. *See* Bank.

BANKRUPTCY

Act of bankruptcy—

Execution levied by seizure and sale—

Holding of goods by sheriff—Execution on debtor's stock in trade—Debtor allowed to trade with goods under walking possession agreement—Goods held by sheriff for twenty-one days—Whether act of bankruptcy—Bankruptcy Act 1914, s 1(1)(e). *Re Dalton (a bankrupt), Ex parte Herrington & Carmichael (a firm) v Trustee of the Property of the Bankrupt* [1962] 2 499, ChD.

Execution of deed of assignment for the benefit of creditors—

Foreign debtor carrying on business abroad and in England by agent—Assignment for benefit of creditors operating according to foreign law—Whether act of bankruptcy. *Re The Debtors (No 836 of 1935)* [1936] 1 875, CA.

Misrepresentation—Innocent misrepresentation by one of two judgment debtors that he was solely entitled to assets—Assent of creditors to the deed induced thereby—Intervention of rights of a third party, the purchaser of a hotel which was vested in the two debtors as joint tenants—Conveyance to purchaser completed by both debtors—Whether judgment creditor entitled to retract assent to deed of assignment and to present bankruptcy petition against debtor who made the misrepresentation. *Re L G Clarke, Ex parte The Debtor v S Aston & Son Ltd* [1966] 3 622, ChD.

Non-compliance with bankruptcy notice—

Debtor setting up 'cross demand' equalling or exceeding the amount of the judgment debt—Claim by debtor against creditor (his wife) for possession of chattels in matrimonial home—Divorce proceedings pending—Whether claim was a cross demand—Bankruptcy Act 1914, s 1(1)(g)—Married Women's Property Act 1882, s 17. *Re A Debtor (No 80 of 1957), Ex parte The Debtor v Wiseburgh* [1957] 2 551, CA.

Remaining out of England with intent to defeat or delay creditors—

Standard of proof—Fraudulent preference—Payments to some creditors—Bankruptcy Act 1914, s 1(1)(c), (d). *Re A Debtor (No 360 of 1951), Ex parte The Debtor v National Provincial Bank Ltd* [1952] 1 519, CA.

Adjudication—

Annulment of adjudication—

Infant adjudged bankrupt—Adjudication based on unenforceable debt—Whether adjudication should be annulled—Bankruptcy Act 1914, s 29(1). *Re Davenport, Ex parte The Bankrupt v Eric Street Properties Ltd* [1963] 2 850, CA.

Appeal against adjudication. *See* Appeal—Appeal against adjudication, *post*.

Debtor's petition—

Annulment of adjudication—Damages of £2,400 awarded against infant appellant—Instalment order in county court for payment of 25s a week—Debtor unable to pay £2,400 but able to pay 25s a week and such other debts as he had—Only debts presently payable considered in determining inability to pay debts—Annulment of receiving order and adjudication—Bankruptcy Act 1914, s 6, 2 29(1). *Re A Debtor (No 17 of 1966)* [1967] 1 668, ChD.

Annulment of adjudication—Doubt as to enforceability of creditor's claim—Bankruptcy Act 1914, s 6(1). *Re Dunn (a bankrupt), Ex parte Official Receiver v Dunn* [1949] 2 388, CA.

Official Receiver's application—

Resolution of creditors that debtor be not adjudged bankrupt—Jurisdiction of court—Bankruptcy Rules 1952 (SI 1952 No 2113), r 219—Act 1914, s 105, s 132(1), (2), s 168(3). *Re Fletcher, Ex parte Fletcher v Official Receiver* [1955] 2 592, CA.

Administration in bankruptcy of estate of person dying insolvent—

Power to order administration—

Power where no personal representative—Bankruptcy Act 1914, s 130—Bankruptcy Rules 1915 (SR & O 1914 No 1824), rr 302, 303. *Re A Debtor (No 1035 of 1938)* [1939] 2 56, ChD.

Voluntary conveyance with intent to defraud creditors—

House, purchased by debtor with misappropriated money, conveyed by vendor to debtor's wife—Chattels given by debtor to wife—Whether conveyance in writing necessary—Whether there was a conveyance in writing by deceased debtor—Whether trustee under Bankruptcy Act 1914, s 130, could maintain claim under Law of Property Act 1925, s 172. *Re Eichholz (dcd), Ex parte Trustee of the Property of the Deceased Debtor v Eichholz, Eichholz's Trustee v Eichholz* [1959] 1 166, ChD.

After-acquired property—

Vesting in trustee—

Gift of jewellery to bankrupt—Jewellery received from donor by bankrupt's solicitor as her agent and handed over by solicitor to another agent appointed by bankrupt—Jewellery sold by bankrupt and proceeds retained by her—Solicitor acting in ministerial capacity and not liable for conversion—Bankruptcy Act 1914, ss 22, 47. *Re The Hon Mrs Deirdre Samuel* [1945] 2 437, CA.

Time of vesting—First bankruptcy—Order at criminal trial that bankrupt's after-acquired property be paid towards costs of prosecution—Claim by trustee to after-acquired property although he had not intervened—Second bankruptcy—Whether bankrupt's after-acquired property vested in trustee of first or second bankruptcy—Costs in Criminal Cases Act 1908, s 6(5)—Bankruptcy Act 1914, ss 18(1), 38, 39(1), (2), 47(1)—Bankruptcy (Amendment) Act 1926, s 3. *Re Pascoe (a bankrupt), Ex parte Trustee in Bankruptcy and Northumberland County Council* [1944] 1 281, CA.

BANKRUPTCY (cont)

Annulment—

Application to annul adjudication—

Application by person interested—Meaning of 'person interested'—Spouse of bankrupt—Whether spouse a 'person interested' merely by reason of his or her matrimonial status—*Bankruptcy Act 1914, s 29(1). Beesley (Audrey), ex parte Beesley (Terence Jack) v The Official Receiver* [1975] 1 385, ChD.

Debt on which adjudication founded not presently payable. *See* Adjudication—Debtor's petition—Annulment of adjudication—Damages of £2,400 awarded against infant appellant—Instalment order in county court for payment of 25s a week, *ante*.

Effect—

Power of court—Disputed debt—Power of court to decide all questions arising in bankruptcy—Rejection of proof of debt—Power of court to set aside rejection after annulment of adjudication order—Debtor having entered into bond in respect of disputed debt—Bond to pay amount recovered in any proceeding—'Any proceeding' limited to proceedings outside bankruptcy—Court having no jurisdiction to entertain application or admit proof after annulment—*Bankruptcy Act 1914, ss 29(1)(4), 105(1). Re A Debtor (No 819 of 1970), Ex parte Biart v The Trustee of the Property of the Debtor* [1974] 3 502, ChD.

Unproved debt—Proved debts paid in full—Annulment of adjudication as proved debts paid in full—Whether creditor for unproved debts entitled to sue debtor after annulment—*Bankruptcy Act 1914, s 29(1). More v More* [1962] 1 125, ChD.

Appeal—

Appeal against adjudication—

Allegation that petition not served on debtor—Process server cross-examined—Debtor and his witness tendered for cross-examination but not cross-examined—No request by debtor to give oral evidence—Acceptance of process server's evidence and dismissal of appeal by registrar—Whether registrar entitled to accept process server's evidence without cross-examining debtor. *Re Brace (a debtor), Ex parte The Debtor v Gabriel and the Official Receiver* [1966] 2 38, CA.

Extension of time for appealing—Receiving order made when appeal against judgment debt on which petition based pending—Subsequent success of appeal—No appeal within time against receiving order—Consequent non-prosecution of another petition based on good debt—Considerations relevant to grant or refusal of application to extend time for appealing against receiving order. *Re Noble (a bankrupt, Ex parte The Bankrupt v The Official Receiver* [1964] 2 522, CA.

Right of creditors to be heard—Whether 'Person aggrieved'—*Bankruptcy Act 1914, ss 18, 108(2). Re Baron* [1943] 2 662, ChD.

Appeal against refusal of certificate of misfortune, on discharge—

Procedure—Inter partes appeal—*Bankruptcy Act 1914, s 26(4). Re Joyce* [1955] 2 747, CA.

Appeal from county court—

Appeal against punishment for contempt of court—Court to which appeal lies—Appeal by bankrupt from order of county court judge committing him to prison for contempt of court—Appeal lies to Court of Appeal—Jurisdiction of Divisional Court sitting in bankruptcy excluded—Administration of Justice Act 1960, s 13(2)(b). *Re C K Rudkin-Jones (a bankrupt), Ex parte The Bankrupt v The Trustee of the Property of the Bankrupt* [1964] 3 750, ChD.

Notice of appeal—Delivery of copy to registrar—Extension of time for delivery—'Good cause shown'—Mistake by appellant's solicitor—*Bankruptcy Rules 1952 (SI 1952 No 2113), r 130, r 389. Re A Debtor (No 36 of 1952), Ex parte The Debtor v J T Richardson, Rymer Bros Ltd* [1953] 1 776, ChD.

Notice of appeal—Delivery of copy to registrar—'Forthwith'—*Bankruptcy Rules 1915 (SR & O 1914 No 1824), r 132, r 385, r 386. Re Muscovitch and Muscovitch, Ex parte Muscovitch and Muscovitch (bankrupts) v Official Receiver* [1939] 1 135, CA.

Case stated by county court judge—

Decision of High Court—Appeal to Court of Appeal—Competency—*Bankruptcy Act 1914, s 108(2). Re Andrews, Ex parte Official Receiver (Trustee) v Standard Range and Foundry Co Ltd* [1936] 2 750.

Costs—

Appeal by debtor—Costs of Official Receiver—Form of order. *Re Smith, Re Shaw* [1938] 1 408, CA.

Security for costs. *See* Appeal—Security for costs, *post*.

Court of Appeal—

Appeal out of time—Jurisdiction of Court of Appeal to grant leave—Need to show special circumstances—RSC Ord 58, r 15—*Bankruptcy Rules 1915 (SR & O 1914 No 1824), r 130, r 134. Re Macadam (No 2), Ex parte Gillaume v The Trustee* [1950] 1 659, CA.

Divisional Court—

Jurisdiction—Appeal against receiving order—Death of petitioning creditor prior to hearing of appeal—Executors applying for order to carry on proceedings—Jurisdiction of Divisional Court to make order—*Bankruptcy Rules 1952 (SI 1952 No 2113), rr 4(1), 132, 390—RSC Ord 59, r 10(1). Re Bean, Ex parte Debtors v Brodie* [1972] 2 1319, ChD.

House of Lords—

Leave—Application—Leave refused by Court of Appeal—Jurisdiction of House of Lords to grant leave—*Bankruptcy Act 1914, s 108(2)(b). Soul v Inland Revenue Comrs* [1964] 3 325, HL.

Right of appeal—

Person aggrieved—Order made without jurisdiction under *Bankruptcy Act 1914, s 51(2)* that money payable by Minister to bankrupt be paid to trustee—Appeal by Minister—Whether court would set aside order even if Minister not 'person aggrieved' and so not entitled to appeal—*Bankruptcy Act 1914, s 108(2). Re Duckett (a bankrupt), Ex parte Minister of Education v McLeod* [1964] 1 19, CA.

BANKRUPTCY (cont)

Appeal (cont)—

Security for costs—

Application for dispensation from payment—Grounds on which court will order payment of security for costs to be dispensed with—Bankruptcy Rules 1952 (SI 1952 No 2113), r 129. **Re Traviss (a bankrupt), Ex parte The Bankrupt v The Official Receiver** [1971] 2 1257, ChD.

Legal aid. *See* **Legal aid** (Security for costs—Appeal in bankruptcy proceedings).

Time for appeal—

Extension of time—Secured creditor—Election by trustee—Application for extension of time for exercise of election—Refusal—Order as to costs—Time for appeal—Bankruptcy Rules 1915 (SR & O 1914 No 1824), r 130. **Re Bulmer** [1936] 3 366, ChD.

Appropriation of salary or income—

Income—

Covenant to make maintenance payments to divorced wife—Wife adjudicated bankrupt—Suspended discharge—Whether maintenance payments 'income'—Whether payments to be made to bankrupt or trustee in bankruptcy—Bankruptcy Act 1914, s 51(2). **Re Tennant's Application** [1956] 2 753, CA.

Life interest of bankrupt in father's residuary estate—Whether 'income' within Bankruptcy Act 1914, s 51(2). **Re Cohen (a bankrupt), Ex parte The Bankrupt v Trustee of the Property of the Bankrupt, Ex parte Trustee of the Property of the Bankrupt v The Bankrupt** [1961] 1 646, CA.

Order—

Order continuing appropriation after discharge of bankrupt—Validity—Bankruptcy Act 1914, s 51. **Re A Debtor (No 6 of 1934), Ex parte Official Receiver** [1941] 3 289, ChD.

Superannuation contributions—

Sum equal to superannuation contributions repayable to teacher not entitled to superannuation—Whether within Bankruptcy Act 1914, s 51(2).—Teachers (Superannuation) Act 1925, s 12. **Re Duckett (a bankrupt), Ex parte Minister of Education v McLeod** [1964] 1 19, CA.

Ascertainment of debt in German court—

Enforcement in England—

Limitation. *See* **Conflict of laws** (Foreign judgment—Enforcement—Limitation period—When time begins to run—Judgment subject to stay of execution—Final and conclusive judgment).

Assignment—

Assent—

Assignment for benefit of creditors—Assent by creditors—Limited company—Debts due to two branches—Assent by one branch—Dissent by other branch. **Dunlop Rubber Co Ltd v W B Haigh & Son** [1936] 3 381, KBD.

Effect of receiving order on assignment—

Debt due to guarantor of bankrupt's banking account—Money when received to be paid to guarantor—Right of trustee to recover—Receiving order—Priority over non-judicial acts on same day—Bankruptcy Act 1914, s 45. **Re Warren** [1938] 2 331, ChD.

Attachment of debt—

Restriction of rights of creditor under attachment—

Completion of attachment—Attachment of debt on undertaking of creditor's solicitors to hold sum for six months against claim of trustee in bankruptcy—Completion of attachment—'Receipt of the debt'—Bankruptcy Act 1914, s 40(1), (2)—Crown Proceedings Act 1947, s 27(1). **Re Lupkovics, Ex parte The Trustee v Freville** [1954] 2 125, ChD.

Avoidance of settlement—

Exception—

Marriage—Settlement made before and in consideration of marriage—Meaning of 'in consideration of marriage'—Settlement to be conditioned to take effect only on marriage taking place—Purpose of settlement to encourage or facilitate the marriage—Husband and wife purchasing house shortly before marriage as prospective matrimonial home—Husband settling share in house on wife—Whether settlement made 'in consideration of' marriage—Bankruptcy Act 1914, s 42(1). **Re Densham (a bankrupt), ex parte the trustee of the bankrupt v Densham** [1975] 3 726, ChD.

Purchaser in good faith—Settlement made on purchaser in good faith and for valuable consideration—Purchaser for valuable consideration—Contract by bankrupt's wife to buy house—House conveyed to her—Mortgage of house—All purchase price paid by husband except sum advanced under mortgage—Husband and wife both parties to mortgage but she alone charging the land by way of legal mortgage—Receiving order made against husband—Whether the conveyance was void against his trustee in bankruptcy—Whether wife was purchaser for valuable consideration within Bankruptcy Act 1914, s 42(1). **Re A Debtor, Ex parte The Official Receiver** [1965] 3 453, ChD.

Purchaser in good faith—Settlement made on purchaser in good faith and for valuable consideration—Purchaser for valuable consideration—Expression to be construed in commercial sense—Unnecessary to prove that property settled equal in value to consideration given by purchaser—Acquisition of house by husband and wife—Both parties contributing to purchase—Wife's contribution less than half—Wife by agreement taking half share in house—Whether wife acquiring share as a 'purchaser...for valuable consideration'—Bankruptcy Act 1914, s 42(1). **Re Densham (a bankrupt), ex parte the trustee of the bankrupt v Densham** [1975] 3 726, ChD.

Purchaser in good faith—Settlement made on purchaser in good faith and for valuable consideration—Purchaser for valuable consideration—Settlement within two years of bankruptcy—Purchase of house for bankrupt by trustees of settlement—Contribution by bankrupt of part of purchase price—Settlement by bankrupt of his contribution on trusts of original settlement—Bankruptcy Act 1914 s 42(1). **Re Macadam (a bankrupt), Ex parte Guillaume v The Trustee** [1950] 1 303, ChD.

BANKRUPTCY (cont)

Avoidance of settlement (cont)—

Exception (cont)—

Purchaser in good faith—Settlement made on purchaser in good faith and for valuable consideration—Purchaser for valuable consideration—Person who provides quid pro quo in commercial sense—Transfer of mortgaged property—Covenant by transferee to indemnify transferor against liability under mortgage—Outstanding mortgage debt substantially less than value of property—Whether covenant constituting valuable consideration—Bankruptcy Act 1914, s 42(1). *Re Windle (a bankrupt), ex parte the trustee of the bankrupt v Windle* [1975] 3 987, ChD.

Meaning of 'settlement'—

Contract by employer with bankrupt to benefit third party—Agreement to pay sums on retiring employee's death to his widow and daughter—Bankruptcy and death of employee within two years—Whether sums interceptable by bankrupt's trustee in bankruptcy—Whether agreement a settlement void under Bankruptcy Act 1914, s 42—Bankruptcy Act 1914, s 42. *Re Schebsman, Ex parte The Official Receiver* [1943] 2 768, CA.

Husband and wife—Acquisition of house—Agreement that house should belong to parties jointly—Contributions to cost of acquisition in unequal shares—Whether agreement constituting a 'settlement'—Bankruptcy Act 1914, s 42(1). *Re Densham (a bankrupt), ex parte the trustee of the bankrupt v Densham* [1975] 3 726, ChD.

Bankruptcy notice—

Effectiveness—

Deed of assignment executed by one of two debtors in partnership and assented to by creditors—Innocent misrepresentation that debtor solely entitled to assets—Debtor's wife, being his partner in the business, was joint tenant of the premises—Debtor's wife concurred in conveyance on sale of the premises by the trustee and was willing to execute supplemental deed of assignment—Judgment creditors purported to withdraw assent to deed and served a bankruptcy notice on the debtor's wife—Whether bankruptcy notice effective. *Re L G Clarke, Ex parte The Debtor v S Aston & Son Ltd* [1966] 3 622, ChD.

Failure to comply with notice—

Act of bankruptcy. *See* Act of bankruptcy—Non-compliance with bankruptcy notice, *ante*.

Failure to comply prior to coming into force of Courts (Emergency Powers) Act 1939—Discretion of registrar—Courts (Emergency Powers) Act 1939, s 1(5). *Re A Debtor (No 13 of 1939)* [1940] 1 227, ChD.

Form—

Notice to pay trustee in bankruptcy—Statement as to capacity of claimant. *Re A Debtor (No 66 of 1955), Ex parte The Debtor v The Trustee of the Property of Waite (a bankrupt)* [1956] 3 225, CA.

Issue—

Limitation—Order by court of summary jurisdiction for payment of arrears of water rate and costs—Summary Jurisdiction Act 1879, s 35—Direction to levy distress in default of payment—Whether order precluding issue of bankruptcy notice—Bankruptcy Act 1914, s 1(1)(g)—Water Act 1945, s 38(3). *Re A Debtor (No 48 of 1952), Ex parte Amptill Rural District Council v The Debtor* [1953] 1 545, CA.

Non-compliance with—

Act of bankruptcy. *See* Act of bankruptcy—Non-compliance with bankruptcy notice, *ante*.

Service—

Extension of time for service—Whether notice of extension must be given to debtor—Bankruptcy Rules 1915 (SR & O 1914 No 1824), r 142. *Re A Debtor (No 4 of 1942)* [1943] 1 125, ChD.

Substituted service—Affidavit in support—Sufficiency—Bankruptcy Rules 1915 (SR & O 1914 No 1824), r 156. *Re De Cespedes* [1937] 2 572, CA.

Substituted service—Bankruptcy Rules 1915 (SR & O 1914 No 1824), rr 143, 156. *Re A Judgment Debtor (No 1539 of 1936)* [1936] 3 767, CA.

Setting aside—

Debtor alleging debt satisfied—Time for issuing application to set aside—Bankruptcy Rules 1952 (SI 1952 No 2113), r 31, r 137(b), r 138. *Re A Debtor (No 30 of 1956), Ex parte The Debtor v Harman* [1957] 2 216, ChD.

Further evidence—Jurisdiction to admit further evidence at hearing, if debtor's initial affidavit traversed by creditor—Bankruptcy Act 1914, s 1(1)(g)—Bankruptcy Rules 1952 (SI 1952 No 2113), r 137, r 138, r 139(1). *Re A Debtor (No 991 of 1962), Ex parte The Debtor v Tossoun* [1963] 1 85, CA.

Validity—

Debt due to company in liquidation—Notice served and petition presented in name of liquidator and not in name of company in liquidation—Bankruptcy Act 1914, s 147(1). *Re A Debtor (No 41 of 1951), Ex parte The Debtor v Hunter (Liquidator of Marvel Paper Products Ltd)* [1952] 1 107, ChD.

Formal defect—Copy served on debtor entitled in the wrong court—Bankruptcy Act 1914, s 147(1). *Re A Debtor (No 21 of 1950), Ex parte The Debtor v Bowmaker Ltd* [1950] 2 1129, ChD.

Judgment creditor resident abroad outside the scheduled territories—Notice requiring payment into court—Exchange Control Act 1947, Sch IV, para 3—Exchange Control (Bankruptcy Notices) Order 1949 (SI 1949 No 585), art 1(a), Sch, Part I—RSC Ord 42, r 1(2). *Re A Debtor (No 277 of 1950), Ex parte The Debtor v Liguori* [1950] 2 733, CA.

Notice based on judgment debt—Reduction of judgment debt on appeal—Set off of costs—Validity of notice—Bankruptcy Act 1914, s 2(ii), s 5(2), (3). *Re A Debtor (No 20 of 1953), Ex parte The Debtor v Scott* [1954] 1 454, ChD.

BANKRUPTCY (cont)

Bankruptcy notice (cont)—

Validity (cont)—

Prescribed form—Formal defect or irregularity—Jurisdiction of court to cure defect—Judgment or order—Notice to require debtor to pay judgment sum in accordance with judgment or order—Order against debtor for injunction and costs to be taxed—Taxing master's certificate issued—Bankruptcy notice specifying balance due from debtors as debt due on taxing master's certificate—No reference to original order of court—Whether bankruptcy notice defective—Whether defect a 'formal defect or irregularity' which may be cured by court—Bankruptcy Act 1914, ss 2, 147(1). **Cartwright v Barker** [1975] 2 970, ChD.

Bankruptcy rules—

Application to winding-up of company. *See* **Company** (Winding-up—Application of bankruptcy rules).

Commencement of bankruptcy—

Relation back—

Presentation of bankruptcy petition followed by application for liabilities adjustment order—Protection order made—Bankruptcy proceedings stayed—Adjustment order refused—Bankruptcy petition restored—Receiving order—Date of commencement of bankruptcy—Costs—Solicitors' profit costs and disbursements incurred by debtor before and after notice of act of bankruptcy—Whether allowable out of bankrupt's estate—Bankruptcy Act 1914, ss 30(2), 37(1). **Re British Folding Bed Co, ex parte The Trustee v N A Woodiwiss & Co** [1948] 2 216, ChD.

Committee of inspection—

Members—

Limited company—Proxy—Fiduciary position. **Re Bulmer, Ex parte Greaves v Inland Revenue Comrs** [1937] 1 323, CA.

Costs—

Appeal. *See* **Appeal**—Costs, *ante*.

Security for costs—

Appeal. *See* **Appeal**—Security for costs, *ante*.

Set-off—

Separate proceedings—Bankruptcy petition by judgment creditors dismissed with costs—Judgment debt unpaid—Jurisdiction to order stay of execution of order for costs. **Re A Debtor (No 21 of 1950), Ex parte The Petitioning Creditors v The Debtor** [1951] 1 600, ChD.

Taxation—

Bill of costs—Form—Expression of sums of money—Decimatisation—Decimal Currency Act 1969, Sch 1. **Practice Direction** [1971] 1 511.

Bill of costs—Petitioning debtor's solicitor's bill of costs—Assets certified as likely to realise £100 but not to exceed £200—Estate not administered summarily under Bankruptcy Act 1914, s 129—Bankruptcy Rules 1952 (SI 1952 No 2113), r 100(1), (2), Appendix II, Part I, items No 3 to No 11. **Re Porter (a bankrupt), Ex parte The Board of Trade v Ollard, Ollard and Sessions** [1954] 2 795, ChD.

Certificate—Form—Expression of sums of money—Decimatisation—Decimal Currency Act 1969, Sch 1. **Practice Direction** [1971] 1 511.

Documents—Calculation of length—Method of calculation—Page basis—International Standards Organisation paper sizes—Bankruptcy Rules 1952 (SI 1952 No 2113), App II. **Practice Direction** [1971] 1 512.

Procedure. **Practice Direction** [1964] 1 48.

Criminal—

Fine imposed on conviction prior to bankruptcy—

Proof of fine as debt in bankruptcy proceedings. *See* **Sentence** (Fine—Bankruptcy of accused).

Death of petitioning creditor—

Continuation of proceedings. *See* **Appeal**—Divisional Court—Jurisdiction—Appeal against receiving order—Death of petitioning creditor prior to hearing of appeal, *ante*.

Debts provable in bankruptcy—

Debts deemed not to be provable in bankruptcy—

Value incapable of being fairly estimated—Arrears of maintenance—Enforcement of arrears a matter of discretion—Debt not provable—Bankruptcy Act 1914, s 7(1), s 30(6). **James v James** [1963] 2 465, Div.

Deed of arrangement—

Assent—

Dealings with trustee—Estoppel—Action for debt. **Victor Weston (Fabrics) Ltd v Morgensterns (a firm)** [1937] 3 769, CA.

Limited company—Debts due to two branches—Assent by one branch—Dissent by other branch. **Dunlop Rubber Co Ltd v W B Haigh & Son** [1936] 3 381, KBD.

Benefit under deed—

Person having contingent or future claim against debtor—Whether entitled to benefit under deed. **Re Casse** [1937] 2 710, ChD.

Composition with creditors—

Receipt stating terms of oral agreement—Whether receipt should have been registered—Deeds of Arrangement Act 1914, s 1. **Hughes and Falconer v Newton** [1939] 3 869, KBD.

Reservation of rights of creditors against sureties—

Right of surety who has paid to indemnity by debtor. **Cole v Lynn** [1941] 3 502, CA.

Trustee—

Liability—Order given as trustee. **Hunt Bros (a firm) v Colwell** [1939] 4 406, CA.

BANKRUPTCY (cont)

Deed of arrangement (cont)—

Trustee (cont)—

Position of trustee—Deed ineffective for lack of assent by creditors—Subsequent bankruptcy—Expenditure in carrying on business—Remuneration—Deeds of Arrangement Act 1914, ss 2, 3, 21. **Re Zakon** [1940] 1 263, ChD.

Validity—

Deed executed in Scotland according to Scots law—No registration—Property in England—Deeds of Arrangement Act 1914, s 2. **Re Pilkington's Will Trusts** [1937] 3 213, ChD.

Discharge—

Certificate of misfortune—

Appeal against refusal of certificate. *See* Appeal—Appeal against refusal of certificate of misfortune, on discharge, *ante*.

Bankruptcy caused by 'misfortune' without any misconduct—Bankruptcy Act 1883, s 32(2)—Bankruptcy Act 1914, s 26(4). **Re Joyce** [1955] 2 747, CA.

Bankruptcy caused by 'misfortune' without any misconduct—Debtor buying shares on credit in very large way—Dealings in those shares suspended by the Stock Exchange—Bankruptcy due to consequent fall in value of the shares—Bankruptcy Act 1883, s 32(2)—Bankruptcy Act 1914, s 26(4). **Re A Debtor (No 612 of 1960)**, *Ex parte The Debtor v The Official Receiver* [1964] 2 165, CA.

Order—

Effect of order—Order for payment from income for benefit of creditors—Order intended to be operative after discharge but in error made to cease on discharge becoming effective—Jurisdiction of court to vary order—Bankruptcy Act 1914, ss 26(8), 108(1). **Re A Debtor (No 946 of 1926)** [1939] 1, 735, CA.

Effect of order—Release of debts—Rent—Future rent due after date of proof—Disclaimer—Bankruptcy Act 1914, s 54—Bankruptcy Rules 1915 (SR & O 1914 No 1824), r 276. **Metropolis Estates Co Ltd v Wilde** [1940] 3 522, CA.

Refusal—

Grounds for refusal—No application made under the Liabilities (War-Time Adjustment) Act 1941—Whether proper ground for refusal—Bankruptcy Act 1914, s 26(1), (2), (3). **Re Benjamin** [1943] 1 468, ChD.

Suspension—

Attachment of condition—Suspension for two years—Condition for payment of instalments to continue after discharge—Power to impose condition—Bankruptcy Act 1914, s 26(2). **Re Tabrisky** [1947] 2 182, CA.

Jurisdiction—Exercise of discretion—Bankruptcy Act 1914, ss 26, 108. **Re Smith** [1947] 1 769, CA.

Jurisdiction—Jurisdiction to make order suspending discharge and imposing condition of consent to judgment—Bankruptcy Act 1914, s 26(2) (as amended by Bankruptcy (Amendment) Act 1926, s 1), s 26(8). **Re Mills (a bankrupt)**, *Ex parte The Bankrupt v Official Receiver* [1966] 1 516, ChD.

Disclaimer of onerous property—

Time for exercise of right—

Official Receiver succeeding to trusteeship—Onerous property—Right of disclaimer—Statutory period for exercise of right—Extension of time—Bankruptcy Act 1914, ss 54(1), (7), 109(4). **Re A Debtor (No 416 of 1940)**, *Ex parte Official Receiver (trustee) v Hubbard* [1950] 1 1085, CA.

Distribution of assets—

Application in satisfaction of liabilities—

Contract having effect of varying statutory rules—Company—Voluntary winding-up. *See* Company (Voluntary winding-up)—Distribution of company's property—Application in satisfaction of liabilities—Contract having effect of varying statutory rules).

Distribution of property—

Final dividend—

Notice—Evidence of posting—Extension of time—Discretion—Costs—Bankruptcy Act 1914, s 67. **Re Pavyer** [1936] 1 568, ChD.

Surplus assets—

Right of bankrupt to. *See* Surplus assets—Right of bankrupt to assets remaining after payment in full of creditors, *post*.

Effect on antecedent transactions—

Attachment of debt—

Completion—Garnishee order—Payment into court—Order for payment out—Payment delayed through administrative difficulty—Receiving order before payment received by creditor—Bankruptcy Act 1914, s 40(2). **George v Thompson's Trustee** [1949] 1 554, ChD.

Effect on transaction by bankrupt—

Payment by cheque before bankruptcy—Collection of money by payee's bank after bankruptcy—Bankrupt granted secured overdraft by bank—Bankruptcy Act 1914, ss 45, 47(1). **Re Hone (a bankrupt)**, *Ex parte The Trustee v Kensington Borough Council* [1950] 2 716, ChD.

Enquiry as to debtor's dealings and property—

Summons to persons capable of giving information—

Application to Court of Appeal after refusal of registrar to grant summons—Hearing of application in camera—Bankruptcy Act 1914, s 25(1)—RSC Ord 58, r 13(3). **Re Green (a bankrupt)**, *Ex parte The Trustee* [1958] 2 57, CA.

Discharged bankrupt—Summons to his personal representatives after his death—Executors were former partner of bankrupt, his accountant and his solicitor—Statement rendered by discharged bankrupt in his lifetime containing material for enquiry—Whether jurisdiction to make order against executors—Bankruptcy Act 1914, s 25(1)—Bankruptcy Rules 1952 (SI 1952 No 2113), r 236. **Re a Debtor (No 12 of 1958)**, *Ex parte The Trustee of The Property of The Debtor v Clegg* [1968] 2 425, ChD.

BANKRUPTCY (cont)

Enquiry as to debtor's dealings and property (cont)—

Summons to persons capable of giving information (cont)—

Former solicitor of and attorney to the debtor—Abortive previous proceedings to compel him as solicitor to deliver accounts in respect of same matter—No appeal by trustee—Whether *res judicata*—Delay—Whether bankruptcy summons abuse of process of court—Bankruptcy Act 1914, s 25(1)—RSC Ord 37, r 20—RSC Ord 52, r 25. **Re A Debtor (No 472 of 1950)** [1958] 1 581, CA.

Execution—

Benefit of execution—

Retention—Withdrawal of sheriff upon agreement to pay instalments—Instalments paid—Debtor filing own petition—Receiving order—Claim by trustee to instalments paid—Bankruptcy Act 1914, s 40. **Re Andrews, Ex parte Official Receiver (trustee) v Standard Range & Foundry Co Ltd** [1936] 3 450, CA.

Costs of execution—

Notice of receiving order served on sheriff after goods taken in execution but before execution completed—Right of sheriff to costs—Sale of Goods Act 1893, s 26(1)—Bankruptcy Act 1914, s 41(1). **Re Cooper (a bankrupt), Ex parte Trustee of the Property of the Bankrupt v Registrar and High Bailiff of the Peterborough and Huntingdon County Courts** [1958] 3 97, ChD.

Relation back of trustee's title—

Execution completed after act of bankruptcy but before date of receiving order and before notice of presentation of petition or of act of bankruptcy—Bankruptcy Act 1914, s 37(1), s 40(1). **Re Love, Ex parte Official Receiver (trustee) v Kingston-upon-Thames County Court Receiver** [1951] 2 1016, CA.

Writ of sequestration—

Writ issued to enforce order for permanent maintenance on divorce—Husband's subsequent bankruptcy—Property of husband passing into trustee's hands subject to sequestration—Wife's debt not provable in bankruptcy—Husband in contempt of court—Writ of sequestration not discharged. **Coles v Coles** [1956] 3, 542, Div.

Extortion—

Attempted extortion by petitioning creditor—

Judgment debt—Payment of solicitor and client costs as term of accepting payment of debt by instalments—Voluntary offer—Whether extortion by creditor—Bankruptcy Act 1914, s 5(3). **Re A Debtor (No 757 of 1954), Ex parte The Debtor v F A Dumont Ltd (petitioning creditor)** [1955] 2 65, CA.

Fees—

Counsel—

Judgment summons. **Practice Direction (Bankruptcy)** [1953] 2 969, ChD.

File—

Inspection—

Transcript of private examination. *See* Record of proceedings—Private examination—Inspection of file, *post*.

Forfeiture clause—

Annuity—

Discharge from bankruptcy operating after death of testator and before any payment due—Whether forfeiture clause operates—Bankruptcy Act 1914, ss 26(9), 28(2), 29(2), 38(2)(a), 47(1). **Re Walker** [1939] 3 902, ChD.

Fraudulent preference—

Insolvent solicitor—

Payment to most important client—Intention to prefer—Desire of debtor to obtain advantage for third party and for himself—Bankruptcy Act 1914, s 44(1), as amended by Companies Act 1947, s 115(3). **Re T W Cutts (a bankrupt), Ex parte Bognor Mutual Building Society v Trustee in Bankruptcy** [1956] 2 537, CA.

Joinder of parties—

Bankrupt's account guaranteed by surety—Payments to creditor when bankrupt unable to pay his debts—Proceedings by trustee in bankruptcy for a declaration of fraudulent preference—Court's determination might affect surety—Whether surety ought to be joined as a party to the proceedings. **Re Idenden (a bankrupt)** [1970] 2 387, ChD.

Surety or guarantor—

Bank overdrafts secured by mere deposit of documents of third party without any agreement to pay sums owing—Account put into credit and documents released immediately before bankruptcy—Absence of contractual relationship between depositor and creditor—Whether depositor surety or guarantor—Bankruptcy Act 1914, s 44. **Re Conley (trading as Caplan and Conley), Ex parte The Trustee v Barclays Bank Ltd** [1938] 2 127, CA.

Fraudulent removal of property by bankrupt after presentation of petition. *See* Offences—Fraudulent removal of property by bankrupt after presentation of petition, *post*.

Gambling by bankrupt engaged in trade or business. *See* Criminal law (Bankruptcy—Gambling by bankrupt engaged in trade).

Inspection of file—

Transcript of private examination. *See* Record of proceedings—Private examination—Inspection of file, *post*.

Joint tenancy of property charged to secure loan—

Bankruptcy of one of joint tenants. *See* Proof—Secured creditor—Joint tenancy of property charged to secure loan, *post*.

Judgment debt—

Act of bankruptcy—

Application by debtor that payment be by instalments—Order for instalments made without notice to creditors—Interference with creditor's right to proceed by bankruptcy petition—County Court Rules 1936, Ord 24, r 19. **Sophian v A J Clifford & Son (a firm)** [1946] 2 733, CA.

BANKRUPTCY (cont)

Judgment debt (cont)—

Committal—

Order for committal to lie in office so long as debtor pays instalments—No previous order for payment by instalments—Bankruptcy Rules 1915 (SR & O 1914 No 1824), r 379. **Re Sanders, Ex parte Bentley** [1947] 2 828, ChD.

Enforcement—

Part of debt unenforceable in bankruptcy—Debt of married woman incurred before Aug 2, 1935—Whether whole of debt unenforceable—Law Reform (Married Women and Tortfeasors) Act 1935, s 4(1)(c). **Re A Debtor (No 21 of 1937)** [1938] 2 824, CA.

Judgment summons—

High Court—

Application for leave to issue judgment summons—Applications for leave to issue judgment summons in High Court must show cause why summons should not issue in county court—Default summonses under Debtors Act 1869, s 5, unaffected—Bankruptcy Rules 1952 (SI 1952 No 2113), r 378. **Practice Direction** [1956] 2 928, ChD.

Jurisdiction—

Award of damages—

Discretion—When exercisable—Bankruptcy Act 1914, s 105. **Re Hutton, A Bankrupt, Ex parte Mediterranean Machine Operations Ltd v Haigh** [1969] 1 936, ChD.

Legal proceedings against debtor following receiving order—

Remedy of creditor against property or person of debtor in respect of debt—

Forfeiture of lease—Debtor having failed to pay rent—Exercise by landlord or right of forfeiture—Action by landlord against debtor for possession of premises—Whether forfeiture a 'remedy against the property... of the debtor in respect of the debt'—Whether leave of the court required for institution of proceedings for possession—Bankruptcy Act 1914, s 7(1). **Ezekiel v Orakpo** [1976] 3 659, CA.

Limitation of action—

Time ceasing to run when receiving order made—

Scope of doctrine—Remedies of secured creditor unaffected by receiving order—Remedies barred by subsequent expiry of period of limitation—Creditor ceasing to be 'secured creditor'—Bankruptcy Act 1914, Sch 2, r 13(c). **Cotterell v Price** [1960] 3 315, ChD.

Married woman—

Debt—

Business debt—Judgment before Aug 2, 1935—Subsequently increased to £50 by interest—Law Reform (Married Women and Tortfeasors) Act 1935, s 4(1)(c). **Re A Debtor (No 15 of 1936)** [1936] 2 1493, ChD.

Debt not in respect of business—Guaranteed in 1933—Payment under guarantee in 1936—Law Reform (Married Women and Tortfeasors) Act 1935, s 4(1)(c). **Re A Debtor (No 627 of 1936)** [1937] 1 1, CA.

Separate property—

Income under settlement provided by husband subject to restraint on anticipation—Alimony pendente lite—Proportion of income to be made available for creditors—Means of subsistence—Bankruptcy Act 1914, s 52. **Re Lady Mary Bowden** [1937] 4 635.

Meeting of creditors—

Voting—

Restriction on voting at meeting in respect of unliquidated debt—'Unliquidated debt'—Stated sum claimed as damages for misfeasance and breach of trust—High Court action pending—Bankruptcy Act 1914, Sch 1, para 9. **Re Rickett, Ex parte Insecticide Activated Products Ltd v Official Receiver** [1949] 1 737, ChD.

Mortgagor—

Enforcement of remedy by mortgagee—

Leave—Courts emergency powers—Trustee respondent to application. **Re Legal Charge dated Nov 26, 1937** [1949] 1 477, ChD.

Non-petitioning creditor—

Vexatious litigant—

Whether leave required to appeal against rejection of proof of debt. *See Vexatious proceedings* (Instituting proceedings—Institute—Bankruptcy proceedings).

Notice—

County court—

Payment of judgment debt to creditor's agents. *See County court* (Judgment or order—Payment into court—Bankruptcy notice—County court exercising bankruptcy jurisdiction).

Obtaining credit without disclosing undischarged bankrupt. *See Offences—Undischarged bankrupt obtaining credit, post.*

Offences—

Failure to give satisfactory explanation of manner of incurring substantial loss of part of bankrupt's estate—

Bankrupt having been engaged in trade or business and having debts contracted in course of trade or business outstanding at date of receiving order—Whether absolute offence—Bankruptcy Act 1914, s 157(1)(c). **R v Salter** [1968] 2 951, CA.

Fraudulent removal of property by bankrupt after presentation of petition—

Onus of proof—Onus of proof on prosecution throughout—Bankruptcy Act 1914, s 154(1), para (5), as amended by Bankruptcy (Amendment) Act 1926, s 5(1). **R v Lusty** [1964] 1 960, CCA.

Undischarged bankrupt obtaining credit—

Obtaining credit to extent of £10 or upwards—Bankrupt obtaining credit on different occasions for sums under £10—Total sum of credits obtained over £10—Whether aggregation of smaller sums allowable—Bankruptcy Act 1914, s 155(a). **R v Hartley** [1972] 1 599, CA.

Obtaining credit to extent of £10 or upwards—Contracts to make paintings from photographs or snapshots—Deposits paid—Failure to carry out work—Whether obtaining credit—Bankruptcy Act 1914, s 155(a). **Fisher v Raven, Raven v Fisher** [1963] 2 389, HL.

BANKRUPTCY (cont)

Offences (cont)—

Undischarged bankrupt obtaining credit (cont)—

Obtaining credit to extent of £10 or upwards—Indictment—Form—Particulars of offence—Accuracy regarding amount of credit obtained and time of alleged commission of offence. **R v Hartley** [1972] 1 599, CA.

Payment of money to bankrupt and assignee—

Discharge from liability of person paying—

Solicitor unaware of debtor's true financial position—Assets of debtor in hands of solicitor—Solicitor paid debts of debtor out of assets on debtor's instructions, with knowledge of execution—Debtor made bankrupt on his own petition—Claim by trustee that solicitor accountable for amount of payments—Solicitor discharged from liability—Payment of money... to a person subsequently adjudged bankrupt—Bankruptcy Act 1914, s 46. **Re Dalton (a bankrupt), Ex parte Herrington & Carmichael (a firm) v Trustee of the Property of the Bankrupt** [1962] 2 499, ChD.

Person of unsound mind—

Jurisdiction to make receiving order—

Receiver in lunacy already appointed—Divesting of title of trustee in bankruptcy by appointment of receiver. **Re A Debtor (No 1 of 1941)** [1941] 3 11, ChD.

Petition—

Amendment—

Jurisdiction—Petition amended by substituting another act of bankruptcy for that originally alleged—Bankruptcy notice did not expire until after presentation of petition—Application for leave further to amend petition by restoring reference to original act of bankruptcy—Lapse of more than three months since original act of bankruptcy occurred—Whether court could allow amendment which would introduce act of bankruptcy out of time, in a case where that had at some time previously appeared on petition—Bankruptcy Act 1914, s 109(3). **Re A Debtor (No 31 of 1969), Ex parte the Debtor v Triggs Turner & Co** [1970] 1 920, ChD.

Conditions for presentation—

Act of bankruptcy occurring within three months before presentation of petition—Whether debt can be added more than three months after act of bankruptcy relied on—Bankruptcy Act 1914, s 4(1)(c). **Re Noble (a bankrupt), Ex parte The Bankrupt v The Official Receiver** [1964] 2 522, CA.

'Carrying on business'—Income tax arrears under Case I of Sch D unpaid—Debtor ceased trading and left England to reside abroad—Back duty claims by revenue authorities—Accountants employed by debtor in connexion with revenue claims—Fees due to accountants—Whether debtor carried on business in England until income tax arrears and accountants' fees satisfied—Bankruptcy Act 1914, s 4(1)(d). **Re Bird, Ex parte The Debtor v Inland Revenue Comrs** [1962] 2 406, CA.

Debt owing by debtor to petitioning creditor—'Debt'—Arrears of rates—Arrears as basis for petition—Bankruptcy Act 1914, s 4(1)(b), s 33(1)(a). **Re McGreavy, Ex parte McGreavy v Benfleet Urban District Council** [1950] 1 442, CA.

Creditor's petition—

Nature of debt—Creditor obtaining judgment for purchase price of specific shares—Whether a 'secured creditor'—Bankruptcy Act 1914, ss 4(2), 167. **Re A Debtor (No 6 of 1941, Northampton County Court), Ex parte The Debtor v The Petitioning Creditor and The Official Receiver** [1943] 1 553, CA.

Nature of debt—Divorce damages—Order to pay part to the petitioner direct—Bankruptcy Act 1914, s 1(1)(g)—Supreme Court of Judicature (Consolidation) Act 1925, s 189(3). **Re A Debtor (No 975 of 1937)** [1938] 2 530, CA.

Nature of debt—Judgment debt for damages and costs—Costs not taxed and thus not a liquidated sum at date of act of bankruptcy—Petition based on aggregate of damages and costs—Costs not available as debt at date of act of bankruptcy—Common law of bankruptcy—Bankruptcy Act 1914, ss 4(1), 5(2). **Re A Debtor (No 20 of 1953), Ex parte The Debtor v Scott** [1954] 3 74, CA.

Dismissal—

Assenting creditor—Deed of assignment for benefit of creditors—Petitioning creditor's conduct at meeting—Assent by silence at meeting agreeing to deed—Bankruptcy Act 1914, s 5(3). **Re A Debtor (No 382 of 1938)** [1938] 3 744, CA.

Discretion of court—Sufficient cause—Bankruptcy Act 1914, s 5(3). **Re A Debtor (No 66 of 1955), Ex parte The Debtor v The Trustee of the Property of Waite (a bankrupt)** [1956] 3 225, CA.

Estoppel—

Deed of arrangement—Trading with trustee—Earlier unconnected act of bankruptcy—Amendment of petition—Signature by partnership—Bankruptcy Act 1914, ss 5(3), 109(2)—Bankruptcy Rules 1915 (SR & O 1914 No 1824), rr 278, 385. **Re A Debtor (No 23 of 1939)** [1939] 2 338, CA.

Hearing—

Creditor's petition—Proof of debt—Admission of debt at hearing—Affidavit of proof filed after hearing on same day—Whether statutory requirements fulfilled—Bankruptcy Act 1914, s 5(2)—Bankruptcy Rules 1915 (SR & O 1914 No 1824), r 171. **Re A Debtor (No 27 of 1943)** [1943] 2 15, CA.

Service—

Evidence. *See* Appeal—Appeal against adjudication—Allegation that petition not served on debtor, *ante*.

Service out of jurisdiction—'Debtor'—Foreigner—'Carrying on business'—Business continued until all debts paid—Bankruptcy Act 1914, s 1(1)(a), (2)(c), s 4(1)(c). **Theophile v Solicitor-General** [1950] 1 405, HL.

Service out of jurisdiction—Necessity that nature of document served be brought to notice of debtor—Bankruptcy Act 1914, s 5(1)—Bankruptcy Rules 1915 (SR & O 1914 No 1824), rr 155, 156 & 158. **Re A Debtor (No 441 of 1938), Ex parte Petitioning Creditor v Debtor** [1938] 4 92, CA.

BANKRUPTCY (cont)

Petition (cont)—

Service (cont)—

Substituted service—Debtor proceeding out of jurisdiction and concealing whereabouts—Bankruptcy Rules 1915 (SR & O 1914 No 1824), r 156. **Re A Debtor (No 419 of 1939) [1939] 3 429, CA.**

Stay—

Discretion—Exercise of discretion—Application for adjustment order pending. **Re A Debtor [1943] 2 594, CA.**

Inability to pay arising from circumstances attributable to war—Material transactions entered into after outbreak of war—Condition of stay varied—Courts (Emergency Powers) Act 1943, s 1(5). **Re Debtors (Nos 2 and 3 of 1944), Ex parte The Petitioning Creditors v The Debtor [1944] 2 525, ChD.**

Time for filing—

Extension of time—Bankruptcy notice—Application to set aside—Dismissal by registrar—Appeal by debtor to High Court and Court of Appeal—Appeal dismissed—Petition filed by judgment creditor—Whether out of time—Bankruptcy Act 1914, s 4(1)(c)—Bankruptcy Rules 1915 (SR & O 1914 No 1824), r 141—Bankruptcy Rules 1952 (SI 1952 No 2113), r 139. **Re A Debtor (No 10 of 1953) [1953] 2 561, ChD.**

Withdrawal—

Leave—Creditors' petition—Debt of petitioning creditor paid before hearing—Leave sought to withdraw petition—Receiving order made without substitution of new petitioning creditor—Jurisdiction—Bankruptcy Act 1914, s 5(7), s 111. **Re Mann (a debtor), Ex parte The Debtor v Harrods Ltd [1958] 3 660, ChD.**

Petitioning creditor's debt—

Divorce damages—

Order to pay part to petitioner direct—Jurisdiction—Bankruptcy Act 1914, s 1(1)(g)—Supreme Court of Judicature (Consolidation) Act 1925, s 189(3). **Re A Debtor (No 975 of 1937) [1938] 2 530, CA.**

Judgment debt—

Part of debt unenforceable in bankruptcy—Debt of married woman incurred before Aug 2, 1935—Bankruptcy notice for whole debt—Validity of notice—Law Reform (Married Women and Tortfeasors) Act 1935, s 4(1)(c). **Re A Debtor (No 21 of 1937) [1938] 2 824, CA.**

Postponement of debt—

Wife's claim—

Money lent by wife for husband's business—Judgment obtained by wife—Postponement of judgment debt—Bankruptcy Act 1914, s 36(2). **Re Lupkovics, Ex parte The Trustee v Freville [1954] 2 125, ChD.**

Practice—

Appeal—

Appeal against refusal of certificate of misfortune on discharge. *See* Appeal—Appeal against refusal of certificate of misfortune on discharge, *ante*.

Costs. *See* Appeal—Costs, *ante*.

Bankruptcy notice—

Service. *See* Bankruptcy notice—Service, *ante*.

Costs—

Taxation—Bill of costs—Expression of sums of money. *See* Costs—Taxation—Bill of costs—Expression of sum of money, *ante*.

Taxation—Documents. *See* Costs—Taxation—Documents, *ante*.

Taxation—Procedure. *See* Costs—Taxation—Procedure, *ante*.

Debt incurred by bankrupt on behalf of another—

Recovery—Procedure—Whether proceedings should be by motion in bankruptcy—Bankruptcy Act 1914, s 105. **Re Horder, Ex parte The Trustee [1936] 2 1479, ChD.**

Petition—

Service. *See* Petition—Service, *ante*.

Proceedings between trustee in bankruptcy and third party—

Evidence—Bankrupt called as a witness—Whether party calling the bankrupt entitled to cross-examine him without showing that he is hostile—Evidence contrary to statements at public or private examination. **Re Marsden [1944] 1 597, ChD.**

Preferential claim—

Assessed tax—

Excess profits tax in respect of a chargeable accounting period other than last completed period before bankruptcy—Bankruptcy Act 1914, s 33(1)(a). **Re Pratt, Ex parte Inland Revenue Comrs v Phillips (trustee in bankruptcy) [1950] 2 994, CA.**

Distress by landlord or other person—

Right of trustee in bankruptcy to receive proceeds of distress—'Landlord or other person'—Bankruptcy Act 1914, s 33(4). **Re Caidan [1941] 3 491, ChD.**

Parochial or other local rates—

Water rate—Bankruptcy Act 1914, s 33(1)(a). **Re Baker, Ex parte Eastbourne Waterworks Co v Official Receiver [1954] 2 790, ChD.**

Private examination—

Inspection of file. *See* Record of proceedings—Private examination, *post*.

Proof—

Agreement not to prove in consideration of promise to pay after bankruptcy—

Right of creditor to sue for debt—Estoppel. **John v Mendoza [1939] 4 472, KBD.**

Agreement not to prove on third party undertaking to pay debt—

Bankruptcy of third party—Right to prove in bankruptcy of third party. **Re Cuthbert [1936] 1 342, ChD.**

Expunging proof—

Burden of proof—Evidence—Debtor's statement of affairs—Proof admitted many years previously—Estoppel—Bankruptcy Act 1914, s 14(1), s 141, Sch 2, r 24. **Re Browne (a bankrupt), Ex parte Official Receiver v Thompson [1960] 2 625, ChD.**

BANKRUPTCY (cont)

Proof (cont)—

Money employed in setting up business—

Benefit to creditor—Creditor interested in business and benefiting thereby, but not a partner or receiving share of profits—Whether entitled to prove in bankruptcy in competition with creditors of business. **Re Meade (a debtor), Ex parte Humber v Palmer (the trustee)** [1951] 2 168, ChD.

Postponement of debts—

Interest—Moneylender's debt—Interest at higher rate than 5 per cent, already received on debt—Bankruptcy Act 1914, s 66—Moneylenders Act 1927, s 9(1). **Re Lascelles** [1940] 4 272, ChD.

Rejection—

Extension of time for appealing—Whether application *ex parte* or on notice—Jurisdiction of registrar in bankruptcy—Bankruptcy Act 1914, s 102(1), (2)(f), s 109(4), s 147(1)—Bankruptcy Rules 1952 (SI 1952 No 2113), r 8(1)(g), (2), r 9, r 31, r 32(1), (2), r 389. **Re Vanbergen (a bankrupt), Ex parte The Trustees of the Property of the Bankrupt v Vanbergen (married woman)** [1955] 1 40, CA.

Secured creditor—

Joint tenancy of property charged to secure loan—Debtor and wife beneficial joint tenants of property—Property charged in favour of bank to secure loan—Bankruptcy of debtor—Realisation of security insufficient to cover loan—Whether bank entitled to prove for whole of balance against estate of debtor. **Re Rushton (a bankrupt), Ex parte National Westminster Bank Ltd v Official Receiver** [1971] 2 937, ChD.

No valuation of security—Loss of right to enforce security. **King v Michael Faraday & Partners Ltd** [1939] 2 478, KBD.

Time for admission or rejection of proofs—

Trustee other than Official Receiver—Proof to be admitted, rejected or further evidence required within 28 days—Further evidence required and obtained—Whether fresh time limit of 28 days from date further evidence obtained—Bankruptcy Rules 1952 (SI 1952 No 2113), r 259. **Re A Debtor (No 819 of 1970), Ex parte Biart v The Trustee of the Property of the Debtor** [1974] 3 502, ChD.

What debts provable—

Fine on conviction—Bankruptcy Act 1914, s 30(3), (8). **Re Pascoe** [1944] 1 593, ChD.

Property available for distribution—

Future earnings—

Future earnings charged by deed of arrangement before bankruptcy. **Re de Marney** [1943] 1 275, ChD.

Gift by bankrupt to children—

Gift within three months before petition—Claim by trustee in bankruptcy to recover property given—Quasi contractual right—Service of writ out of jurisdiction—Whether contract made within jurisdiction—Whether obligation governed by English Law. **Trustee of Rousou (a bankrupt) v Rousou** [1955] 2 169, [1955] 3 486, ChD.

Goods in reputed ownership of bankrupt in his trade or business—

Reputed ownership—Materials stored in builder's yard—Materials on building site—Bankruptcy Act 1914, s 38(c). **Re Fox, Ex parte Oundle and Thrapston Rural District Council v The Trustee** [1948] 1 849, ChD.

Matrimonial home—

Deserted wife—Wife in occupation pursuant to husband's undertakings in maintenance order. **Re A Debtor, Ex parte The Trustee v Solomon** [1966] 3 255, ChD.

Deserted wife—Wife of bankrupt in occupation—Right of trustee to possession. **Bendall v McWhirter** [1952] 1 1307, CA.

Husband and wife joint tenants—Husband declared bankrupt—Home held by husband and wife on trust for sale—Wife entitled to half share in equity—Husband having no other assets to meet claims of creditors—Application by trustee in bankruptcy for order for sale—Husband and wife living in home—Discretion of court whether to order sale—Factors governing exercise of discretion. **Re Turner (a bankrupt)** [1975] 1 5, ChD.

Proceeds of action—

Claim by bankrupt for damage to reputation and property—Settlement of action—Apportionment of agreed damages—Bankruptcy Act 1914, s 38(a). **Re Kavanagh, Ex parte The Bankrupt v Jackson (the trustee)** [1950] 1 39, CA.

Trust for sale—

Order for sale of trust property—Property charged to bank to secure loan to bankrupt—Bankrupt's father conveying house into joint names of himself and bankrupt—Loan used by bankrupt to start business—Failure of business—Trustee applying for order for sale of house—Trustee claiming bank loan deductible from gross proceeds of sale—Whether father's share in proceeds liable for repayment of bank. **Re a Debtor (No 24 of 1971), ex parte Marley (J) v Trustee of the property of the debtor** [1976] 2 1010, ChD.

Powers of court—Order for possession—House held by bankrupt and another on trust for sale—Bankrupt in possession of house and having beneficial interest in proceeds of sale—Application by trustee for order giving effect to trust—Power of court to make such order 'as it thinks fit'—Power to order that possession of house be delivered to trustee in bankruptcy—Law of Property Act 1925, s 30. **Re McCarthy (a bankrupt), Ex parte the trustee of the bankrupt v McCarthy** [1975] 2 857, ChD.

Protected tenancy—

Effect of bankruptcy—

Termination of protected tenancy. *See Rent restriction* (Statutory tenant person who immediately before termination was protected tenant—Bankruptcy of protected tenant).

Public examination—

Adjournment—

From time to time—Examination adjourned generally with liberty to restore—Bankruptcy Act 1914, s 15(3). **Re Von Dembinska, Ex parte The Debtor** [1954] 2 46, CA.

BANKRUPTCY (cont)

Public examination (cont)—

Statement in examination—

Evidence in criminal proceedings. *See* **Criminal evidence** (Statement by accused—Bankruptcy proceedings).

Receiving order—

Discretion to make order—

Moneylender's petition—Tender by debtor of principal, interest at 5 per cent, and costs, but not postponed interest—Discretion of registrar to make receiving order—**Moneylenders Act 1927, s 9(1). Re A Debtor (No 231 of 1936)** [1936] 3 164, CA.

Jurisdiction to make order—

Appeal pending against debt on which petition based. **Re Noble (a bankrupt), Ex parte The Bankrupt v The Official Receiver** [1964] 2 522, CA.

Infant—Jurisdiction to make receiving order against infant. **Re A Debtor (No 564 of 1949)** [1950] 1 308, CA.

Infant—Order against infant—Infant trading with adult—Jurisdiction to make receiving order against infant—**Bankruptcy Act 1914, s 3. Re A Debtor (No 564 of 1949), Ex parte Comrs of Customs and Excise v The Debtor** [1950] 1 308, CA.

Order in respect of person of unsound mind. *See* Person of unsound mind—Jurisdiction to make receiving order, *ante*.

Legal proceedings against debtor following receiving order. *See* Legal proceedings against debtor following receiving order, *ante*.

Prima facie right of petitioning creditor to order—

Special circumstances to justify adjournment of petition. **Re A Debtor (No 452 of 1948), Ex parte The Debtor v M R Le Mee-Power** [1949] 1 652, CA.

Registration at Land Registry—

Re-registration—Discharge of bankrupt—Re-registration 16 years later—**Land Charges Act 1925, s 6(1)(c), (3)—Bankruptcy Rules 1915 (SR & O 1914 No 1824), r 181A. Re A Receiving Order (in bankruptcy)** [1947] 1 843, ChD.

Rescission—

Application for rescission after expiration of time allowed for appeal—Circumstances in which application entertained—**Bankruptcy Act 1914, s 108(1). Re Cohen (a bankrupt), Ex parte The Bankrupt v Inland Revenue Comrs** [1950] 2 36, CA.

Discretion—Arrangement with creditors—Unequal treatment of creditors—Exercise of discretion. **Re A Debtor (No 994 of 1935)** [1936] 1 794, CA.

Jurisdiction of court—Discretion—Principles on which discretion should be exercised—**Bankruptcy Act 1914, s 108(1). Re A Debtor (No 12 of 1970), Ex parte The Official Receiver v The Debtor** [1971] 2 1494, CA.

Record of proceedings—

Private examination—

Inspection of file—Inspection by person not a party to bankruptcy proceedings—Circumstances justifying leave to inspect file including transcript of private examination—Exceptional circumstances—Action for libel by deponent against third party—Application by third party to inspect transcript of deponent's examination—Need to prove deposition has a material and direct bearing on some issue in libel action—Inspection of deposition by court to determine whether it contained anything material—**Bankruptcy Rules 1952 (SI 1952 No 2113), r 15(2). Re Poulson (J G L), a bankrupt, ex parte Granada Television Ltd v Maudling** [1976] 2 1020, ChD.

Stop order—Order that deposition taken in private examination be kept off the file—Immediate publication of information likely to jeopardise overall purpose of bankruptcy proceedings—Whether registrar having power to make 'stop order'—**Bankruptcy Rules 1952 (SI 1952 No 2113), r 15 (as amended by the Bankruptcy (Amendment) Rules 1962 (SI 1962 No 295)). Re Poulson (J G L), a bankrupt, ex parte Granada Television Ltd v Maudling** [1976] 2 1020, ChD.

Registrar—

Jurisdiction. *See* Proof—Rejection—Extension of time for appealing—Whether application *ex parte* or on notice—Jurisdiction of registrar, *ante*.

Re-opening transactions—

Jurisdiction—

Extent of jurisdiction—Receiver's remuneration—Certificate of master obtained—Jurisdiction of court to reconsider accounts. **Re Kay & Lovell** [1941] 2 67, ChD.

Rescission of receiving order. *See* Receiving order—Rescission, *ante*.

Sale of goods—

Bankruptcy of purchaser—

Purchase price provided by auctioneers—Title to goods. *See* **Sale of goods** (Passing of property—Ascertained goods—Purchase price provided by auctioneers—Bankruptcy of purchaser).

Sale of land—

Purchaser committing act of bankruptcy before completion. *See* **Sale of land** (Rescission of contract—Bankruptcy).

Scheme of arrangement—

Approval by court—

Reasonable security for payment of statutory composition—Probability of recovery within a reasonable time—Scheme approved by creditors—Reluctance of court to upset favourable scheme acceptable to creditors—'Reasonable time'—**Bankruptcy Act 1914, s 16(10). Re P F Murray, A Debtor, Ex parte The Debtor v Official Receiver** [1969] 1 441, ChD.

Secured creditor—

Proof. *See* Proof—Secured creditor, *ante*.

Set-off—

Mutual dealings—

Bank—Separate accounts—Company. *See* **Bank** (Account—Separate accounts—Right to combine or set-off—Company).

BANKRUPTCY (cont)

Set-off (cont)—

Mutual dealings (cont)—

Guarantee of creditor's bank overdraft—Deposit of title deeds by guarantor—Bankruptcy of guarantor—Trustee paying off creditor's overdraft—Whether creditor entitled to set off debt due to him from guarantor against amount paid by trustee—Bankruptcy Act 1914, s 31. **Re A Debtor (No 66 of 1955), Ex parte The Debtor v The Trustee of the Property of Waite (a bankrupt)** [1956] 3 225, CA.

Set off of amount of damages recovered from bankrupt for fraud against claim by trustee of rent—Rent accrued before and after bankruptcy—Bankruptcy Act 1914, s 31. **Kitchen's Trustee v Madders** [1949] 2 1079, CA.

Winding-up of insolvent English company. *See* **Company** (Winding-up—Application of bankruptcy rules—Set-off—Mutual dealings).

Solicitor—

Client's account. *See* **Solicitor** (Client's account—Bankruptcy of solicitor).

Stay—

Action—

Action pending against bankrupt at time of adjudication—Whether action automatically stayed by his adjudication—Bankruptcy Act 1914, s 9(1). **Realisations Industrielles et Commerciales SA v Loescher and Partners** [1957] 3 241, QBD.

Minority shareholders' action—Misfeasance alleged against sole director with controlling interest—Defective statement of claim. **Birch v Sullivan** [1958] 1 56, ChD.

Proceedings—

Debtor availing himself of services of liabilities adjustment officer—Registrar's discretion to stay proceedings—Liabilities (War-Time Adjustment) Act 1941, s 3, s 20(3). **Re A Debtor (No 4 of 1942)** [1943] 1 125, ChD.

Stay of proceedings. *See* **Practice** (Stay of proceedings—Bankruptcy).

Stop order. *See* **Record of proceedings**—Private examination—Stop order, *ante*.

Successive bankruptcies—

First bankruptcy in England—

Second bankruptcy in India—Assets available after second bankruptcy—Conflict of laws—Bankruptcy Act 1914, s 21(2), s 39 (as substituted by Bankruptcy Act 1926, s 3). **Re Temple, Ex parte The Official Receiver** [1947] 1 592, ChD.

Surplus assets—

Right of bankrupt to assets remaining after payment in full of creditors—

Creditors—Payment in full of all proving creditors—Other creditors not proving—Right of bankrupt to surplus assets—Charging order in favour of non-proving creditor—Bankruptcy Act 1914, s 69. **Re Ward** [1942] 1 513, ChD.

Surplus available for distribution—

Application—

Priority—Statutory interest on debts proved—Excess interest on moneylender's claims—Claim by trustee of bankrupt's marriage settlement—Bankruptcy Act 1914, ss 30(3), 33(7), (8), 42(2)—Moneylenders Act 1927, s 9(1). **Re A Debtor (No 707 of 1939), Re Baughan** [1947] 1 417, ChD.

Title of trustee. *See* **Trustee in bankruptcy**—Title of trustee, *post*.

Transfer of proceedings—

Transfer to High Court—

Jurisdiction—'Proceedings'—Motion pending in bankruptcy proceedings in county court—Whether there was jurisdiction to transfer to High Court—Bankruptcy Act 1914, s 100(2). **Re Kouyoumdjian (a bankrupt), Ex parte The Trustee of the Property of the Bankrupt v Lord** [1956] 2 286, ChD.

Transfer from county court to High Court to enable petitioning creditor to receive legal aid—Bankruptcy Rules 1952 (SI 1952 No 2113), r 21. **Re Crossley (a debtor)** [1954] 3 296, ChD.

Trustee in bankruptcy—

Business carried on by trustee in bankruptcy—

Guarantee against loss given by defendant—Loss incurred—Action by trustee to recover loss—Whether action maintainable—Public policy—Illegal contract—Consideration—Bankruptcy Act 1914, s 56(1). **Clark v Smith** [1939] 4 59, CA.

Control over trustee by bankrupt—

Extent—Removal of trustee—Bankruptcy Act 1914, ss 80, 105(1). **Re A Debtor (No 400 of 1940), Ex parte The Debtor v Dodwell (the trustee)** [1949] 1 510, ChD.

Duty of trustee—

Duty as officer of the court—Agreement for loan intended to pay particular creditor—Execution of improvements by creditor on land of bankrupt—Land sold at enhanced price by reason of improvements—Claim by creditor to be paid out of purchase money. **Re Gozzett, Ex parte Messenger & Co Ltd v The Trustee** [1936] 1 79, CA.

Duty to act fairly—Duty not to take advantage of third party's mistake—Enrichment of estate at third party's expense—Claim by trustee against third party for recovery of sums paid by bankrupt after receiving order and before adjudication—Third party ignorant of bankruptcy proceedings—Third party supplying goods to bankrupt—Sums paid by bankrupt in part payment for goods supplied—Estate having benefited from goods supplied—Claim by trustee to recover sums paid to third party—Third party not entitled to submit proof of debt and having no effective remedy for recovery of price of goods delivered—Whether trustee should be allowed to recover sums paid. **Clark (a bankrupt), Ex parte the trustee of the property of the bankrupt v Texaco Ltd** [1975] 1 453, ChD.

Payment into account with Bank of England—

Bank account with local bank—Grounds for authorising payments into account with local bank—Probable amount of the cash balance—Any other reason for the advantage of the creditors—Whether fact that cash balance a large one a proper reason for authorising payment into local bank—Whether obtaining of interest for the advantage of creditors a proper reason—Bankruptcy Act 1914, s 89(2), proviso (a). **Re Walker (dec'd)** [1974] 1 551, CA.

BANKRUPTCY (cont)

Trustee in bankruptcy (cont)—

Power to assign lease—

Covenant not to assign without consent—Binding on tenant and 'successors in title'—Whether trustee a 'successor in title' to tenant. *Re Wright (A Bankrupt), Ex parte Landau (A Creditor) v The Trustee* [1949] 2 605, ChD.

Removal—

Right of bankrupt to insist on removal. *Re A Debtor (No 400 of 1940), Ex parte The Debtor v Dodwell (the trustee)* [1949] 1 510, ChD.

Title of trustee—

Payments to debtor's solicitor to prosecute appeal against receiving order. *Re Pollock* [1936] 3 157, ChD.Relation back—Protected transactions—Bona fide transaction without notice—Discharge of overdraft at bank after presentation of petition but before receiving order. *Re Seymour* [1937] 3 499, ChD.Relation back—Protected transactions—Banker's lien—Cheque—Lien of bank on cheque—Act of bankruptcy prior to cheque being presented to bank for collection—Receiving order made after presentation of cheque—Two accounts of debtor with bank, both in debit—Set-off by bank of money collected on cheque against combined overdrafts—Bankruptcy Act 1914, s 37(1), s 45(d). *Re Keever (a bankrupt), Ex parte The Trustee of the Property of the Bankrupt v Midland Bank Ltd* [1966] 3 631, ChD.

Vesting of property in trustee—

After acquired property. *See* After acquired property—Vesting in trustee, *ante*.Tenancy—Premises subject to Rent Acts—Rent paid in excess of recoverable rent—Bankruptcy of landlord—Right of tenant to deduct amount of rent overpaid from rent payable to trustee—Liability of trustee—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 14(1). *Hole v Cuzen* [1953] 1 87, CA.

Undischarged bankrupt—

Rights of action—

Minority shareholders' action—Whether bankrupt registered shareholder may maintain action. *Birch v Sullivan* [1958] 1 56, ChD.Undischarged bankrupt—Undischarged bankrupt obtaining credit. *See* Offences—Undischarged bankrupt obtaining credit, *ante*.**BANKS**

Watercourse—

Right to deposit soil on banks. *See* Land drainage (Drainage board—Right to deposit spoil on banks of watercourse—Banks).**BANNS**Publication. *See* Marriage (Banns).**BAPTISM**

Refusal to baptise a child—

Whether offence triable by consistory court. *See* Ecclesiastical law (Consistory court—Jurisdiction—Offence charged not involving matter of doctrine, ritual or ceremonial—Charge of serious neglect of duty—Refusal to baptise child).**BARBADOS**

Settlement—

Power of revocation—

Consent of trustees necessary—Whether donee of power, being settlor, was competent to dispose of property—Estate and Succession Duties Act 1941 (Laws of Barbados, No 16 of 1941), s 3 (a). *Comr of Estate and Succession Duties v Bowring* [1960] 3 188, PC.**BARGAINING POWER**Inequality of bargaining power. *See* Equity (Undue influence—Inequality of bargaining power).**BARRISTER**

Books—

Expenditure on acquisition—

Capital allowance. *See* Income tax (Capital allowances—Plant—Books—Books purchased by barrister).Generally. *See* Counsel.

Travelling expenses—

Deduction for income tax purposes. *See* Income tax (Deduction in computing profits—Travel between home and place of work—Barrister travelling between chambers and home when he did part of his professional work).**BASEMENT BAKEHOUSE**Certificate of suitability. *See* Factory (Basement bakehouse—Certificate of suitability).**BASTARDY**Affiliation proceedings. *See* Affiliation.

Application for bastardy order—

Recovery of expenses. *See* National assistance (Recovery of expenses—Application for bastardy order).Legitimation. *See* Legitimation.**BATHING**

Right to use foreshore—

Whether a recognised public right. *See* Foreshore (Rights over foreshore—Acquiring sea-borne coal—Bathing).**BEES**Property in bees. *See* Animal (Property in animals—Bees).

BEHAVIOUR

Divorce—

Behaviour of respondent. *See* **Divorce** (Behaviour of respondent).

BENCH WARRANT

Quarter sessions—

Jurisdiction to issue bench warrant. *See* **Quarter sessions** (Committal of offender for sentence—Jurisdiction of quarter sessions—Issue of bench warrant).

BENEFICE

Presentation to benefice. *See* **Ecclesiastical law** (Presentation to benefice).

Union of benefices. *See* **Ecclesiastical law** (Union of benefices).

BENEFICIAL INTERESTS

Settlement. *See* **Settlement** (Beneficial interests).

BENEFICIARY

Absolutely entitled—

Duty of trustee to distribute. *See* **Trust and trustee** (Duty of trustee—Beneficiary absolutely entitled).

Class of beneficiaries—

Discretionary trust. *See* **Trust and trustee** (Discretionary trust—Class of beneficiaries unascertainable).

Will—

Appointment of beneficiaries. *See* **Will** (Gift—Appointment of beneficiaries).

Forfeiture clause. *See* **Will** (Forfeiture clause).

Pre-deceasing testator. *See* **Will** (Lapse—Beneficiary pre-deceasing testator).

Will. *See* **Will** (Beneficiary).

BENEFIT

Disablement benefit—

Industrial injury. *See* **Industrial injury** (Disablement benefit).

Generally. *See* **National insurance**.

Supplementary benefit. *See* **Supplementary benefit**.

BENEFIT TO COMMUNITY

Charitable object. *See* **Charity** (Benefit to community).

BENEFITS IN KIND

Employee—

Income tax. *See* **Income tax** (Emoluments from office on employment—Benefits in kind).

BENEVOLENT ASSOCIATION

Objects clause—

Alteration. *See* **Company** (Objects clause—Alteration—Benevolent association).

BEQUEST

Conditional bequest—

Condition. *See* **Will** (Condition—Conditional bequest).

Cumulative or repetitive requests—

Codicil. *See* **Will** (Codicil—Cumulative or repetitive requests).

Payment. *See* **Administration of estates** (Legacy).

Will. *See* **Will** (Gift).

BERTH

Availability. *See* **Shipping** (Availability of berth).

Nomination. *See* **Shipping** (Nomination of berth).

Time lost waiting for berth—

Demurrage. *See* **Shipping** (Demurrage—Time lost waiting for berth).

BEST EVIDENCE

Criminal proceedings. *See* **Criminal evidence** (Best evidence).

BETTING

Debt secured by deed of charge—

Illegal consideration. *See* **Mortgage** (Illegal consideration).

Generally. *See* **Gaming** (Betting).

Winnings—

Income tax—

Incident of profession. *See* **Income tax** (Profits—Profession or vocation—Profits arising from profession—Winnings from bets).

BIAS

Magistrates—

Generally. *See* **Magistrates** (Bias).

Licensing justices. *See* **Licensing** (Justices—Disqualification—Bias).

Rent assessment committee. *See* **Rent restriction** (Fair rent—Rent assessment committee—Bias).

Tribunal—

Bias of tribunal inquiring into dismissal of teacher. *See* **Tribunal** (Membership—Bias).

BIBLE

Copyright—

Infringement—

Defence—Crown copyright. *See* **Copyright** (Infringement—Defence—Crown copyright).

BICYCLE

Auxiliary engine fitted. *See* **Road traffic** (Motor vehicle—Dual purpose vehicle—Bicycle with auxiliary engine fitted).

BID

Auction. *See* **Auction** (Bid).

BIGAMY

Bigamous marriage—
Nullity. *See* **Nullity** (Bigamous marriage).
Offence. *See* **Criminal law** (Bigamy).

BILL OF COSTS

Taxation. *See* **Costs** (Taxation—Bill of costs).

BILL OF EXCHANGE

Acceptance—

Acceptance under mistake of fact—

Liability of acceptor—Acceptance procured by fraud of third party—Bill incomplete when accepted—Bills of Exchange Act 1882, s 29(1). **Ayres v Moore** [1939] 4 351, KBD.

Local acceptance—

Bills expressed to be payable in Dutch currency at named bank in Amsterdam—Bills accepted in London—Whether local acceptance—Absence of statement that bills were not payable elsewhere than at named place—Bills of Exchange Act 1882, s 19(2)(c). **Bank Polski v K J Mulder & Co** [1942] 1 396, CA.

Cheque—

Bank's position. *See* **Bank** (Cheque).

Consideration—

Auctioneer—Sale of property by auction—Deposit—Payment of deposit by purchaser—Payment by cheque drawn by purchaser in favour of auctioneer—Auctioneer waiving requirement for payment in cash—Auctioneer acting as agent for vendor—Cheque subsequently stopped by purchaser—Vendor accepting purchaser's repudiation and rescinding contract of sale—Right of auctioneer to sue purchaser on cheque—Consideration for cheque. **Pollway Ltd v Abdullah** [1974] 2 381, CA.

Crossed cheque—

Title to cheque—Payee taking cheque from person who forged it—Crossed 'not negotiable'—Payee having no better title than forger—Bills of Exchange Act 1882, s 81. **Wilson & Meeson (a firm) v Pickering** [1946] 1 394, CA.

Holder for value—

Collecting bank—Whether collecting bank can also be holder for value. **Barclays Bank Ltd v Astley Industrial Trust Ltd** [1970] 1 719, QBD.

Value given for cheque—Consideration not passing directly between holder and drawer—Whether drawee of cheque deemed holder for value as against drawer—Whether drawer of cheque became a party to it prior to the time when value was given—Bills of Exchange Act 1882, s 27(2). **Diamond v Graham** [1968] 2 909, CA.

Holder in due course—

Collecting bank—Cheques delivered by customer for collection for his own account—Cheques not indorsed—Customer by arrangement allowed to draw against uncleared cheques—Cheques presented by collecting bank but dishonoured—Collecting bank had allowed customer to draw against the cheques—Whether collecting bank holder in due course—Bills of Exchange Act 1882, s 2, s 8(3)—Cheques Act 1957, s 2. **Midland Bank Ltd v R V Harris Ltd** [1963] 2 685, QBD.

Collecting bank—Cheque, unendorsed, paid in by payee for credit of third party, a customer of bank—Cheque dishonoured—Customer's account overdrawn—Alleged implied agreement that customer might draw against uncleared effects—Whether cheque delivered for collection—Whether bank gave value for cheque—Bills of Exchange Act 1882, s 2—Cheques Act 1957, s 2. **Westminster Bank Ltd v Zang** [1966] 1 114, HL.

Collecting bank—Customer's accounts overdrawn—Receiving order made against customer on the day following that of presentation of the cheque for collection—Protection of bank against trustee to the extent of the overdrafts—Bills of Exchange Act 1882, s 97(1)—Bankruptcy Act 1914 s 45(d). **Re Keever (a bankrupt), Ex parte The Trustee of the Property of the Bankrupt v Midland Bank Ltd** [1966] 3 631, ChD.

Company—

Name—

Misdescription—Effect. *See* **Company** (Name—Use of name—Bill of exchange—Incorrect description of drawee company by drawer).

Consideration—

'Antecedent debt or liability'—

Forbearance or promise to forbear on part of recipient—Cheque given to pay antecedent debt of third party—No forbearance or promise to forbear by creditor—Bills of Exchange Act 1882, s 27(1)(a),(b). **Oliver v Davis** [1949] 2 353, CA.

Failure of consideration—

Partial failure—Remote party—Right of set-off. **Oscar Harris, Son & Co v Vallarman & Co** [1940] 1 185, CA.

Promissory note. *See* **Promissory note**—Consideration, *post*.

Sufficiency of consideration—

Payment of cheque into bank—Drawing of cheques on account at request of drawer's agent. **Cole v Milsom** [1951] 1 311, KBD.

BILL OF EXCHANGE (cont)

Del credere agent. *See* **Agent** (Del credere agent—Buyer's acceptance of bill of exchange for price of goods).

Dishonour—

Notice. *See* Notice of dishonour, *post*.

Foreign currency—

Judgment for sum due on dishonoured bill—

Conversion date. *See* **Judgment** (Payment of sum of money—Foreign currency—Conversion date—Bill of exchange).

Formal requirements—

Certainty as to drawee—

No drawee specified—Addition with consent of drawer—Material alteration—Whether good bill of exchange—Whether to be treated as valid—Treated as promissory note—Bills of Exchange Act 1882, ss 20(1) 64(1). **Haseldine v Winstanley** [1936] 1 137, KBD.

Direction to pay money to or to order of specified person or bearer—

Document in form of cheque—'Pay cash or order'—Whether document bill of exchange—Whether document intended to enable payment to be obtained from a banker—Bills of Exchange Act 1882, ss 3(1), 73, 82—Cheques Act 1957, s 4(2)(b). **Orbit Mining & Trading Co Ltd v Westminster Bank Ltd** [1962] 3 565, CA.

Document in form of cheque—'Pay cash or order'—Whether payable 'to or to order of specified person or to bearer'—Bills of Exchange Act 1882, s 3(1). **Cole v Milsome** [1951] 1 311, KBD.

Holder for value—

Cheque. *See* **Cheque**—Holder for value, *ante*.

Meaning of term—

Term not distinguishable from holder who has given or taken value. **Barclays Bank Ltd v Astley Industrial Trust Ltd** [1970] 1 719, QBD.

Holder in due course—

Cheque. *See* **Cheque**—Holder in due course, *ante*.

Resident outside scheduled territories—

Claim for recovery of amount due—Right to judgment for amount due even though Treasury permission not obtained. *See* **Currency control** (Bill of exchange—Holder in due course—Resident outside scheduled territories—No Treasury permission obtained—Claim for recovery of amount due).

Illegality—

Common illegal intention of earlier parties to bill—

Holder in due course unaffected. **Bank für Gemeinwirtschaft v City of London Garages Ltd** [1971] 1 541, CA.

Indorsement—

Indorsement by way of guarantee—

Subsequent indorsement by drawers below those of guarantors—Whether complete bill—Liability to holders in due course—Bills of Exchange Act 1882, s 20. **Lombard Banking Ltd v Central Garage and Engineering Co Ltd** [1962] 2 949, QBD.

Indorsement on behalf of company—

'Pay to our order'—Acceptance by company—Indorsement by managing director—Whether signature in personal or representative capacity—Presentment for payment at a particular place—Bills of Exchange Act 1882, ss 26, 87. **Britannia Electric Lamp Works Ltd v D Mandler & Co Ltd, and Mandler** [1939] 2 469, KBD

Promissory note—

Payable to 'F and F N Co'—Indorsement, by partner of firm, 'F and F N'—Incomplete and irregular on its face—Plaintiffs suing as holders in due course—Entitled to succeed as holders for value—Bills of Exchange Act 1882, s 29(1). **Arab Bank Ltd v Ross** [1952] 1 709, CA.

Restrictive indorsement—

Subsequent indorsement by drawers restricting negotiability—Whether bill complete and regular on its face—Liability of earlier indorser—Intention of parties relevant factor—Extrinsic evidence to explain restrictive indorsement—Bills of Exchange Act 1882, s 20, s 29(1), s 56. **Yeoman Credit Ltd v Gregory** [1963] 1 245, QBD.

Negotiability—

Restriction on negotiability—

Bill payable to order of payee only—Crossed 'not negotiable'—Effect—Bills of Exchange Act 1882, ss 8(1), 81. **Hibernian Bank Ltd v Gysin & Hanson** [1939] 1 166, CA.

Notice of dishonour—

Time—

Time measured from date of dishonour by bank properly designated for payment—Whether notice of dishonour written on the day when a bill is dishonoured is good without proof that the notice was written and sent after the time when the bill was dishonoured on that day—Bills of Exchange Act 1882, s 49(12)(a), (13). **Yeoman Credit Ltd v Gregory** [1963] 1 245, QBD.

Waiver—Notice sent by drawer's when dishonoured bills returned by acceptor's paying agents—Notice received by one indorser on behalf of himself and other indorser—Whether notice of dishonour duly given—Whether notice duly addressed—Bills of Exchange Act 1882, s 49, r 12, r 13. **Lombard Banking Ltd v Central Garage and Engineering Co Ltd** [1962] 2 949, QBD.

Validity—

Premature notice—Notice of dishonour given before bill dishonoured—'Given'—Notice sent by post—Notice delivered in the ordinary course of post—Notice posted before dishonour and received after dishonour—Whether notice 'given' when posted or when received—Bills of Exchange Act 1882, s 49. **Eaglehill Ltd v J Needham Builders Ltd** [1972] 3 895, HL.

BILL OF EXCHANGE (cont)

Notice of dishonour (cont)—

Validity (cont)—

Premature notice—Notice of dishonour given before bill dishonoured—Evidence—Presumption as to sequence of events—Bill dishonoured and notice of dishonour given on same day—No evidence whether notice of dishonour given before or after bill dishonoured—Presumption that dishonour and notice of dishonour occurring in proper order. **Eaglehill Ltd v J Needham Builders Ltd** [1972] 3 895, HL.

Presentation for payment—

Dispensing with presentation for payment—

Illegality—Cheque payable in enemy-occupied country—Presentation for payment dispensed with—Right to sue on cheque—Bills of Exchange Act 1882, ss 45, 46(2)(a),(c), 55, 72(3). **Cornelius v Banque Franco-Serbe** [1941] 2 728, KBD.

Law governing presentation—

Bill payable in Holland—Accepted generally in England—Bills of Exchange Act 1882, s 72(2), (3). **Bank Polski v K J Mulder & Co** [1942] 1 396, CA.

Profits—

Income tax—

Computation of profits. *See* **Income tax** (Computation of profits—Accountancy principles—Bills of exchange).

Promissory note—

Consideration—

Failure of consideration—Promissory notes payable over ten months—Failure to pay first promissory note when due—Suspension of work under contract—Claim for payment of first two promissory notes—No defence in action on first promissory note. **Fielding and Platt Ltd v Iajjar** [1969] 2 150, CA.

Inadequacy of consideration—Issue for court—Burden of proof. **Adib el Hinnawi v Yacoub Fahmi Abu El Huda El Faruqi** [1936] 1 638, PC.

Form—

Deposit receipt stating terms of repayment—Whether promissory note. **Nawab Major Sir Mohammad Akbar Khan v Attar Singh** [1936] 2 545, PC.

Irrevocable undertaking to pay contained in letter—Whether promissory note—Bills of Exchange Act 1882 s 83(1). **Wirth v Weigel Leygonie & Co Ltd** [1939] 3 712, KBD.

Promise to pay at a fixed or determinable future time—

Document stating payment to be made 'on or before' Dec 31 1956—Payment on a contingency—Document not promissory note—Bills of Exchange Act 1882, s 11, s 83(1). **Williamson v Rider** [1962] 2 268, CA.

Summary judgment—

Leave to defend—

Action by holder in due course. *See* **Practice** (Summary judgment—Leave to defend—Bill of exchange—Action on bill of exchange by holder in due course).

BILL OF INDICTMENT*See* **Criminal law** (Bill of indictment).**BILL OF LADING**C and f contract. *See* **Sale of goods** (C and f contract).C i f contract. *See* **Sale of goods** (C i f contract).

Credit—

Sale of goods—

Presentation of bills of lading. *See* **Sale of goods** (Payment—Confirmed credit—Credit available on presentation inter alia of bills of lading).

Generally. *See* **Shipping** (Bill of lading).

Goods sold on c and f terms—

Freight to be payable at destination—

Whether freight at risk of sellers or buyers. *See* **Sale of goods** (C and f contract—Cargo sold to cargo owners by charterers of ship).

Passing of property—

Reservation of right of disposal. *See* **Sale of goods** (Passing of property—Reservation of right of disposal—C i f contract).

BILL OF SALE

Absolute bill of sale—

Apparent possession—

Chattel in common establishment—Contents of house given to housekeeper in consideration of her agreeing to look after children permanently—Transaction evidenced by unregistered bill of sale—Whether goods in possession or apparent possession of maker of bill—Whether judgment creditor of maker of bill entitled to levy execution on contents of house—Bills of Sale Act 1878 s 4, s 8. **Koppel v Koppel (Wide claimant)** [1966] 2 187, CA.

Receipts on sale of furniture—Sale to housekeeper residing on premises—Receipts unregistered—Whether goods in possession or apparent possession of grantee—Bills of Sale Act 1878, ss 4, 8. **Youngs v Youngs (Baker claimant)** [1940] 1 349, CA.

Conditional bill of sale—

Assurance of personal chattels given by way of security for payment of money—

Purported sale of car followed by hire-purchase agreement—Bills of Sale Act (1878) Amendment Act 1882, s 3. **Polsky v S & A Services Ltd** [1951] 1 1062, CA.

BILLETING

Billeting notice—

Date from which notice operative—

Billeting notice served on householder—Householder lodging complaint against notice—Householder charged with failure to comply with notice—Complaint not heard at time of hearing before justices—Whether billeting notice operative before complaint determined by tribunal—Defence (General) Regulations 1939, reg 22(1),(8),(9). *Mee v Toone* [1940] 2 155, KBD.

Service—

Service by police constable in presence of billeting officer—Whether notice properly served—Defence (General) Regulations 1939, reg 22. *Humphreys v Tyler* [1942] 1 585, KBD.

Offence—

Failure to care for child evacuee—

Girl aged 14 billeted with accused—Failure to care for girl—Whether 'child' within the regulations—Defence (General) Regulations 1939, reg 22. *Rodger v Varey* [1942] 1 567, KBD.

BILLS OF QUANTITIES

See **Building contract** (Bills of quantities).

BINDING-OVER

Magistrates. *See* **Magistrates** (Binding-over).

BINGO

Lawfulness. *See* **Gaming** (Lawful and unlawful gaming—Bingo).

Licensed premises—

Gaming. *See* **Licensing** (Gaming on licensed premises—Bingo).

See **Gambling** (Lawful and unlawful gaming—Bingo).

BIRD

Protection. *See* **Animal** (Protection—Bird).

BIRTH

Certificate—

Affidavit supporting. *See* **Practice** (Chancery Division—Affidavit—Affidavit supporting—Certificate of birth, marriage or death).

Wardship proceedings—

Proof of date. *See* **Ward of court** (Application to make minor ward of court—Proof of date of birth of the minor).

BISHOP

Gift to bishop—

Charitable purpose. *See* **Charity** (Religion—Bishop).

BLACKMAIL

See **Criminal law** (Demanding money with menaces).

BLIND

Attestation of will by blind man. *See* **Will** (Attestation—Witness—Blind man).

Duty of care to blind—

Blind persons on highway. *See* **Negligence** (Duty to take care—Persons to whom duty owed—Blind persons on highway).

BLOOD

Specimen—

Driving while unfit through drink or drugs. *See* **Road traffic** (Driving while unfit to drive through drink or drugs—Specimen of blood or urine).

Specimen for laboratory test—

Determination of driver's blood—

alcohol proportion *See* **Road traffic** (Specimen for laboratory test to determine driver's blood-alcohol proportion—Blood).

BLOOD TEST

Nullity suit—

Power of court to order blood tests. *See* **Nullity** (Pregnancy at date of marriage by person other than petitioner—Application for order for blood tests).

Paternity—

Test to determine paternity. *See* **Paternity** (Blood test).

BLOODSTOCK

Will—

Specific bequests. *See* **Will** (Gift—Specific bequests—All my bloodstock).

BOARD

Board of Trade—

Company—

Investigation of company's affairs. *See* **Company** (Investigation by Board of Trade).

Petition to wind-up company. *See* **Company** (Compulsory winding-up—Petition by Board of Trade).

Industrial training. *See* **Industrial training** (Training board).

BOARD AND LODGING

Loss—

Domestic servant—

Damages. *See* **Damages** (Loss made good by third party—Board and lodging—Domestic servant receiving board and lodging as part of wages—Claim for loss of board and lodging).

BOARD OF TRADE

Company—

Investigation of affairs. *See* **Company** (Investigation by Board of Trade).

Petition to wind up. *See* **Company** (Compulsory winding-up—Petition by Board of Trade).

Trading with the enemy. *See* **Trading with the enemy**.

BODILY HARM

Assault occasioning bodily harm. *See* **Criminal law** (Assault—Occasioning bodily harm).

Grievous bodily harm. *See* **Criminal law** (Grievous bodily harm).

BODY

Coroner's power to detain. *See* **Coroner** (Inquest—Custody of body).

BOMB HOAX

Public nuisance. *See* **Criminal law** (Public nuisance—Elements of offence—Danger or risk to comfort of public).

BONA VACANTIA

Donations made to trust fund—

Failure of objects of fund—

Donors unascertainable. *See* **Trust and trustee** (Resulting trust—Donations made to fund—Failure of objects of fund).

Interest on intestacy—

Effect of disclaimer. *See* **Intestacy** (Interest on intestacy—Disclaimer—Effect—Bona vacantia).

Property of dissolved company. *See* **Company** (Winding-up—Dissolution—Bona vacantia).

BOND

Administration bond. *See* **Administration of estates** (Administration bond).

Insurance—

Guarantee of payment of bond. *See* **Insurance** (Guarantee insurance—Bonds—Guarantee of payment of bonds).

Redemption—

Rate of exchange. *See* **Money** (Currency—Rate of exchange—Redemption of bonds).

BONUS

Income tax—

Bonus paid to employee. *See* **Income tax** (Emoluments from office or employment—Personal gifts distinguished from emoluments—Bonuses).

BOOK

Expenditure on acquisition of books—

Barrister—

Capital allowances. *See* **Income tax** (Capital allowances—Plant—Books).

Obscenity. *See* **Criminal law** (Obscene publications).

BOOKMAKER

Breach of statutory duty—

Civil action. *See* **Statutory duty** (Breach of duty imposed under sanction of penalty—Competence of civil action at suit of person aggrieved—Bookmaker).

Business—

Receiving or negotiating bets. *See* **Gaming** (Betting—Bookmaker—Business of receiving or negotiating bets).

Licensed track—

Charges. *See* **Gaming** (Betting—Licensed track—Charges to bookmakers).

BORROWING

Foreign currency—

Exchange control. *See* **Currency control** (Exchange control—Borrowing or lending foreign money).

Treasury control. *See* **Money** (Borrowing—Treasury control).

BORSTAL TRAINING

Appeal. *See* **Sentence** (Appeal—Borstal training).

Committal for sentence. *See* **Magistrates** (Committal for sentence—Committal with a view to a borstal sentence).

Committal to Crown Court. *See* **Crown Court** (Committal of offender to Crown Court for sentence—Borstal training).

Committal to quarter sessions for sentence. *See* **Quarter sessions** (Committal of offender for sentence—Borstal training).

Generally. *See* **Sentence** (Borstal training).

BOUNDARY

Conveyance—

Conveyance of dwelling-house—

Footings and eaves extending beyond area depicted by plan—Parcels referring to plan—Whether footings conveyed. *Truckell v Stock* [1957] 1 74, CA.

BOUNDARY (cont)

Conveyance (cont)—

Conveyance of plot of land—

Parcels vague—Plan for identification only—Surrounding circumstances—Boundary marked out by posts on land and agreed to by parties—Boundary marked out having kink including additional piece of land—Plan showing boundary as straight line—Whether court may look at and accept boundary agreed to by parties. *Willson v Greene* [1971] 1 109, ChD.

Seashore. *See* Seashore—Conveyance of land, *post*.

Description of registered land. *See* Land registration (Description of registered land—Boundary).

Hedge—

Evidence of boundary between adjoining properties—

Ordnance survey map—Line of boundary passing through centre of hedge—Implication. *Davey v Harrow Corpn* [1957] 2 305, CA.

Presumption—Title deeds showing different boundary—Whether evidence of deeds prevails over presumption. *Fisher v Winch* [1939] 2 144, CA.

Presumption of ownership—

Close adjoining waste land. *White v Taylor (No 2)* [1968] 1 1015, ChD.

Repair—

Obligation to repair—Evidence necessary to establish prescriptive obligation. *Jones v Price* [1965] 2 625, CA.

Highway. *See* Highway (Boundary of highway).

Local authority. *See* Local government (Alteration of area).

Party wall—

Damage to wall—

Recovery—Law of Property Act 1925, Sch I, Pt V. *Apostol v Simons* [1936] 1 207, CA.

Difference between building owner and adjoining owner—

Arbitration—Award—Appeal against award—Time for appeal. *See* Arbitration (Award—Delivery of award—Date of delivery).

Right of support and user—

Extent of right—Law of Property Act 1925, s 38(1). *Upjohn v Seymour Estates Ltd* [1938] 1 614, KBD.

Infringement of right—Appellants entitled to half of wall and to use of entire wall for support—Wall rebuilt as an arcade by respondents—Whether appellants' rights infringed—London Building Act 1930, s 117. *Burlington Property Co Ltd v Odeon Cinemas Ltd* [1938] 3 469, CA.

Seashore—

Conveyance of land—

Natural feature or right line boundary—Sea beach—Recession of sea—Land bounded on west 'by Sea Beach'—Meaning of sea beach—Effect of recession of sea—Boundaries described in conveyance 'agreeably to the Plan endorsed hereon'—Western boundary shown as straight line on plan—Subsequent recession of sea and formation of strip of alluvium to west of boundary delineated on plan—Evidence that formation of alluvium gradual and imperceptible—Whether western boundary line of medium high tide or fixed line shown on plan—Whether alluvium forming part of land conveyed. *Government of the State of Penang v Beng Hong Oon* [1971] 3 1163, PC.

BOXING

Slander of title. *See* Slander of title (Professional description—Boxing title).

BRAIN DAMAGE

Damages. *See* Damages (Personal injury—Brain damage).

BRAKES

Heavy motor car. *See* Road traffic (Heavy motor car—Braking system).

Motor vehicle—

Efficient braking system. *See* Road traffic (Motor vehicle—Efficient braking system).

BRANCH BANK

Position vis-à-vis head office. *See* Bank (Branch bank—Position vis-à-vis head office).

BREACH OF CONFIDENCE

See Equity (Breach of confidence).

BREACH OF CONTRACT

Generally. *See* Contract (Breach).

Sale of goods. *See* Sale of goods (Breach of contract).

Sale of land. *See* Sale of land (Breach of contract).

BREACH OF COVENANT

Ground of opposition to new tenancy. *See* Landlord and tenant (Opposition to grant of new tenancy of business premises—Breach of covenant).

Land—

Right of entry on breach—

Interest in land. *See* Land (Estates or interest capable of subsisting at law—Rights of entry exercisable over or in respect of a legal term of years absolute—Right of entry on breach of covenant).

Land charge. *See* Land charge (Equitable easement—Right or privilege over or affecting land being an equitable interest—Right of re-entry on breach of covenant).

Lease—

Alterations. *See* Landlord and tenant (Covenant—Alterations—Breach of covenant against alterations).

Forfeiture. *See* Landlord and tenant (Forfeiture of lease—Breach of covenant).

Repair. *See* Landlord and tenant (Breach of covenant to repair).

BREACH OF COVENANT (cont)

Lease (cont)—

Underlessee—

Forfeiture of lease—Relief. *See* **Landlord and tenant** (Relief against forfeiture—
Underlessee—Breach of covenant other than for payment of rent).

BREACH OF PROMISEMarriage. *See* **Marriage** (Breach of promise).**BREACH OF STATUTORY DUTY**Indemnity. *See* **Indemnity** (Breach of statutory duty).

Joint tortfeasors. *See* **Tort** (Contribution between joint tortfeasors—Occupiers of public dry dock—
Breaches of statutory duty).

Safe system of working. *See* **Safe system of working** (Reasonable care not to expose employee to
unnecessary risk—Scalding water from shower—Breach of statutory duty).

See **Statutory duty** (Breach).See **Statutory duty** (Breach of duty imposed under sanction of penalty).**BREACH OF THE PEACE**

Insulting behaviour. *See* **Criminal law** (Insulting behaviour—Behaviour whereby a breach of the
peace might be occasioned).

Picketing. *See* **Trade dispute** (Picketing—Breach of peace anticipated).Public order. *See* **Public order**.**BREACH OF TRUST**See **Trust and trustee**.**BREAD**Sale. *See* **Weights and measures**.

Shop—

Hours of closing. *See* **Shop** (Hours of closing—Exemption—Sale of newly cooked provisions for
consumption off the premises).

BREATH TESTDriving with blood-alcohol proportion above prescribed limit. *See* **Road traffic** (Breath test).**BREATHALYSER**Breath test on motorist. *See* **Road traffic** (Breath test—Device).**BRETTON WOODS AGREEMENTS**

Currency control. *See* **Currency control** (Exchange control—Foreign exchange control—Bretton
Woods Agreements).

BRIBEAgent. *See* **Agent** (Secret commission—Bribe).

Corruption—

Acceptance of bribe. *See* **Criminal law** (Corruption—Ingredients of offence—Acceptance of
bribe).

Member of Parliament—

Offer of bribe to Member of Parliament—

Ceylon. *See* **Ceylon** (Parliament—Member of House of Representatives—Bribery—Offer of a
bribe to a member in his 'capacity' as a member of Parliament).

Receipt by Crown servant—

Right of Crown to bribe. *See* **Crown** (Crown servant—Receipt of bribes by servant—Right of
Crown to bribes).

Witness—

Conspiracy to bribe witness. *See* **Criminal law** (Conspiracy—Obstruction of justice—Bribery of
witness).

BRIDGE

Accommodation. *See* **Railway** (Accommodation works—Duty of railway authority to maintain
works—Persons to whom duty owed).

Maintenance—

Covenant to maintain—

Covenant by purchaser of land to erect and maintain bridge—Bridge erected to avoid
severance of rest of vendor's land from highway—Vendors' right to carry cables and mains
over bridge. **Metropolitan Water Board v Watkins** [1937] 1 489, ChD.

Repair—

Bridge carrying road over railway. *See* **Highway** (Repair—Bridge carrying road over railway).

Tolls. *See* **Tolls** (Franchise tolls—Bridge).**BRIDLEWAY**

Road used as public path—

Classification—

Special review—Presumption as to right of bridleway. *See* **Highway** (Classification—
Definitive map—Road used as public path—Reclassification—Special review—Presumption
that public have right of way on horseback over highway classified as road used as public
path).

BRIEF

Dock brief—

Duty of counsel. *See* **Counsel** (Duty—Dock brief).**BRITISH FILM**See **Cinema** (Film—British film).

BRITISH GUIANA

See Guyana.

BRITISH LEGION CLUB

Property of club. *See* Club (Members' club—Property of club—British Legion club).

BRITISH SCHOOL OF EGYPTIAN ARCHAEOLOGY

Charitable purpose. *See* Charity (Education—Archaeology—British School of Egyptian Archaeology).

BRITISH TRANSPORT COMMISSION

Charges scheme—

Jurisdiction of Transport Tribunal—

New scheme as distinct from alteration of existing scheme—Body of new scheme similar to that of existing scheme, but alteration of schedules by increasing charges—Application for confirmation of new scheme within twelve months of coming into force of existing scheme—Jurisdiction to entertain application—Transport Act 1947, s 79(1), proviso (i). **British Transport Commission v London County Council** [1953] 1 801, CA.

Public transport. *See* Road traffic (Public transport—British Transport Commission).

Transferred undertaking—

Compensation to employee—

Diminution of emoluments—'Expectation under customary practice to payment of compensation in event of discharge'—Transferred Undertaking (Compensation to Employees) Regulations 1950 (S I 1950 No 1083), Sch II, para 8(1)(i). **R v Birmingham Compensation Appeal Tribunal of Ministry of Labour and National Service, Ex parte Road Haulage Executive** [1952] 2 100, QBD.

Discharged employee—'Right to payment of compensation'—Whether including right to damages for wrongful dismissal—Transferred Undertakings (Compensation to Employees) Regulations 1950, (S I 1950 No 1083), Sch II, para 4(1)(i). **R v Westminster Compensation Appeal Tribunal, Ex parte Road Haulage Executive** [1953] 1 687, CA.

Compensation to owner of undertaking—

One-man business conducted by owner personally—Calculation of average net annual profit—Transport Act 1947, s 47(3), Sch IX, paras 1, 2(1). **Road Haulage Executive v Elrick (Trading as Elrick and Hutcheon)** [1953] 1 736, HL.

BROADCASTING

Corporation—

Income tax—

Exemption. *See* Income tax (Exemption—Crown—Public corporation—Broadcasting).

Expenses. *See* Income tax (Deduction in computing profits—Expenses wholly and exclusively laid out for purposes of trade—Broadcasting corporation).

Defamation—

Qualified privilege. *See* Libel and slander (Qualified privilege—Broadcast).

Television—

Authority—

Statutory duty—Content of programmes—Independent Broadcasting Authority—Duty of authority to satisfy themselves so far as possible that programmes include nothing offending good taste or decency or offensive to public feeling—Authority not required to see every filmed programme before broadcast—Decision of authority that programme suitable for broadcasting in general conclusive—Circumstances in which authority themselves should see programme before making decision—Circumstances in which decision of authority may be questioned in courts—Authority's decision unreasonable or based on a misdirection as to statutory requirements—Television Act 1964, s 3(1)(a). **Attorney-General (on the relation of McWhirter) v Independent Broadcasting Authority** [1973] 1 689, CA.

Independent television company—

Film—Production in court as evidence—Jurisdiction of court—Jurisdiction to order television company to produce and exhibit film—Untransmitted film—County court—Witness summons—Whether court having jurisdiction to require company to produce and exhibit untransmitted film. **Senior v Holdsworth** [1975] 2 1009, CA.

Territorial waters—

Jurisdiction of magistrates. *See* Magistrates (Jurisdiction—Implied jurisdiction from enactment creating offence—Territorial waters).

Wireless—

Licence. *See* Telegraphs and telephones (Wireless—Licence).

BROKER

Insurance. *See* Insurance (Broker).

BROTHEL

Criminal offences in connection with brothels. *See* Criminal law (Brothel).

Immoral user of premises—

Forfeiture of lease—

Discretion to grant relief. *See* Landlord and tenant (Relief against forfeiture—Immoral user of premises—Suffering premises to be used as a brothel).

BUILDER

Defective premises—

Liability in negligence. *See* Negligence (Defective premises—Builder's liability).

Sale of land—

Warranty—

Damages for breach. *See* Sale of land (Damages for breach of contract—Warranty—Newly constructed house—Builder).

BUILDING

- Access to working places—
 - Safety of. *See* Working places—Safe means of access, *post*.
- Alteration—
 - Licensed premises—
 - Consent. *See* Licensing (Justices—Consent to alteration of premises).
- Architect's plan—
 - Copyright—
 - Implied licence to allow use of plans for all purposes connected with the building. *See* Copyright (Licence—Implied licence—Architect's building plans).
- Architectural or historic interest—
 - Planning control. *See* Town and country planning (Building of special architectural or historic interest).
- Architectural work—
 - Copyright. *See* Copyright (Artistic work—Architectural work).
- Building contract. *See* Building contract.
- Building in course of construction—
 - Negligence—
 - Liability of contractors—Occupation of site by building contractor—Intimation of possible visit by building owner—Building owner falling and injuring himself—Concealed danger. **Nabarro v Frederick Cope & Co Ltd** [1938] 4 565, KBD.
 - Liability of contractors and sub-contractors—Hole made by contractors in part later under exclusive control of sub-contractors left by them in safe condition. **Canter v J Gardner & Co Ltd** [1940] 1 325, KBD.
 - Liability of contractors and sub-contractors—Incomplete staircase. **Howard v S W Farmer & Son Ltd** [1938] 2 296, CA.
 - Offence under regulations. *See* Building regulations—Offence against 1965 regulations—When complete—Building not completed, *post*.
- Building licence—
 - Generally. *See* Building control (Building licence).
 - House constructed under—
 - Limitation of purchase price. *See* Housing (House constructed under building licence—Limitation of purchase price).
- Building operations—
 - Construction of temporary structures for purposes of building operations etc. *See* Construction of temporary structures for purposes of building operations etc, *post*.
- Duty to take care—
 - Persons to whom duty owed. *See* Negligence (Duty to take care—Person to whom duty owed—Building).
- Electricity regulations—
 - Person responsible for complying with regulations. *See* Factory (Electricity regulations—Person responsible for complying with regulations—Building operations).
- Electrical wiring—
 - Regulations requiring wires to be covered with insulating material where necessary to prevent danger to employees—Breach of regulations—Imperative nature of regulations—Factory and Workshop Act 1901, ss 79, 136—Regulations for the Generation, Transformation, Distribution and Use of Electrical Energy (S R & O 1908 No 1312), reg 2—Building Regulations 1926, (S R & O 1926 No 738), reg 45. **Long v G F Kirk & Co Ltd** [1938] 1 142, KBD.
- Excavations—
 - Duty to provide barriers for—'Excavation, pit or opening in the ground'—Old covered-over water tank—Existence unknown to contractor and not apparent on reasonable inspection—No barrier provided—Whether action for damages for breach of statutory duty lay—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 77. **Knight v Lambrick Contractors Ltd** [1956] 3 746, CA.
- Fencing of machinery—
 - Dangerous machinery—Powered hand-tool—Grinding wheel driven by movable electric motor of one horse-power—Power transmitted by flexible driving shaft approximately seven feet long—Part of shaft ungarded—Use by mason on building site—Whether tool was machinery requiring to be fenced—Construction (General Provisions) Regulations 1961, (S I 1961 No 1580) reg 42. **Lovelidge v Anselm Olding and Sons Ltd** [1967] 1 459, QBD.
 - 'Machinery'—Use of calor gas heater to dry out motor on top of pulverising fuel mill being installed at power station—Wire mesh guard in front of engine of heater removed by workman in order to adjust engine—Workman injured—Whether heater 'machinery'—Whether heater in use—Whether heater securely fenced—Building (Safety, Health and Welfare) Regulations 1948 (S I 1948 No 1145), reg 4, reg 85. **Baxter v Central Electricity Generating Board** [1964] 2 815, Assizes.
- Gangways—
 - Regulations governing gangways—What constitutes a 'gangway'—Concrete passageway part of actual building under construction—Whether a 'gangway'—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 27(2). **Jennings v Norman Collison (Contractors) Ltd** [1970] 1 1121, CA.
 - Regulations governing gangways—What constitutes a 'gangway'—Gutter under construction—Part of permanent building—Hook holding support of gutter defective—Latent defect—Accident not foreseeable—Working place—No guard-rail—Absence of guardrail not cause of accident—Whether gutter a 'gangway'—Whether work could 'safely be done'—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), regs 3(2), 5, 7(1), (4), 8(1), 12(2), 24(1). **Curran v William Neill & Son (St Helens) Ltd** [1961] 3 108, CA.

BUILDING (cont)**Building operations (cont)—****Ladders—**

Duty to provide ladders of adequate strength for purpose—Delegation of duty—Plaintiff in charge of steel erection—Duty to select ladders delegated to plaintiff—Selection of defective ladder—Plaintiff injured in fall from ladder—Liability of employers and owners of ladder—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 29(1), (8). *Johnson v Croggon & Co Ltd* [1954] 1 121, QBD.

Provision for work being done on or near roof covered with fragile materials. *See* Roof work—Work being done on or near roof covered with fragile materials—Duty to provide ladders, crawling boards etc for workmen having to pass over or above fragile materials, *post*.

Noise—

Nuisance. *See* Nuisance (Noise—Building operations).

Protection of eyes of persons employed in specified processes—

Duty to provide goggles for breaking stone, concrete, slag or similar materials—Demolishing brickwork—Brick dust entering employee's eye—Exclusion of brick from regulations—Construction (General Provisions) Regulations 1961, (S I 1961 No 1580), reg 52, Sch, para (2). *Hobbs v C G Robertson Ltd* [1970] 2 347, CA.

Protection of eyes of persons employed in specified processes—

Duty to provide goggles for 'cutting stone or similar materials by means of a hand tool'—Piece of metal, from tool used by workman cutting earthenware pipe, entered his eye—Goggles not provided—Whether employers in breach of statutory duty—Construction (General Provisions) Regulations 1961, (S I 1961 No 1580), reg 52, Schedule, para (2). *Littler v G L Moore (Contractors) Ltd* [1967] 3 801, Assizes.

Duty to provide goggles for cutting concrete by means of a tool—Workman making hole in reinforced concrete with power-operated tool—Whether 'cutting...concrete...by means of a...tool'—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 84, Sch 2(2). *Fallaize v Troughton & Young Ltd* [1956] 3 127, QBD.

Process requiring protection—Nailing wooden batten to concrete—Process of compression and not of breaking or cutting concrete—Batten in fact providing protection—Process literally divisible by batten—Fragment of metal hammer lodging in plaintiff's eye—Construction (General Provisions) Regulations 1961 (S I 1961 No 1580), reg 52, Sch, para (2). *Baker v F Rendell & Sons Ltd* [1970] 3 442, Assizes.

Protection of workmen from falling material or article—

Duty of main contractor—Hoist tower for carrying bricks provided by main contractor for own and sub-contractor's use—Hoist normally operated by sub-contractor's workmen—Workman employed by sub-contractor on hoist shaft injured by falling bricks—Whether main contractor affected by requirement that persons working in such places be protected from falling material—Construction (General Provisions) Regulations 1961, (S I 1961 No 1580) reg 3(1)(a), reg 46(1). *Upton v Hipgrave Brothers (a firm)* [1965] 1 6, QBD.

Protection of workman from falling material or article—

Part of structure—Whether includes part of structure which becomes detached—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 90(1). *Bailey v Ayr Engineering & Construction Co Ltd* [1958] 2 222, CA.

Premises on which machinery worked by steam, water or other mechanical power—Part of premises on which person habitually employed—Workman employed on scaffolding—Electric crane on building for lifting bricks—Workman injured by falling brick—Whether crane machinery worked by mechanical power—Whether workman 'habitually' employed in part of premises—Building Regulations 1926, (S R & O 1926 No 738), reg 31. *Kearns v Gee Walker and Slater Ltd* [1936] 3 151, CA.

Safety nets, sheets and belts—

Need to provide—Exception where adequate foothold available—Provision of belts at office half a mile from place of work—Evidence of practice not to use belts—Whether safety belts 'available'—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 97. *Roberts v Dorman Long & Co Ltd* [1953] 2 428, CA.

Stairs—

Duty to ensure landing or space forming part of stairway guarded—Meaning of 'guarded'—Building Regulations 1965, (S I 1965 No 1373), reg H5. *Sunley Homes Ltd v Borg* [1969] 3 332, QBD.

Duty to provide guardrails—Stairs from which workmen liable to fall more than 6ft 6 inches—One guardrail 3ft above stairs provided—Workman falling from stairs under guardrail—Whether more than one guardrail necessary—Building (Safety, Health and Welfare) Regulations 1948 (S I 1948 No 1145), reg 27(2)(a). *Astell v London Transport Board* [1966] 2 748, CA.

Duty to provide hand-rails or other efficient means to prevent fall of persons—'Hand-rail'—'Guard-rail'—Meaning of these terms—Other efficient means to prevent the fall of persons—Construction ejusdem generis—Causation of accident—Hand-rail not provided, but plaintiff had no hand free to grasp one—Building (Safety, Health and Welfare) Regulations 1948 (S I 1948 No 1145), reg 27(1), (2)—Factories Act 1937, s 25(2). *Corn v Weir's Glass (Hanley) Ltd (L Bates Ltd Third Party)* [1960] 2 300, CA.

Statutory powers of local authority—

Duty of care in exercising powers. *See* Negligence (Duty to take care—Statutory powers—Local authority—Building operations).

Building owner—**Difference with adjoining owner—**

Arbitration—Award—Appeal against award—Time for appeal. *See* Arbitration (Award—Delivery of award—Date of delivery of award).

BUILDING (cont)

Building regulations—

Application—

Construction of a building—Factory under construction—Installation of electrical apparatus by sub-contractors—Working platform not closely boarded—Failure to provide toe-boards—Workman employed by sub-contractors killed by pipe falling from platform—Liability of sub-contractors—Whether work integral part of 'construction of a building'—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 2(1), reg 4, reg 22, reg 24(1). **Hughes v McGoff and Vickers Ltd** [1955] 2 291, Assizes.

Construction of a building—Installation of lift in building under construction—Application of statutory duty of contractor and sub-contractor—Erection or alteration of scaffold by sub-contractor, although building contractor contractually responsible for scaffolding—Boards of working platform inadequate length—Workman employed by building contractor injured by falling from platform into well of lift shaft—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 2(1), reg 4. **Simmons v Bovis Ltd** [1956] 1 736, Assizes.

Construction of a building—Nuclear reactor—Installation in sealed reactor building of nuclear reactor under construction—Removal of welding set across an improvised plank bridge over a trench—Scaffold—Workman in charge injured by fall of welding set when crossing bridge—Liability of employers—Whether workman engaged in construction of a 'building'—Building (Safety, Health and Welfare) Regulations 1948 (S I 1948 No 1145) reg 2(1), reg 3(2), reg 5, reg 7(1), reg 12(1), reg 26(3), reg 93. **Byers v Head Wrightson & Co Ltd** [1961] 2 538 QBD.

Construction of a building—Operation in power station—Installation and erection of generating plant—Whether part of operation of 'Construction...of a building'—Joisting not securely covered over—Breach of statutory duty—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 2(1), reg 30(3). **Elms v Foster Wheeler Ltd** [1954] 2 714, CA CA.

Construction of a building—Operation in power station—Installation of equipment including pulverising fuel mill—Motor on top of pulverising fuel mill—Whether 'construction...of a building'—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 2(1). **Baxter v Central Electricity Generating Board** [1964] 2 815, Assizes.

Construction, structural alteration, repair or maintenance of a building—Installation of plant in factory—'Working platform'—Steel platform of plant—Fixed structure—No guardrails provided—Workman injured in fall from platform—Liability of employers—Whether work on which workman employed work on 'construction, structural alteration, repair or maintenance of building'—Building (Safety Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 2(1), reg 22. **Hutchison v Cocksedg & Co Ltd** [1952] 1 696, Assizes.

Independent contractor—'Workman'—'Person employed'—Whether person working as an independent contractor is a 'workman' or 'person employed'—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 4, reg 31. **Herbert v Harold Shaw Ltd** [1959] 2 189, CA.

'Operations for the preparation for an intended building'—Pumping station—Necessary ancillary works for intended building—Excavation for building to be erected—Workman walking out of excavation struck by hammer lobbed down into excavation—Liability of employers for breach of statutory duty—Whether 'operations for the preparation for an intended building' including necessary ancillary works—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 2(1), reg 90. **Horsley v Collier and Catley Ltd** [1965] 2 423, Assizes.

Premises on which machinery temporarily used for construction of a building—Night watchman injured during weekend stoppage of work—Machinery not being used, but available for use—Whether regulations applicable—Building Regulations 1926, (S R & O 1926 No 738), reg 15. **Field v Perry's (Ealing) Ltd** [1950] 2 521, KBD.

Repair or maintenance of a building—Neon lighting installation—Repair of neon sign attached to cinema—Whether neon sign was part of the building for the purposes of the Building (Safety, Health and Welfare) Regulations 1948 (S I 1948 No 1145), reg 2(1). **Price v Claudgen Ltd** [1967] 1 695, HL.

Repair or maintenance of a building—Workman making profile of a roof gutter—Whether work of 'repair or maintenance'—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 2, reg 31(3). **Sumner v Robert L Priestly Ltd** [1955] 3 445, CA.

Breach—

Breach by employers and employee—Apportionment of responsibility where faults not co-extensive—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 4, reg 29(4). **McMath v Rimmer Bros (Liverpool) Ltd** [1961] 3 1154, CA.

Demolition of building. *See* Demolition, *post*.Excavations. *See* Building operations—Excavations, *ante*.

Eyes—

Protection. *See* Building operations—Protection of eyes of persons employed in specified processes, *ante*.

Fencing of machinery. *See* Building operations—Fencing of machinery, *ante*.Gangways. *See* Building operations—Gangways, *ante*.

Guardrails—

Stairs. *See* Building operations—Stairs—Duty to provide guardrails, *ante*.

Working places. *See* Working places—Guardrails, *post*.

Ladders. *See* Building operations—Ladders, *ante*.Lifting operations. *See* Lifting operations, *post*.

Offence against 1965 regulations—

When offence complete—Building not completed. **Sunley Homes Ltd v Borg** [1969] 3 332, QBD.

Protection of eyes of persons employed in specified processes. *See* Building operations—Protection of eyes of persons employed in specified processes, *ante*.

BUILDING (cont)

Building regulations (cont)—

Protection of workman from falling material or article. *See* Building operations—Protection of workman from falling material or article, *ante*.

Roof work. *See* Roof work, *post*.

Safe means of access—

Working places. *See* Working places—Safe means of access, *post*.

Safety nets, sheets and belts—

Building operations. *See* Building operations—Safety nets, sheets and belts, *ante*.

Scaffolding. *See* Scaffolding, *post*.

Stairs. *See* Building operations—Stairs, *ante*.

Temporary structures—

Construction for purposes of building operations etc. *See* Construction of temporary structures for purposes of building operations etc, *post*.

Working places. *See* Working places, *post*.

Construction—

Negligence—

Sub-contractors liable to servant of other sub-contractors—Liability of constructional company having conduct of work for building owner, to servant of sub-contractors—Laying of felt and bitumen on part of roof sub-contracted—Servant of sub-contractors injured by fall through opening in roof temporarily left by other sub-contractors. **McArdle v Andmac Roofing Co** [1967] 1 583, CA.

Regulations relating to. *See* Building regulations, *ante*.

Construction of temporary structures for purposes of building operations etc—

Duty to ensure temporary structures of good construction, sound material etc—

Duration of duty—Framing used as mould for concrete walls of building—Fall of part of framing during subsequent demolition—Whether action for damages for breach of statutory duty lay—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 93. **Grant v George Wimpey & Co Ltd** [1956] 3 470, CA.

Contract—

Duty to take care—

Proximity of relation. *See* Negligence (Duty to take care—Proximity of relation—Building contract).

Generally. *See* Building contract.

Implied term. *See* Contract (Implied term—Implication of term to give business efficacy to contract—Building contract).

Contractor—

Statutory duty—

Safety of scaffolding. *See* Scaffolding—Statutory duty as to safety—Contractor and sub-contractor, *post*.

Safety of working places. *See* working places—Safety of working places—Duty of main contractor under regulations, *post*.

Conveyance—

Solicitor—

Negligence—Damages. *See* Solicitor (Negligence—Damages—Conveyance of building).

Damage to building by blast—

Injury to workman by reason of damage to building—

War injury. *See* War injury (Physical injury caused by impact on person or property of aircraft—Damage to building causing injury—Injury to workman by reason of damage to building by blast—Whether war injury).

Defect—

Liability in negligence. *See* Negligence (Defective premises).

Demolition—

Safety precautions—

Prevention of accidental collapse of part of building—Breaking of floor board—Whether 'collapse'—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 79(7). **Mortimer v Samuel B Allison Ltd** [1959] 1 567, HL.

Prevention of accidental collapse of part of building—Need and practicability of safety precautions—Collapse of wall killing workmen—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 79 (7), reg 94(2). **Knight v Demolition & Construction Co Ltd** [1953] 2 508, QBD.

Prevention of accidental collapse of part of building—Precautions in respect of person employed during progress of work—Employee of building contractors injured by collapse of wall after demolition contractors had left temporarily—Liability of contractors—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 79(7), reg 94(2). **Clay v A J Crump & Sons Ltd** [1963] 3 687, CA.

Supervision—

Work to be carried out under immediate supervision of competent foreman—Supervisor ordering demolition in manner involving no risk—Supervisor absent for short period—Workman adopting dangerous method in supervisor's absence—Degree of 'immediate supervision' required—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 79(5)(i). **Owen v Evans and Owen (Builders) Ltd** [1962] 3 128, CA.

Development—

Town and country planning. *See* Town and country planning (Development—Building).

Disused burial ground—

Prohibition of building. *See* Burial (Burial ground—Disused—Prohibition of erection of any buildings upon any disused burial ground).

Ecclesiastical—

Planning control. *See* Town and country planning (Building of special architectural or historic interest—Ecclesiastical building).

Erection on disused burial ground. *See* Burial (Burial ground—Disused—Erection of building on disused burial ground).

BUILDING (cont)

Foreman—

Supervision of demolition work. *See* Demolition—Supervision—Work to be carried out under immediate supervision of competent foreman, *ante*.

Found by night in building—

Offence. *See* Criminal law (Night offences—Found by night in any building).

Guardrails—

Roof work, for. *See* Roof work—Opening in roof—Duty to provide guardrail or covering, *post*.

Stairs. *See* Building operations—Stairs—Duty to provide guardrails, *ante*.

Working places. *See* Working places—Guardrails, *post*.

Hidden defects—

Damages. *See* Damages (Physical injury or economic loss—Hidden defects—Building).

Industrial building—

Capital allowances. *See* Income tax (Capital allowances).

Classes of use—

Planning control. *See* Town and country planning (Development—Use classes—Industrial building).

Town planning scheme. *See* Town and country planning (Town planning scheme—Industrial building).

Insurance—

Flood—

Householder's policy. *See* Insurance (Householder—Storm, tempest or flood).

Landing—

Duty to ensure landing or space forming part of stairway guarded. *See* Building operations—Stairs—Duty to ensure landing or space forming part of stairway guarded, *ante*.

Larceny. *See* Criminal law (Larceny—Property capable of being stolen—Fixtures).

Late night refreshment house—

Licensing. *See* Licensing (Late night refreshment house).

Lease. *See* Landlord and tenant (Building lease).Licence. *See* Building control (Building licence).

Lifting operations—

Secureness of loads—

Safety measures to prevent accidental fall of bricks etc—Workman employed by sub-contractor on hoist shaft provided by main contractor injured by bricks falling from hoist platform due to wheelbarrow overturning—No means provided to prevent bricks falling from hoist platform—Liability of employer—Construction (Lifting Operations) Regulations 1961, (S 1 1961 No 1581), reg 3(1)(b), reg 49(3), (5). *Upton v Hipgrave Brothers* [1965] 1 6, QBD.

Local authority—

Open space—

Power to erect building on open space. *See* Local authority (Open space—Power to erect building on open space).

London—

Adjoining lands—

Rights of owners where junction line built on—Party fence wall—Right of owner to 'demolish and rebuild' wall—Building owner proposing to rebuild wall to reduced height—Whether building owner required to rebuild wall to original height—London Building Acts (Amendment) Act 1939, s 46(1). *Gyle-Thompson v Wall Street (Properties) Ltd* [1974] 1 295, ChD.

Settlement of differences between building owner and adjoining owner—Arbitration—Award—Validity—Procedural defects—Party structure notice—Service—Notice not properly served—Appointment of surveyor—Surveyor not appointed in writing—Delivery of award—Works commenced before delivery of award—London Building Acts (Amendment) Act 1939, ss 47, 55(h). *Gyle-Thompson v Wall Street (Properties) Ltd* [1974] 1 295, ChD.

Settlement of differences between building owner and adjoining owner—Arbitration—Award—Award determining right to execute works—Conclusiveness of award—Limited right of appeal—Appeal to county court within 14 days—Award one which arbitrators 'having no power to make—Right of party to seek relief in High Court—London Building Acts (Amendment) Act 1939, s 55(k)(m)(n). *Gyle-Thompson v Wall Street (Properties) Ltd* [1974] 1 295, ChD.

Consent to erection of buildings or structure beyond general line of buildings—

'Structure'—Car shelter of tubular steel framework covered with canvas—Whether 'structure'—London Building Act 1930, s 22(1). *London County Council v Tann* [1954] 1 389, QBD.

Height—

Consent to building over one hundred feet in height by London County Council—Appeal by owner of house within hundred yards—Whether interference with visual amenities was a relevant consideration—London Building Act 1930, s 51(1)(a) (as substituted by London County Council (General Powers) Act 1954, s 5), s 52(2)(a). *Maurice v London County Council* [1964] 1 779, CA.

Newly erected building—

Rates. *See* Rates (Unoccupied property—Newly erected building).

Opening in roof—

Duty to provide suitable guardrail or covering for roof work. *See* Roof work—Opening in roof—

Duty to provide suitable guardrail or covering, *post*.

Operations—

Statutory powers of local authority—

Duty of care in exercising powers. *See* Negligence (Duty to take care—Statutory powers—Local authority—Building operations).

BUILDING (cont)

Planning permission—

Development of open site—

Permission for erection of building over whole of site—Extinction of former uses. *See Town and country planning* (Development—Extinction of use—Open site used for market trading).

Plans—

Architect's plans—

Copyright—Implied licence to allow use of plans for all purposes connected with the building. *See Copyright* (Licence—Implied licence—Architect's building plans).

Plant distinguished for purpose of capital allowances. *See Income tax* (Capital allowances—Plant—Building distinguished from plant).

Preservation order. *See Town and country planning* (Building of special architectural or historic interest—Building preservation order).

Repair or maintenance of a building—

Application of building regulations. *See Building regulations—Application—Repair or maintenance of building, ante.*

Roof work—

Opening in roof—

Duty to provide suitable guardrail or covering—Covering—Roof under construction—Stage at which requirement of covering begins to apply—Space for proposed lantern light surrounded by under-layer of roof—Whether necessary to provide covering—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 30(1)(5)(a), reg 97. *Moorcroft v Thomas Powles & Sons Ltd* [1962] 3 741, QBD.

Duty to provide suitable guardrail or covering—Existing building—Temporary absence of workmen placing joists and laying boards over opening—Opening left uncovered and unprotected—Plaintiff injured by falling through opening—Whether employers liable for breach of statutory duty—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 30(1)(5). *McArdle v Andmac Roofing Co* [1967] 1 583, CA.

Duty to provide suitable guardrail or covering—Guardrails—Stage at which requirement of guardrails begins to apply—Roof under construction—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 30(1)(5), reg 97. *Montgomery v A Monk & Co Ltd* [1954] 1 252, CA.

Duty to provide suitable guardrail or covering—Guardrails—Stage at which requirement of guardrails begins to apply—Space intended to form permanent opening but not yet completely surrounded by covered roof—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 30(1). *Phillips v Robertson Thain Ltd* [1962] 1 527, QBD.

Safe means of access to. *See Working places—Safe means of access—Roof, post.*

Work being done on or near roof covered with fragile materials—

Duty to provide ladders, crawling boards etc for workmen having to pass over or work above fragile materials—Duty to use boards—Provision of crawling boards—Requirement of regulations not communicated to workman—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 31(3)(a). *Jenner v Allen West & Co Ltd* [1959] 2 115, CA.

Duty to provide ladders, crawling boards etc for workmen having to pass over or work above fragile materials—Fall through hole in roof under repair—Liability of contractors to servant of sub-contractor—Employee of sub-contractors falling through gap whilst repositioning asbestos sheet—Crawling board provided but not used—Foreman of contractors and of sub-contractor present but neither ensured that crawling boards used—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 4(ii), reg 31(1)(3). *Donaghey v Boulton & Paul Ltd* [1967] 2 1014, HL.

Duty to provide ladders, crawling boards etc for workmen having to pass over or work above fragile materials—Meaning of 'near'—Meaning of 'pass over'—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 31(3). *Byrne v E H Smith (Roofing) Ltd* [1973] 1 490, CA.

Duty to provide ladders, crawling boards etc for workmen having to pass over or work above fragile materials—Meaning of 'work above'—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 31(2). *Harris v Bright's Asphalt Contractors Ltd (Allard & Saunders, Third Parties)* [1953] 1 395, QBD.

Duty to provide ladders, crawling boards etc for workmen having to pass over or work above fragile materials—Provision of crawling boards—Duty to use boards—On whom duty rests—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 4, reg 31(3)(a). *Ginty v Belmont Building Supplies Ltd* [1959] 1 414, QBD.

Work on sloping surface of a roof—

Duty to take suitable precautions to prevent workmen falling—Liability of contractor to servant of sub-contractor for breach—Retention by contractor of control over performance of work—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 31(1). *Mulready v J H & W Bell Ltd* [1953] 2 215, CA.

Duty to take suitable precautions to prevent workman falling—Sloping surface—Protection against falling down and off but not against falling through hole in roof under repair—Liability of contractors to servant of sub-contractor—Crawling boards provided but not used—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 31(1). *Donaghey v Boulton & Paul Ltd* [1967] 2 1014, HL.

Rubble—

Deposit of hopper in street—

Danger or annoyance to users of highway. *See Highway* (Danger or annoyance to users—Deposit of builders' hopper).

Safe means of access to working places. *See Working places—Safe means of access, post.*

BUILDING (cont)

Scaffolding—

Contractor—

Duty of contractor towards servant of sub-contractors—Staging under control of sub-contractors—Staging moved by sub-contractors' workmen without experience of scaffolding—Accident to employee of sub-contractors caused by unstable working platform—Sub-contractors liable for breach of statutory duty and for negligence—Whether contractors also liable—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 4, reg 5, reg 6. *Kearney v Eric Waller Ltd* [1965] 3 352, QBD.

Dismantling of scaffolding—

Duty to provide guardrail where person liable to fall more than specified distance from working place—Whether duty applied to dismantling of scaffolding. *See* Working places—Guardrails—Duty to provide guardrail where person liable to fall more than specified distance from working place—Duration of duty—Whether duty applied to dismantling of scaffolding, *post*.

Duty to provide scaffolding for all work that cannot safely be done from the ground—

Duty to provide guardrail—Scaffolding erected by main contractor—Omission to provide guardrail—Accident to workman employed by sub-contractor—Liability of contractor and sub-contractor—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), regs 5, 24, 31. *Pratt v Richards* [1951] 1 90, KBD.

Duty to provide scaffolding for all work that cannot be safely done from the ground—

Meaning of 'cannot safely be done'—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 5. *Connolly v McGee* [1961] 2 111, QBD.

Erection or alteration of scaffolding—

Duty of employee to comply with regulations—Coupler of one type provided by employers—Use by employee of coupler not supplied by employers—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 4, reg 7, reg 12. *Davidson v Apex Scaffolds Ltd* [1956] 1 473, CA.

Supervision—Scaffold in process of erection—Working platform consisting of trestles with boards—Degree of 'immediate supervision' required—Stability—Whether struts necessary—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 6, reg 9, reg 12. *Moloney v A Cameron Ltd* [1961] 2 934, CA.

Provision of suitable and sufficient scaffolds—

Duty of employee to comply with regulations—Trestle borrowed by employee with employer's assent—Latent defect in trestle—Injury to employee—No breach of statutory duty by employee—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 4, reg 5, reg 7(1). *Quinn v J W Green (Painters) Ltd* [1965] 3 785, CA.

Scaffolding not complying with regulations—

Injury to employee of sub-contractor—Liability of main contractor. *See* Working places—Duty of main contractor under regulations—Duty to comply with such requirements of regulations 'as affect him or any workman employed by him'—Scaffolding—Scaffolding not complying with regulations—Injury to employee of sub-contractor, *post*.

Scaffolding used by workmen of more than one employer—

Duty of employer other than employer for whose workmen was first erected to satisfy himself scaffolding stable—Scaffold erected by contractor—Injury to workman employed by sub-contractor—Duty of employer to take steps to satisfy himself that the scaffold is stable—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 21. *Clarke v E R Wright & Son* [1957] 3 486, CA.

Standards to be vertical—

Standard out of vertical—Negligence of workman in correcting fault—Cause of accident—Whether employer liable for breach of statutory duty—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 10(1)(a). *Norris v William Moss & Sons Ltd* [1954] 1 324, CA.

Statutory duty as to safety—

Contractor and sub-contractor—Upon which contractor statutory duty rests—Building Regulations 1926, (S R & O 1926 No 738), regs 13, 14. *Claydon v Sir Lindsay Parkinson Ltd* [1939] 2 1, CA.

Permitted projection of plank over support—Application of Building Regulations 1926—'Outside the area of the building under construction'—Cement mixer 23 yards from building under construction—Absolute duty to provide safe scaffolding—Factory and Workshop Act 1901, ss 79, 105(1)—Factories Act 1937, ss 60, 107, 130, 136, 137—Building Regulations 1926, (S R & O 1926 No 738), regs 7, 50. *Potts or Riddell v Reid* [1942] 2 161, HL.

Stairway—

Building regulations. *See* Building operations—Stairs, *ante*.

Sub-contractor—

Generally. *See* Building contract (Sub-contractors).

Statutory duty—

Safety of scaffolding. *See* Scaffolding—Statutory duty as to safety—Contractor and sub-contractor, *ante*.

Safety of working places. *See* Working places—Safety of working places—Duty of sub-contractor under regulations, *post*.

Subsidence or collapse—

Insurance. *See* Insurance (Accident insurance—Perils insured against—Subsidence or collapse of building).

Temporary structures—

Construction for purposes of building operations etc. *See* Construction of temporary structures for purposes of building operations etc, *ante*.

Trespass. *See* Trespass to land.

Unfinished building—

Clearance of site. *See* Town and country planning (Unfinished building).

BUILDING (cont)**Water supply—**

Supply of water for domestic purposes to new buildings. *See* **Water supply** (Supply of water for domestic purposes—Duty of undertakers to provide domestic supply to new buildings).

Working places—**Guardrails—**

Duty to provide guardrail where persons liable to fall more than specified distance from working place—Working platform of inadequate width—Failure to provide guardrails or toe-boards—Workman's fall through epileptic fit—Onus of proof—Apportionment of liability—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 22(c), reg 24(1). **Cork v Kirby Maclean Ltd** [1952] 2 402, CA.

Duty to provide guardrails where person liable to fall more than specified distance from working place—Duration of duty—Whether duty applies to dismantling of scaffolding—Building (Safety, Health and Welfare) Regulations 1948 (S I 1948 No 1145), regs 2(1), 24(1). **Sexton v Scaffolding (Great Britain) Ltd** [1952] 2 1085, CA.

Duty to provide guardrail where person liable to fall more than specified distance from working place—Exception in respect of temporary platform—Erection of steel chimney on roof of boiler house—Whether roof a 'temporary platform'—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 24(1), (5)(d). **Westcott v Structural and Marine Engineers Ltd** [1960] 1 775, QBD.

Duty to provide guardrail where person liable to fall more than specified distance from working place—Practicability of providing guardrail—Demolition work—Demolition of warehouse—Disposal of rubble—Removal of floorboards through which rubble could be dropped—Some floorboards left to form passageways for men to move about—No guardrail on edge of floor after removal of wall—Risk to men putting up guardrails exceeding risks to demolition workers working on floorboards—Whether passageway formed by floorboards 'working place'—Whether putting up guardrails impracticable—Construction (Working Places) Regulations 1966 (S I 1966 No 94), regs 28, 38. **Boynton v Willment Brothers Ltd** [1971] 3 624, CA.

Duty to provide guardrail where person liable to fall more than specified distance from working place—Working place—Roof being painted from ladder—Workman stepping on to roof from ladder and falling—Whether roof a 'working place'—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 24(1). **Gill v Donald Humberstone & Co Ltd** [1963] 3 180, HL.

Duty to provide guardrail where person liable to fall more than specified distance from working place—Working place—Flat roof—Place where employee working was working place—Whole roof capable of being working place—No guardrail at roof's edge—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 24(1). **Kelly (Widow and Administratrix of the Estate of Norman Kelly decd) v Pierhead Ltd** [1967] 1 657, CA.

Lighting—

Working place to be efficiently lighted—Working place—Injury to night watchman when inspecting site—Whether place on his tour of inspection 'working place'. **Field v Perrys (Ealing) Ltd** [1950] 2 521, KBD.

Meaning—

Regulations relating to provision of guardrails. *See* Working places—Guardrails—Duty to provide guardrail where person liable to fall more than specified distance from working place—'Working place', *ante*.

Meaning of working place—

Place on which workman required to work for appreciable period of time—Work on flat roof for period of ten to 15 minutes—Whether flat roof a 'working place'—Whether employer under duty to provide guardrail—Construction (Working Places) Regulations 1966 (S I 1966 No 94), reg 28(1). **Ferguson v John Dawson & Partners (Contractors) Ltd** [1976] 3 817, CA.

Safe means of access—

Duty under regulations—Application—Injury to employee of independent scaffolding contractor on building site—Whether erection of scaffolding could be part of an operation or work to which regulations applied—Whether special provision in regulations about erecting and dismantling scaffolds took independent scaffolding contractor out of general duty imposed by regulations to provide safe access—Construction (Working Places) Regulations 1966, (S I 1966 No 94), regs 2(1), 3(1), 4(2), 6(1). **Smith v Vange Scaffolding and Engineering Co Ltd** [1970] 1 249, QBD.

Duty under regulations—Extent of duty—Injury to person crossing plank six inches from ground—Whether employer in breach of duty—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 5. **Brown v F Troy & Co Ltd** [1954] 3 19, QBD.

Duty under regulations—Extent of duty—Injury to person skilled in traverses walking ten feet without handhold along three-inch wide girder twenty feet six inches above ground—Liability of employers—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 5. **Trott v W E Smith (Erectors) Ltd** [1957] 3 500, CA.

Duty under regulations—Persons to whom duty owed—Digging machine hired by main contractors and used as means of access by employee of sub-contractors—Whether main contractors owed a duty under the regulations to sub-contractors' employee—'As affect him'—Construction (General Provisions) Regulations 1961, (S I 1961 No 1580), reg 3 reg 7. **Bunker v Charles Brand & Sons Ltd** [1969] 2 59, QBD.

Duty under regulations—Persons to whom duty owed—Scaffolding—Injury to person not working on scaffold—Injury to person not employed by building contractor—Building (Safety, Health and Welfare) Regulations 1948, (S I 1948 No 1145), reg 4(i), reg 5. **Wingrove v Prestige & Co Ltd** [1954] 1 576, CA.

Roof—Access to roof by means of ladder, concrete passageway and steel-framed door with deadlock—Means of access to and egress from roof constituted by passageway and door together—Construction (General Provisions) Regulations 1961, (S I 1961 No 1580), reg 7. **Jennings v Norman Collison (Contractors) Ltd** [1970] 1 1121, CA.

BUILDING (cont)

Working places (cont)—

Safe means of access (cont)—

Roof—Weather conditions—Relevance—Heavy rainfall rendering means of access route could be negotiated with safety—Construction (General Provisions) Regulations 1961 (S I 1961 No 1580), reg 7(1). **Bryne v E H Smith (Roofing) Ltd** [1973] 1 490, CA.

Safety of working places—

Duty of employer under regulations—Working places so far as practicable to be made and kept safe—Made safe—Working place safe having regard to permanent equipment and normal activities carried on there—Equipment brought on to premises temporarily for particular purpose—Equipment creating a source of danger—Whether rendering place of work unsafe for purpose of regulations—Construction (Working Places) Regulations 1966, (S I 1966 No 94), reg 6(2). **Evans v Sant** [1975] 1 294, QBD.

Duty of main contractor under regulations—Duty to comply with such requirements of regulations 'as affect him or any workman employed by him'—Scaffolding—Scaffolding not complying with regulations—Injury to employee of sub-contractor—Scaffolding for use of sub-contractor and his employees—Whether main contractor owing a duty under the regulations to sub-contractor's employee—Construction (Working Places) Regulations 1966, (S I 1966 No 94), reg 3(1)(a). **Taylor v Sayers** [1971] 1 934, QBD.

Duty of main contractor under regulations—Duty to comply with such requirements of regulations 'as affect him or any workman employed by him'—Whether main contractor owing a duty under regulations to employee of sub-contractor on site—Construction (Working Places) Regulations 1966, (S I 1966 No 94), reg 3(1)(a). **Smith v George Wimpey & Co Ltd** [1972] 2 723, CA.

Duty of main contractor under regulations—Duty to comply with such requirements of regulations 'as affect him or any workman employed by him'—Liability of main contractor for injury to employee of sub-contractor—Rubble left in unlit corridor in breach of regulations—Lighting of corridor responsibility of main contractor—Operations leading to deposit of rubble carried on by main contractor—Employee of sub-contractor injured by falling on rubble—Whether main contractor 'affected' by requirements of regulations—Construction (General Provisions) Regulations 1961, (S I 1961 No 1580), reg 3(1)(a)—Construction (Working Places) Regulations 1966 (S I 1966 No 94), reg 3(1)(a). **Baron v B French Ltd** [1971] 3 1111, Assizes.

Duty of sub-contractor under regulations—Duty in respect of safety of scaffolding—Duty of sub-contractor to employee when employee engaged on building operation—Duty where scaffolding erected by main contractor—Injury to employee of sub-contractor while on scaffolding erected by main contractor—Employee measuring windows for glazing when accident occurring—Whether employee engaged on 'building operation'—Whether sub-contractor in breach of statutory duty—Factories Act 1961, s 176—Construction (Working Places) Regulations 1966 (S I 1966 No 94), reg 23. **Vineer v C Doidge & Sons Ltd (P G W Holdings Ltd, Third parties)** [1972] 2 794, CA.

BUILDING CONTRACT

Arbitration—

Jurisdiction of arbitrator to review architect's final certificate. *See* Architect—Final certificate—Conclusiveness—Arbitration, *post*.

Revocation of arbitrator's authority by leave of court. *See* Arbitration (Arbitrator—Authority—Revocation—Leave of court—Grounds for—Current action in court—Building contract).

Arbitration clause—

Arbitrator—

Extent of arbitrator's jurisdiction—Architect refusing certificate—Allegation of improper work—Dispute referred to arbitrator—Arbitrator's jurisdiction to consider manner in which work done and award sum due. **Prestige & Co Ltd v Brettell** [1938] 4 346, CA.

Dispute not to be referred to arbitration until after completion of work—

Exception—Reference as to withholding by engineer of any certificate—Refusal by engineer to certify for payment for particular excavation before completion of the works—Whether dispute was one as to the withholding by the engineer of any certificate—Institution of Civil Engineers' General Conditions of Contract (4th Edn), cl 66. **A E Farr Ltd v Ministry of Transport** [1960] 3 88, ChD.

Architect—

Arbitration clause appointing architect as arbitrator—

Architect's decision to be binding in case of disputes—Refusal of architect to issue certificate or to act as arbitrator—Whether absence of certificate a bar to recovery of sum claimed by builder. **Neale v Richardson** [1938] 1 753, CA.

Architect's notice—

Requirements of natural justice—RIBA form of contract—Local Authorities Edition with Quantities 1963, condition 25. **London Borough of Hounslow v Twickenham Garden Developments Ltd** [1970] 3 326, ChD.

Final certificate—

Conclusiveness—Arbitration—Jurisdiction of arbitrator to review and revise certificate—RIBA Standard Form of Contract No 6, Conditions, cl 24 (f), cl 27. **Windsor Rural District Council v Otterway and Try Ltd** [1954] 3 721, QBD.

Conclusiveness—Arbitration—Jurisdiction of arbitrator to review and revise certificate—Defects which a reasonable examination would not have disclosed—RIBA Standard Form of Contract No 6 (1950 Edn), cl 24 (f), cl 27. **East Ham Borough Council v Bernard Sunley & Sons Ltd** [1965] 3 619, HL.

BUILDING CONTRACT (cont)

Architect (cont)—

Final certificate (cont)—

Conclusiveness—Conclusive evidence 'in any proceedings arising out of this Contract'—Conclusive evidence that works 'have been properly carried out and completed in accordance with the terms of this Contract'—Action commenced by contractors against employers prior to final certificate—Counterclaim put in after final certificate—Counterclaim for consequential loss in respect of defects discovered after employers going into occupation and before issue of final certificate—Whether counterclaim barred—RIBA Standard Form of Contract [1963 Edn, July 1969 Revision], cl 30(7). **P & M Kaye Ltd v Hosier & Dickinson Ltd** [1972] 1 121, HL.

Interim certificate—

Certificate issued on inadequate valuation or estimate of building owner's quantity surveyor—Certificate issued by architect for smaller sum than that claimed by contractors—Whether interference with, or obstruction of, issue of certificate by building owner. **R B Burden Ltd v Swansea Corpn** [1957] 3 243, HL.

Negligence—

Breach of duty—Cause of action of building owner against architect—Whether in contract or in tort—Defective drains installed due to negligent supervision—Subsidence resulting—Time when damage from breach of duty occurred. **Bagot v Stevens Scalan & Co** [1964] 3 577, QBD.

Proximity of relation—Demolition followed by building—Labourer employed by building contractors—Wall left standing on demolition in unsafe condition, excavation having been brought closer to foundation than planned—Collapse of wall injured labourer—Architect merely asked demolition contractors whether wall safe—Demolition contractors merely asked foreman—No adequate examination of wall by building contractors who relied on architect and demolition contractors to leave site safe—Apportionment of blame between architect, demolition contractors and building contractors. **Clay v A J Crump & Sons Ltd** [1963] 3 687, CA.

Safety of manner of working—Refusal by architect to vary specification and contract—Work specified capable of safe execution—Work executed in unsafe manner and bricklayer injured thereby—Whether responsibility of builders, employers of bricklayer, alone or whether architect also in breach of duty. **Clayton v Woodman & Son (Builders) Ltd** [1962] 2 33, CA.

Bills of quantities—

Terms—

Provision for safeguarding against flood damage—Liability of building contractor. **AMF International Ltd v Magnet Bowling Ltd** [1968] 2 789, QBD.

Breach of contract—

Measure of damages. *See* Damages—Measure of damages, *post*.

Certificate—

Architect's final certificate. *See* Architect—Final certificate, *ante*.

Architect's interim certificate. *See* Architect—Interim certificate, *ante*.

Local authority's certificate of habitation—

Conclusiveness—Contract provided that certificate should be conclusive evidence of completion of house—Whether certificate conclusive against liability for structural defects. **Billyack v Leyland Construction Co Ltd** [1968] 1 783, QBD.

Sub-contractors' interim certificate. *See* Sub-contractors—Interim certificate, *post*.

Construction—

Ambiguity—

Building to be built in workmanlike manner and in accordance with specification—Specification provided that excavation should be carried out in accordance with byelaws and to satisfaction of local authority—Certificate given by local authority—Subsequent discovery of structural defects due to insufficient excavation for foundations—Whether liability of contractors in damages excluded by reason of certificate. **Billyack v Leyland Construction Co Ltd** [1968] 1 783, QBD.

Expert evidence. *See* Evidence (Expert witness—Building contract—Evidence of practical difficulties consequent on one construction of a clause in contract).

Contractor—

Demolition contractor—

Negligence—Proximity of relation—Labourer employed by building contractors subsequently coming on site—Wall left standing on site in unsafe condition—Collapse of wall injured labourer—No adequate examination of wall by building contractors—Apportionment of blame between architect, demolition contractors and building contractors. **Clay v A J Crump & Sons Ltd** [1963] 3 687, CA.

Guarantee of due performance—

Guarantee of due performance by contractor of bond in favour of rural district council—Bond given in favour of county council—Knowledge of guarantors—Estoppel. **Provident Accident & White Cross Insurance Co Ltd v Dahne and White** [1937] 2 255, KBD.

Liability for loss or damage—

Contractor responsible for damage 'from any cause whatsoever'—Construction of jetty—Damage by Admiralty vessel—Liability of contractor—General Conditions of Government Contracts for Building and Civil Engineering Works, condition 26(2). **A E Farr Ltd v The Admiralty** [1953] 2 512, QBD.

Limited company—

RIBA conditions of contract—NFBTE and FASS sub-contract—Voluntary liquidation of contractor after practical completion of work, and before issue of architect's final certificate—Sum due to sub-contractor under interim certificate not paid—Right of building owner to pay sub-contractor and deduct sum paid from amount due to contractor—Retention money—Equitable assignment—Contractor trustee for sub-contractor. **Re Tout and Finch Ltd** [1954] 1 127, ChD.

BUILDING CONTRACT (cont)**Contractor (cont)—**

Right to claim sum in excess of contract price—

Change of circumstances—Delay not due to fault of either party—Scarcity of labour—Buildings ultimately completed—Whether contractors entitled to sum in excess of contract price on quantum meruit. **Davis Contractors Ltd v Fareham Urban District Council** [1956] 2 145, HL.

Right to payment for additional work—

Alterations and additions—Contract amended by deed of variation—Payment to contractor limited—Subsequent large increase in works—Whether contractor entitled to payment for additional work. **Sir Lindsay Parkinson & Co Ltd v Comrs of Works and Public Buildings** [1950] 1 208, CA.

Excavation of rock—Rock not shown on plans or in bills of quantities. **C Bryant & Son Ltd v Birmingham Hospital Saturday Fund** [1938] 1 503, KBD.

Right to payment for work done prior to contract—

Estimates prepared before contract—Work in excess of normal—Contract never concluded—Whether entitled to remuneration on a quantum meruit. **William Lacey (Hounslow) Ltd v Davis** [1957] 2 712, QBD.

Specialist contractor—

Entry on building site on instruction of building owner to install equipment in building in course of erection—Building contractor concurring that building ready—Contractual and implied obligation of building owner that building ready to receive equipment—Damage to equipment by flood-water entering building—Exception clause inapplicable—Liability of building owner in contract—Liability of building owner and building contractors in tort. **AMF International Ltd v Magnet Bowling Ltd** [1968] 2 789, QBD.

Damages—

Liability for damages—

Sub-contract—Implied warranty of fitness of staging for use—Defective staging erected for spraying operation by sub-sub-contractors—Use by contractors for lining operation under liberty reserved in sub-contract—Collapse causing contractors' employee's death—No examination of staging by contractors—Liability of contractors to employee's widow for breach of statutory duty—Twenty-five per cent responsibility apportioned to contractors for breach of statutory duty to employee—Whether sub-contractor liable, by way of damages for breach of warranty, to indemnify contractors—Law Reform (Married Woman and Tortfeasors) Act 1935, s 6. **Sims v Foster Wheeler Ltd (Pilbrico Co Ltd, Third Party)** [1966] 2 313, CA.

Sub-contract—Nominated suppliers—Defective materials supplied—Undetectable defect—Whether main contractor warrants impliedly the fitness of materials supplied by nominated supplier—RIBA form of contract—Building contract—Architect—Instructions in writing—RIBA form of contract. **Gloucester County Council v Richardson** [1967] 3 458, CA.

Measure of damages—

Defective work—Defects not apparent until five years after completion of building—Defects remedied promptly by building owner—Damages assessed by reference to cost of remedial works when actually carried out and not to cost as at date of breach of contract. **East Ham Borough Council v Bernard Sunley & Sons Ltd** [1965] 3 619, HL.

Defective work—Defects not apparent until lapse of years after completion of building—Defects such as to render it uneconomic to repair building—Measure of damages value of building at date defects discovered if properly built—Interest from date plaintiff went out of occupation. **Archer v Moss** [1971] 1 747, CA.

Wrong type of brick and defective bricks used in building house. **Clark v Wooll** [1965] 2 353, QBD.

Enforceability—

Certainty of terms—

Terms fundamental to contract—Price—No agreed method of ascertaining price. *See Contract* (Enforceability—Certainty of terms—Terms fundamental to contract—Price—No agreed method of ascertaining price—Building contract).

Engineer—

Withholding of certificate—

Arbitration. *See Arbitration clause*—Dispute not to be referred to arbitration until after completion of work—Exception—Reference as to withholding by engineer of any certificate, *ante*.

Extension of time—

Contractor's right to extension for delay by nominated sub-contractor—

Sub-contractor purporting to complete on time—Subsequent discovery of defects—Remedial works by sub-contractor after time expired—No delay entitling contractor to extension of time for completion of contract—RIBA form of contract—Local Authorities Edition with Quantities 1963, condition 23(g). **Westminster City Council v J Jarvis & Sons Ltd** [1970] 1 943, HL.

Implication of term to give business efficacy to contract. *See Contract* (Implied term—

Implication of term to give business efficacy to contract—Building contract).

Retrospective extension of time—

Extension granted by architect after completion of work—Validity. **Amalgamated Building Contractors Ltd v Waltham Holy Cross Urban District Council** [1952] 2 452, CA.

Forfeiture clause—

Application—

Contract fixing time for completion of work—Contract continuing after date for completion—Whether forfeiture clause applicable after completion date—Whether consent of court necessary under Courts (Emergency Powers) Acts before serving notice under forfeiture clause. **Joshua Henshaw & Sons v Borough of Rochdale** [1944] 1 413, CA.

BUILDING CONTRACT (cont)

Formation—

Term to be negotiated—

Price—Agreement to negotiate price. *See Contract* (Enforceability—Certainty of terms—
Term fundamental to contract—Price—No agreed method of ascertaining price—Building
contract).

Frustration—

Change of circumstances—

Scarcity of labour. *See Contract* (Frustration—Change of circumstances—Scarcity of labour
to fulfil building contract).

Guarantee of due performance—

Default by contractor—

Action against guarantor—Reliance on engineer's certificate—Action dismissed—Second
action claiming loss caused by delay—Whether *res judicata*—Actions on Breaches on
Bonds Act 1697 s 8. **Workington Harbour and Dock Board v Trade Indemnity Co Ltd (No
2)** [1938] 2 101, HL.

Illegality—

Infringement of bye-law by building work—

Effect—Whether contractor disentitled by illegality to recover payment for work done.
**Townsend (Builders) Ltd v Cinema News & Property Management Ltd (David A Wilkie
& Partners, Third Party)** [1959] 1 7, CA.

Indemnity—

Contract between builders and scaffolding contractors. *See Indemnity* (Contract between
builders and scaffolding contractors).

Negligence. *See Indemnity* (Negligence—Building contract).

Insurance—

Obligation to insure—

Persons subject to obligation—Building contractors' obligation to insure against subsidence
and collapse of adjoining properties—Whether obligation extended to insurance of building
owner—RIBA form of contract (1939), revised 1952, condition 15(a). **Gold v Patman and
Fotheringham Ltd** [1958] 2 497, CA.

Offer and acceptance—

Acceptance—

Retrospective acceptance. *See Contract* (Offer and acceptance—Acceptance—
Retrospective acceptance—Building contract).

Privity of contract—

Building owner and sub-contractor—

RIBA standard form of contract—Insolvency of contractor—Ratification. **A Vigers Sons & Co
Ltd v Swindell** [1939] 3 590, KBD.

Proper law. *See Conflict of laws* (Contract—Proper law of contract—Building contract).

Specific performance. *See Specific performance* (Building contract).

Sub-contract—

Incorporation of clauses from head contract—

Implied terms—Notice to remove sub-contractor—Implied term as to impossibility of
performance—Implication of terms in sub-contracts—Quantum meruit. **Chandler Bros Ltd
v Boswell** [1936] 3 179, CA.

Sub-contractors—

Interim certificate—

Amount certified as payable for sub-contract works—Deductions from sum payable—
Certificate issued to main contractors—Quantified claim by main contractors against sub-
contractors for delay and bad workmanship—Main contractors reserving right to deduct
from payments due to sub-contractors 'amount of any bona fide accounts and/or other
claims' which they have against sub-contractor—Whether main contractors deprived of
right of set-off. **Gilbert-Ash (Northern) Ltd v Modern Engineering (Bristol) Ltd** [1973] 3
195, HL.

Amount certified as payable for sub-contract works—Deductions from sum payable—
Certificate issued to main contractors—Unquantified claim by main contractors against
sub-contractors for delay—Main contractors entitled 'to deduct from... any money due... to
sub contractor... any sum which the sub-contractor is liable to pay to the contractor'—Only
quantified ascertainable sums deductible—Main contractors not entitled to deduct in
respect of unliquidated claim subject to dispute—RIBA form of sub-contract, cl 11(b), 13.
Dawnays Ltd v F G Minter Ltd [1971] 2 1389, CA.

Nominated suppliers—

Alleged wrongful repudiation by building contractor—Defective materials supplied—
Undetectable defect—Whether main contractor warrants impliedly the fitness of materials
supplied by nominated supplier—Building contract—Architect—Instructions—Notice to
determine contract on ground of delay exceeding one month—Notice given by contractor—
Whether contractor in breach of contract or whether notice valid—RIBA form of contract,
conditions, cl 18(v), cl 20. **Gloucestershire County Council v Richardson** [1968] 2 1181,
HL.

Nominated sub-contractor—

Garnishee order against main contractor—Whether debt due from main contractor to sub-
contractor before architect's certificate. **Dunlop & Ranken Ltd v Hendall Steel Structures
Ltd (Pitchers Ltd Garnishees)** [1957] 3 344, QBD.

Remuneration—

Right of building owner to pay sub-contractor direct—Power of architect to give certificate in
favour of sub-contractor after certificate given in favour of contractor. **J A Milestone &
Sons Ltd (in liquidation) v Yates Castle Brewery Ltd** [1938] 2 439, KBD.

BUILDING CONTRACT (cont)

Sub-contractors (cont)—

Sub-contract for prime cost item—

Sub-contract repudiated—Main contractor performing sub-contract work without prejudice—Whether architect required to nominate substitute sub-contractor—Whether main contractor entitled to be paid for costs reasonably incurred in excess of sub-contract price—RIBA form of contract—Local Authorities Edition with Quantities 1963, conditions 11(3), 27. **North West Metropolitan Regional Hospital Board v T A Bickerton & Son Ltd** [1970] 1 1039, HL.

Time for completion—

Extension. *See* Extension of time, *ante*.

Wages—

Rise and fall clause—

Increase or decrease in rates of wages resulting in increase or decrease of cost to contractor—Weekly sums credited to each employee each week, payable as lump sum holiday money—Whether contractor entitled to add to contract price increase in holiday credits. **London County Council v Henry Boot & Sons Ltd** [1959] 3 636, HL.

Warranty—

Implied warranty—

Fitness or quality of materials—Two warranties implied, fitness for purpose and good quality—Sub-contract for work and materials—Defective materials supplied—Material specified by contractors, manufactured only by one manufacturer—Specified material obtained but having undetectable defects, due to faulty manufacture, rendering it not of good quality—Material supplied and fixed by sub-contractor—Whether sub-contractor liable for supplying such material. **Young and Marten Ltd v McManus Childs Ltd** [1968] 2 1169, HL.

BUILDING CONTROL

Building licence—

Construction—

Whether licence to be construed with the application for licence—House to be sold at price 'including cost of roads, sewers and other services'—Cost of making up roads to satisfaction of local authority not included—Public Health Act 1875, s 150. **Smith v Jones** [1952] 2 907, QBD.

Failure to obtain—

Effect on contractual obligations—Building architect's undertaking to obtain—Architect failing to obtain licence—Liability to builders for breach of warranty. **Strongman (1945) Ltd v Sinccock** [1955] 3 90, CA.

Prosecution by local authority—Information laid by clerk to council—No resolution by council authorising clerk to take proceedings—Effect—Defence (General) Regulations 1939, reg 56A(2)(as amended)—Control of Building Operations (Proceedings by Local Authorities)(No 1) Order 1947 (S R & O 1947 No 75), art 1. **Bob Keats Ltd v Farrant** [1951] 1 899, KBD.

Licence for specified work—

Authorised expenditure—Services used for purpose of building operation—Whether architect's fees included in amount authorised by licence—Defence (General) Regulations 1939, reg 56A(4), (6). **Young v Buckles** [1952] 1 354, CA.

Authorised expenditure exceeded—Defences open to alleged offender—Cost of supplying article—Inclusion in permitted cost—Defence (General) Regulations 1939, reg 56A(2), (6), (8). **Bostel Bros Ltd v Hurlock** [1948] 2 312, CA.

Authorised expenditure exceeded—Oral permission covering excess—Retrospective effect of licence—Defence (General) Regulations 1939, reg 56A(2), (6). **Jackson Stansfield & Sons v Butterworth** [1948] 2 558, CA.

Authorised expenditure exceeded—Work ordered and executed separately—Execution at same time as licensed work—Defence (General) Regulations 1939, reg 56A (as amended), Sch VI, Part II. **Muir v James** [1953] 1 494, CA.

Extra work within licence-free limit—Necessity for further licence. **Brewer Street Investments Ltd v Barclays Woollen Co Ltd** [1953] 2 1330, CA.

General authority to spend £10 and £2 a month without licence—Whether additional to work covered by specific licence—Defence (General) Regulations 1939, reg 56A(1), (2)—Control of Building Operations (No 8) Order 1947 (S R & O 1947 No 74), art 2(1), (2). **Dennis & Co Ltd v Munn** [1949] 1 616, CA.

Licensed and unlicensed work carried out—Allocation of payments to licensed work—Defence (General) Regulations 1939, reg 56A(2). **A Smith & Son (Bognor Regis) Ltd v Walker** [1952] 1 1008, CA.

Scope of licence—Work ordered by tenant—Licence in name of sub-tenant—Right of builder to recover cost of work from tenant—Defence (General) Regulations 1939, reg 56A(2), (6). **Woolfe v Wexler** [1951] 1 635, CA.

Certificate of registration—

'No person shall carry out any work in the course of a building undertaking carried on by him unless there is in force a certificate under this regulation'—

Appellant employed as a servant to build a barn—No certificate issued to appellant under the regulation—'Carry out'—'In the course of a building undertaking carried out by him'—Defence (General) Regulations 1939, reg 56AB(1). **Courtman v Talbot** [1944] 2 3, KBD.

Permitted cost of work without licence—

Work in excess of limit without licence—

Contract for work of unascertainable cost—Recovery of cost of work—Whether whole or only excess cost irrecoverable—Defence (General) Regulations 1939, reg 56A. **Frank W Clifford Ltd v Garth** [1956] 2 323, CA.

BUILDING LAND

Contract for sale—

Specific performance—

Lapse of time. *See* **Specific performance** (Lapse of time—Contract for sale of building land).**BUILDING LEASE***See* **Landlord and tenant** (Building lease).**BUILDING LICENCE**

Conditions—

Registration. *See* **Housing** (Registration of conditions imposed by building licence).Generally. *See* **Building control** (Building licence).

House constructed under building licence—

Limitation of purchase price. *See* **Housing** (House constructed under building licence—Limitation of purchase price).**BUILDING PLOTS**

Sale of land—

Boundaries between plots. *See* **Sale of land** (Conveyance—Parcels—Building plots).**BUILDING REGULATIONS**Control of buildings. *See* **Public health** (Control of buildings).Generally. *See* **Building** (Building regulations).**BUILDING SCHEME**Restrictive covenant. *See* **Restrictive covenant affecting land** (Building scheme).**BUILDING SOCIETY**

Advances—

Mortgage of freeholds—

Collateral charge on fund—'Pooling agreement'—Validity—Injunction—Execution of mortgage—Estoppel—Fraudulent statements by third party—Building Societies Act 1874, ss 12, 13, 25—Building Societies Act 1894, ss 13(1), 17. **Bradford Third Equitable Benefit Building Society v Borders** [1941] 2 205, HL.Collateral charge on fund—'Pooling agreement'—Validity—Misrepresentation—Building Societies Act 1874, s 13. **Halifax Building Society v Salisbury** [1939] 4 427, CA.

Security on which advances may be made—

Restriction on second mortgages—Loan secured by first mortgage—Second mortgage as collateral security—Validity of second mortgage—Consolidation. **Hayes Bridge Estate v Portman Building Society** [1936] 2 1400, ChD.

Chief Registrar—

Controls exercisable by Chief Registrar—

Expenses—Direction to officer of building society to pay specified sum as expenses incurred by Chief Registrar under s 8(1) of Building Societies Act 1960—Sum comprised expenses incurred by reason of exercise of powers under s 6 or s 7—Whether direction ultra vires—Whether court had jurisdiction in action for debt to inquire into vires—Building Societies Act 1960, s 8(1), (3). **Musson v Emile** [1964] 1 315, QBD.

Meeting—

Notice convening meeting—

Rules entitling all members to notice of all meetings but only holders of completed shares to vote—Enactment requiring notice of special meeting to be sent to members qualified to vote—Notice of special meeting sent to members holding completed shares only—Omission of notice to holders of uncompleted shareholders not accidental—Whether meeting validly convened—Building Societies Act 1960, s 35(1)-(3). **Royal Mutual Benefit Building Society v Sharman** [1963] 2 242, ChD.Winding-up of building society. *See* **Winding-up—Meeting—Notice of meeting, post.**

Mortgage—

Interest—

Compound interest—Right to charge—No agreement for compound interest in mortgage deed. **Eastern Counties Building Society v Russell** [1947] 1 500, KBD.

Mortgage following assignment on sale obtained by fraud—

Whether assignment void against building society. **Gallie v Lee** [1969] 1 1062, CA.

Sale—

Exercise of power of sale—Ensuring sale at best price—Law of Property Act 1925, ss 101, 106(3)—Building Societies Act 1939, s 10. **Reliance Permanent Building Society v Harwood-Stamper** [1944] 2 75, ChD.Option—Grant of option to purchase—Validity. **Cottrill v Steyning and Littlehampton Building Society** [1966] 2 296n, QBD.

Registrar—

Certiorari to quash decision of. *See* **Certiorari** (Jurisdiction—Registrar of Building Societies).

Shares—

Preference shares—

Fixed term shares—Fixed rate ordinary shares—Rules of society authorising issue of preference shares—Whether fixed term shares or fixed rate ordinary shares were preference shares—Whether society could properly bind itself to pay fixed rate interest on ordinary shares. **Alliance Perpetual Building Society v Clifton** [1962] 3 828, ChD.

Winding-up—

Meeting—

Notice of meeting—General meeting—Notice of meeting to be sent to all members—Register of members destroyed—Notice to members by public advertisement—Building Societies Act 1874, s 32(4). **Payne v Coe** [1947] 1 841, ChD.

BUILDING SOCIETY (cont)

Winding-up (cont)—

Meeting (cont)—

Summoning of meeting—Annual meeting—Whether trustees under any duty to summon—
 Building Societies Act 1874, s 32—Building Societies Act 1894, s 9. *Payne v Coe* [1950]
 2 111, ChD.

BUILT UP AREASpeeding. *See* **Road traffic** (Excessive speed—Built up area).**BULL**

Owner or keeper—

Liability in negligence for personal injuries caused by bull. *See* **Animal** (Negligence—Domestic animal—Liability of owner or keeper—Liability in negligence for personal injuries caused by animal—Bull).

BULLOCK ORDER*See* **Costs** (Bullock order).**BURDEN OF PROOF**

Appeal—

Grounds of appeal—

Town and country planning. *See* **Town and country planning** (Enforcement notice—Appeal from Minister to High Court—Burden of proof of grounds of appeal to Minister).

Civil action—

Alternative causes of action—

Alternative causes of action in contract or for fraud—Whether standard of proof different for the alternative causes of action—Degrees of probability within a standard of proof, whether civil or criminal. *Hornal v Neuberger Products Ltd* [1956] 3 970, CA.

Claim for disablement pension by members of regular forces—

Proof beyond reasonable doubt—Effect of statutory requirement of such proof. *Judd v Minister of Pensions and National Insurance* [1965] 3 642, QBD.

Conviction as evidence—

Negligence—Burden of proof reversed—Burden on defendant to prove he had not been negligent—Civil Evidence Act 1968, s 11(2). *Wauchope v Mordecai* [1970] 1 417, CA.

Upsetting conviction—Burden of proof on person seeking to upset conviction—Weight to be given to conviction—Civil Evidence Act 1968, s 11(2)(a). *J W Stuppel v Royal Insurance Co Ltd* [1970] 3 230, CA.

Upsetting conviction—Burden of proof on person seeking to upset conviction—Weight to be given to jury's verdict—Civil Evidence Act 1968, s 11(1), (2). *Taylor v Taylor (Taylor intervening, Holmes cited)* [1970] 2 609, CA.

Criminal offence constituted by acts in respect of which injunction sought—

Standard of proof—Balance of probabilities. *Post Office v Estuary Radio Ltd* [1967] 3 663, QBD and CA.

Negligence—

Conviction as evidence. *See* Civil action—Conviction as evidence—Negligence, *ante*.

Legal burden—Distinction between legal and provisional onus of proof. *Brown v Rolls Royce Ltd* [1960] 1 577, HL.

Contributory negligence. *See* **Negligence** (Contributory negligence—Burden of proof).

Criminal cases—

Evidential burden of proof—

Terminology. *Jayasena v Reginam* [1970] 1 219, PC.Criminal cases—Generally. *See* **Criminal evidence** (Burden of proof).Direction to jury. *See* **Jury** (Direction to jury).

Divorce—

Matrimonial offence. *See* **Divorce** (Evidence—Proof—Burden of proof of matrimonial offence).

Excuse or qualification—

Whether plaintiff or prosecutor has to plead and prove absence of excuse or qualification under factories legislation. *See* **Factory** (Safe place of work—Obligation to make and keep safe so far as reasonably practicable—Burden of proof).

Extradition proceedings—

Restriction on power to return fugitive offender—

Possibility of punishment by reason of race, religion, nationality or political opinions. *See* **Extradition** (Fugitive offender—Restriction on return—Punishment by reason of race, religion, nationality or political opinions—Possibility of punishment—Burden of proof).

Habeas corpus—

Return of gaoler to writ—

Truth of contents. *See* **Habeas corpus** (Return to writ—Enquiry into truth of facts set out in return—Onus of proof).

Immigration—

Non-patrial—

Right of entry. *See* **Immigration** (Leave—Non-patrial—Right of entry—Onus of satisfying immigration officer of right to enter).

Life tenant—

Continuance of life. *See* **Trust and trustee** (Life interest—Continuance of life of life tenant—Burden of proof).

Negligence—

Duty of care. *See* **Negligence** (Duty to take care—Breach of duty—Burden of proof).

Proceedings relating to customs or excise—

Improper importation of goods—

Forfeiture of goods. *See* **Customs** (Forfeiture—Imported goods—Goods on which duty chargeable and unpaid—Onus of proof).

Safe system of working. *See* **Safe system of working** (Permitting unsafe system to be in operation—Burden of proof).

BURDEN OF PROOF (cont)

Trespass to land—

Lawful possession. *See* **Trespass to land** (Defence—Lawful possession—Burden of proof).

War pension—

Claim. *See* **War pension** (Claim—Burden of proof).**BURGLARY**Criminal offence. *See* **Criminal law** (Burglary).Insurance. *See* **Insurance** (Burglary insurance).**BURIAL**

Burial ground—

Charge for monumental inscription—

Right of burial board to charge for permission to cut inscriptions on gravestone—**Burial Act 1852, ss 33, 34, 38. Twyford v Manchester Corpn [1946] 1 621, ChD.**

Disused—

Prohibition of erection of any buildings upon any disused burial ground—Building—Meaning—Monument—Petition for faculty to erect monument on burial ground—Monument to be 24 feet high and to cover an area of 400 square feet—Whether monument a 'building'—Whether court having power to grant faculty—Disused Burial Grounds Act 1884, s 3. **Re St Luke's, Chelsea [1976] 1 609, Con Ct.**Prohibition of erection of any buildings upon any disused burial ground—Electricity substation—'Structure' but not building—Disused Burial Grounds Act 1884, s 3—Open Spaces Act 1887, s 4. **Re St Peter The Great, Chichester [1961] 2 513, Con Ct.**Prohibition of erection of any buildings upon any disused burial ground—Exception—Enlargement of the church—Building to be erected for parish purposes and joined to church—Hall with entrance hall, kitchen, dressing rooms and lavatories—Vestries with lavatories—Whether erection of building would be for the purpose of enlarging the church—Whether building would serve directly primary purpose of church—Disused Burial Grounds Act 1884, s 3. **Re St Mary's, Luton [1966] 3 638, Ct of Arches.**Prohibition of erection of any buildings upon any disused burial ground—Exception—Enlargement of the church—Enlargement—Physical contiguity—Purpose connected with or ancillary to worship—Extension of church for use as choir vestry and meeting-place for congregation after Sunday services—New building also to be used for Sunday school and as place for mid-week meetings of parishioners—Whether building to be used for purposes connected with worship—Whether material that building also to be used for other purposes—Whether building an enlargement of the church—Disused Burial Grounds Act 1884, s 3. **Re St Ann's Church, Kew [1976] 1 461, Con Ct.**Prohibition of erection of any buildings upon any disused burial ground—Roof whose supports would not touch consecrated land—Whether a building 'upon' the land—Disused Burial Grounds Act 1884, s 3—Open Spaces Act 1887, s 4. **Re St Mark's Church, Lincoln [1956] 2 579, Ct of Arches.**Prohibition of erection of any buildings upon any disused burial ground—Whole of ground set apart for interments but not all used for that purpose—Legacy to erect lodge for sexton on unconsecrated part not so used—Whether building on part not yet used for burial forbidden as building on 'disused' burial ground—Disused Burial Grounds Act 1884, s 2, s 3—Open Spaces Act 1887, s 4—Open Spaces Act 1906, s 20. **Re Jewison's Will Trusts [1961] 3 1022, ChD.**

Secular use—

Faculty. *See* **Ecclesiastical law** (Faculty—Secular use of consecrated ground—Burial ground).

Burial rights in perpetuity—

Duty to maintain plot—

Tree falling and causing damage—Liability of grave owner. **London Cemetery Co v Cundey [1953] 2 257, QBD.**

Restrictions touching and concerning land—

Onerous restrictions on cemetery company's land—Winding-up of company—Disclaimer by liquidator. **Re Nottingham General Cemetery Co [1955] 2 504, ChD.**Conspiracy to prevent burial of a corpse. *See* **Criminal law** (Conspiracy—Burial—Prevention).

Cremation society—

Rates—

Charitable purpose. *See* **Rates** (Charitable and other organisations—Hereditaments wholly or mainly used for charitable purposes—Cremation society).

Expenses—

Burial of wife—

Common law liability of husband—Effect of married women's property legislation. **Rees v Hughes [1946] 2 47, CA.****BURIAL GROUND***See* **Burial** (Burial ground).**BUS**Stage carriage. *See* **Road traffic** (Stage carriage).**BUSINESS**

Advertising—

Use of loudspeaker. *See* **Advertisement** (Trade or business—Use of loudspeaker for advertising purposes).

Capital—

Computation—

Excess profits tax. *See* **Excess profits tax** (Capital—Computation—Capital employed in a trade or business).

BUSINESS (cont)

Expenses—

Deduction in computing profits for income tax. *See* **Income tax** (Deduction in computing profits).

False trade description—

Application in course of business. *See* **Trade description** (False trade description—Application in course of trade or business).

Application of false trade description in course of. *See* **Trade description** (False trade description—Application in course of trade or business).

Passing off—

Representation that employers had gone out of business. *See* **Passing off** (Business).

Premises—

Advertisement. *See* **Town and country planning** (Advertisement—Display without express consent on business premises).

Covenant—

User of premises. *See* **Landlord and tenants** (Covenant—User of premises—Covenant against use except as business premises).

Improvements—

Compensation. *See* **Landlord and tenant** (Improvements—Business premises—Compensation).

Intention of landlord to occupy holding. *See* **Landlord and tenant** (Opposition to grant of new tenancy of business premises—Intention of landlord to occupy holding for purposes of a business to be carried on by him).

Intention to demolish or reconstruct. *See* **Landlord and tenant** (Opposition to grant of new tenancy of business premises—Intention of landlord to demolish or reconstruct premises comprised in holding).

Interim rent. *See* **Landlord and tenant** (Rent—Business premises—Interim rent).

New tenancy—

Opposition to grant of new tenancy. *See* **Landlord and tenant** (Opposition to grant of new tenancy of business premises).

Rent. *See* **Landlord and tenant** (Rent—Business premises—New tenancy).

Shop. *See* **Landlord and tenant** (New tenancy—Shop).

Notice to quit. *See* **Landlord and tenant** (Notice to quit—Business premises).

Opposition to grant of new tenancy. *See* **Landlord and tenant** (Opposition to grant of new tenancy of business premises).

Option to purchase—

Right of pre-emption—Personal to donee. *See* **Will** (Option—Option to purchase realty—Business premises).

Recovery of possession. *See* **Landlord and tenant** (Recovery of possession—Business premises).

Rent—

Limitation—Counter—inflation legislation. *See* **Landlord and tenant** (Rent—Business premises—Limitation—Prohibition on increase in rate of rent—Counter-inflation legislation).

Limitation. *See* **Landlord and tenant** (Rent—Limitation—Prohibition on increase in rate of rent—Business premises).

New tenancy. *See* **Landlord and tenant** (Rent—Business premises—New tenancy).

Shop—

New tenancy. *See* **Landlord and tenant** (New tenancy—Shop).

Tenancy. *See* **Landlord and tenant** (Business premises).

Records—

Hearsay evidence—

Criminal proceedings. *See* **Criminal evidence** (Hearsay—Record relating to trade or business).

Sale of business—

Sale of company by receiver as going concern—

Termination of contracts of service. *See* **Company** (Receiver—Sale of business—Effect on employees of company).

Solicitor—

Goodwill attaching to office premises—

Compensation. *See* **Solicitor** (Goodwill attaching to office premises—Compensation).

Sunday trading. *See* **Sunday observance** (Prohibition on transaction of business by tradesman etc on Sunday).

Tax—

Canada. *See* **Canada** (Business tax).

Transfer—

Continuation of employees employment. *See* **Employment** (Continuity—Transfer of trade, business or undertaking).

Will—

Gift of business. *See* **Will** (Gift—Business).

BYELAW

Validity—

Repugnant to statute—

Bye-law prohibiting betting in public places—Statute permitting betting provided certain conditions observed—Street Betting Act 1906, ss 1(1), (4), 2—Betting and Lotteries Act 1934, ss 2(1), 20. **Powell v May** [1946] 1 444, KBD.

Bye-law prohibiting nuisance by noisy animals—Statutory provision for suppression in summary manner of nuisances caused by animal being kept in manner prejudicial to health or nuisance—Public Health Act 1936, s 92(1)(b)—Local Government Act 1933, s 249(4). **Galer v Morrissey** [1955] 1 380, QBD.

BYELAW (cont)

Validity (cont)—

Repugnant to statute (cont)—

Hackney carriage—Byelaw prohibiting plying for hire other than on authorised standing—Statutory obligation to accept hiring when carriage standing in any street or place—London Hackney Carriage Act 1831, s 35—Airports Authority Act 1965, s 12(6)—London (Heathrow) Airport Byelaws 1966, art 5(44). *Eldridge v British Airports Authority* [1970] 2 92, QBD.

Uncertainty—

Bye-law requiring a builder constructing a closet to secure that it should not be entered from a room used for human habitation—Proviso allowing entry from room used as a bedroom—Watercloset bye-laws of the London County Council. *Townsend's (Builders) Ltd v Cinema News & Property Management Ltd (David a Wilkie & Partners Third Party)* [1959] 1 7, CA.

CAB

Hackney carriage—

Byelaw affecting hackney carriages—

Validity. *See* **Byelaw** (Validity—Repugnant to statute—Hackney carriage).

Hackney carriage—

Generally. *See* **Road traffic** (Hackney carriage).

Licence—

Revocation—

Certiorari to quash revocation. *See* **Certiorari** (Jurisdiction—Licensing committee—Cab licence—Decision of Commissioner of Metropolitan Police to revoke).

CABINET

See **Constitutional law** (Cabinet).

CALL UP

National service. *See* **National service** (Call up).

CAMERA

Will—

Specific bequest. *See* **Will** (Gift—Specific bequests—My cameras).

CANADA

Alberta—

Conflict between dominion and provincial legislation. *See* **Constitutional law**—Conflict between dominion and provincial legislation—Alberta, *post*.

Appeals to Privy Council—

Abolition—

Saving for 'judicial proceeding' commenced prior to coming into force of Act abolishing appeals to Privy Council—Whether notice of appeal against, and notice of dissatisfaction with, tax assessments commenced a 'judicial proceeding'—Supreme Court Amendment Act 1949 (S C 1949), ss 3, 7—Income War Tax Act 1927, ss 58, 59, 60, 63, 69—Supreme Court Act 1952, s 2(e). *St Catherine's Flying Training School Ltd v Minister of National Revenue* [1956] 3 781, PC.

Ontario—

Appeal as of right—Privy Council Appeals Act 1927, s 1. *Lovibond v Grand Trunk Ry Co of Canada* [1936] 2 495, PC.

Business tax—

Manitoba—

Canadian Pacific Railway Company—Deed of covenant giving exemption from taxation—Validity. *City of Winnipeg v Canadian Pacific Ry Co* [1953] 2 988, PC.

Saskatchewan—

Exemption of property from taxation—Canadian Pacific Railway Company—Validity of Saskatchewan Act 1905, s 24—City Act 1947. *Attorney-General for Saskatchewan v Canadian Pacific Ry Co* [1953] 2 970, PC.

Compulsory expropriation of land—

Hydro-electric power company—

Statutory powers—Whether all affected property to be vested in power company. *Cross v Gatineau Power Co* [1936] 3 52, PC.

Compulsory purchase—

Compensation for railway—

Interest—Arbitration—Claim for interest on money awarded—Right of action—Petition of right—Niagara Falls Park Act 1887—Niagara Falls Park and River Railway Company Incorporation Act 1892. *International Ry Co v Niagara Parks Commission* [1941] 2 456, PC.

Constitutional law—

Conflict between dominion and provincial legislation—

Alberta—Interest—Reduction of interest on provincially guaranteed securities—British North America Act 1867, ss 91, 92—Canadian Interpretation Act, s 16—Canadian Interest Act—Provincially Guaranteed Securities Proceedings Act (Alberta) 1937—Provincial Guaranteed Securities Interest Act (Alberta) 1937—Provincial Securities Interest Act (Alberta) 1937. *Lethbridge Irrigation District Trustees v Independent Order of Foresters and Attorney-General for Canada* [1940] 2 220, PC.

Parliament—

Legislative power—Power to establish Supreme Court with exclusive and final appellate jurisdiction—Exclusion of appeals to Privy Council from dominions and provinces—British North America Act 1867, ss 91, 92, 101. *Attorney-General of Ontario v Attorney-General of Canada (Attorney-General of Quebec intervening)* [1947] 1 137, PC.

CANADA (cont)

Copyright—

Pictures painted before 1924—

Not produced or reproduced in Canada before 1924—Copyright not registered in Canada before 1924—Copyright Act 1911, s 25(1), (2)—Canadian Copyright Act (RSC 1906, c 70), s 6—Canadian Copyright Act 1921, s 42. **Mansell v Star Printing and Publishing Co of Toronto Ltd** [1937] 3 912, PC.

Crown lands—

Grant by Dominion of rights over petroleum and natural gas—

Power to impose royalties—Validity of royalties imposed after grant—Transfer of rights in Crown land from Dominion to Province—Dominion Lands Act 1908, s 76(k)—Natural Resources Act (Transfer Agreement Act) 1930, s 1, s 3. **Attorney-General of the Province of Alberta v Huggard Assets Ltd** [1953] 2 951, PC.

Crown practice—

Petition of right—

Shares transferred by statutory authority to Crown—Action for rectification of register. **Lovibond v Grand Trunk Ry Co of Canada** [1936] 2 495, PC.

Dominion and provincial legislation—

Conflict between—

Alberta. *See* Constitutional law—Conflict between dominion and provincial legislation—Alberta, *ante*.

Insolvent local government bodies—

Right of province to amalgamate and make consequential provisions—British North America Act 1867, ss 91(19), (21), 92(8)—City of Windsor (Amalgamation) Act 1935—City of Windsor (Amalgamation) Amendment Act 1936—Ontario Municipal Board Act 1932, Part VI—Department of Municipal Affairs Act 1935. **Ladore v Bennett** [1939] 3 98, PC.

Province of New Brunswick not empowered to limit interprovincial, etc, connecting undertakings—

Omnibus undertaking—British North America Act 1867, s 92(10)(a). **Attorney-General for Ontario v Winner, Winner v SMT (Eastern) Ltd** [1954] 3 177, PC.

Right of province to pass Act dealing with bankruptcy and insolvency—

British North America Act 1867, ss 91(21), 92—Debt Adjustment Act (Alberta) 1937. **Attorney-General of Alberta v Attorney-General of Canada** [1943] 1 240, PC.

Right of province to pass taxation Act—

Tax payable by consumer or his agent at time of purchase—Direct taxation—Customs and excise—British North America Act 1867, ss 92(2), 121, 122—Tobacco Tax Act (New Brunswick) 1940, ss 4, 5. **Atlantic Smoke Shops Ltd v Conlon** [1943] 2 393, PC.

Education—

Rate—

Assessment for purposes of separate school—Company—Ascertainment of number of Roman Catholic shareholders—Ontario Separate Schools Act, s 66. **Board of Education for City of Windsor v Ford Motor Co of Canada Ltd** [1941] 3 241, PC.

Electricity—

Power supply—

Contract to supply for the mining life of a property—Assignable only with consent of power company—Consumer company selling mine and being dissolved—Whether contract determined. **Northern Ontario Power Co Ltd v La Roche Mines Ltd, La Roche Mines Ltd v Northern Ontario Power Co Ltd** [1938] 2 755, PC.

Federal and provincial relations—

Bankruptcy and insolvency—

Winding-up—Leave to proceed with debenture holders' action—Action stayed by provincial Act—British North America Act 1867, ss 91(21), 92(13)—Abitibi Power and Paper Co Ltd *Moratorium Act* (Ontario) 1941. **Abitibi Power and Paper Co Ltd v Montreal Trust** [1943] 2 311, PC.

Income tax—

Allowances—

Depreciation—General instructions governing allowances—Exercise of discretion—New company taking over business of company ceasing to exist—Income War Tax Act 1927, ss 3, 5(a), (b), 58, 60, 63—Customs and Inland Revenue Act 1878, s 12. **Pioneer Laundry and Dry Cleaners Ltd v Minister of National Revenue** [1939] 4 254, PC.

Company—

Redemption of bonds—Principal and interest payable at bond-holders' option in currency other than Canadian dollars—Conversion expenses—Not deductible under Income War Tax Act (Canada) 1927—Income War Tax Act (Canada) 1927, s 6(a). **Montreal Coke and Manufacturing Co v Minister of National Revenue, Montreal Light Heat and Power Consolidated v Same** [1944] 1 743, PC.

Exemption—

Newfoundland—Statutes—Statutory exemption from taxation except water rates—Subsequent imposition of income tax in Newfoundland—Whether company liable—Ejusdem generis rule—United Towns Electrical Company Act 1902, s 30. **United Towns Electric Co Ltd v Attorney-General for Newfoundland** [1939] 1 423, PC.

Income accumulating in Canada in trust for unascertained persons—

Charitable institution—Liability for interest on unpaid tax—Income War Tax Act, ss 4(e), 11(2), 48, 49, 66—Statutes of Canada 1934, s 7. **Minister of National Revenue v Trusts and Guarantee Co Ltd** [1939] 4 149, PC.

Provincial income tax—

Deduction by employer from wages—Dominion civil servant—'Employee'—Occupied field—British North America Act 1867, ss 91, 92—Special Income Tax Act 1933 (Manitoba), ss 2, 3, 4, 5, 6, 7. **Forbes v Attorney-General of Manitoba** [1937] 1 249, PC.

CANADA (cont)

- Lien—
 - Mechanics' lien—
 - Oil well—Meaning of 'owner'—Receiver appointed to receive proceeds of sale of oil—Renewal statement not filed—Rights against funds in receiver's hands—Mechanics' Lien Act (Alberta), as amended, ss 2(g), 6(1), 24(6), 43. **Ponoka-Calmor Oils Ltd v Earl F Wakefield Co** [1959] 3 571, PC.
- Local government—
 - Local authority—
 - Powers of discovery—Whether local authority or court—Severability of invalid powers of local authority—Ontario Municipal Board Act 1932—Township of York Act 1936, s 2. **Toronto City Corp v York (Township) and Attorney-General for Ontario** [1938] 1 601, PC.
- Manitoba—
 - Business tax. *See* Business tax—Manitoba, *ante*.
- Mines and minerals—
 - Coal—
 - Royalties—Crown leases and grants—Transfer from dominion to province—Increase of royalties—Conflict with transfer agreement—Natural Resources Act (Transfer Agreement Act) 1930, s 2—Provincial Lands Act 1948, s 8. **Attorney-General of the Province of Alberta v West Canadian Collieries Ltd** [1953] 2 965, PC.
 - Reservation—
 - Right to work implied in reservation—Meaning of 'petroleum'—Vernacular, not scientific, meaning to be sought—Right of occupier of land to natural gas within the land. **Borys v Canadian Pacific Ry Co** [1953] 1 451, PC.
- Newfoundland—
 - Family arrangement—
 - Essential requirements—Generosity of one party—Fiduciary relationship. **Cashin v Cashin** [1938] 1 536, PC.
 - Income tax—
 - Exemption. *See* Income tax—Exemption—Newfoundland, *ante*.
- Ontario—
 - Appeal to Privy Council—
 - Appeal as of right. *See* Appeals to Privy Council—Ontario—Appeal as of right, *ante*.
 - Succession duty. *See* Succession duty—Ontario, *ante*.
- Patent—
 - Validity—
 - Patent declared invalid—Disclaimer subsequently filed limiting scope of claims—Discretion of Supreme Court to refuse a re-hearing—Whether Privy Council will consider patent as amended—Canadian Patent Act 1935, s 50. **Canadian Celanese Ltd v BVD Co Ltd** [1939] 1 410, PC.
- Practice—
 - Ownership of river bed—
 - Historical documentary evidence—Concurrent findings of fact. **St Francis Hydro Electric Co Ltd v R** [1937] 2 541, PC.
 - Power of court to draw conclusion of fact—
 - Rice damaged by closing of ventilators—No finding of fact by jury that ventilators were closed on account of perils of the sea—Rules of Court of British Columbia, Ord 58, r 4. **Canada Rice Mills Ltd v Union Marine and General Insurance Co Ltd** [1940] 4 169, PC.
- Provincial government—
 - Immunity from suit as foreign sovereign. *See* Constitutional law (Foreign sovereign state—Immunity from suit—Province in federal constitution).
- Quebec—
 - Jurisdiction—
 - Writ of summons. *See* Writ of summons—Jurisdiction—Quebec, *post*.
 - Partnership—
 - Agreement for payment of commission on orders obtained—Whether partnership agreement. **Trower & Sons Ltd v Ripstein (since decd)** [1944] 2 274, PC.
 - Practice—
 - Concurrent findings of fact—Dismissal of appeal. **The People of the State of New York v Heirs of the late John M Phillips** [1939] 3 952, PC.
- Railways—
 - Contract—
 - Director directly or indirectly interested—Lease of house for chairman of directors—Railway Act of Canada 1927, s 121—Canadian National Railways Act 1927. **Montreal Trust Co v Canadian National Ry Co** [1939] 3 930, PC.
- Registered land—
 - Conveyance—
 - Merger of contract in conveyance—Whether contract merged in transfer—'Coal and other minerals'. **Knight Sugar Co Ltd v The Alberta Ry & Irrigation Co** [1938] 1 266, PC.
- Sales tax—
 - Sales company formed by manufacturing company—
 - Whether agents of manufacturing company—Special War Revenue Act 1927, s 86(1)(as amended by Statutes of Canada 1932, s 11). **Canada Rice Mills Ltd v R** [1939] 3 991, PC.
- Saskatchewan—
 - Business tax. *See* Business tax—Saskatchewan, *ante*.
- Succession duty—
 - Ontario—
 - Shares in Ontario company—Shares transferable in two transfer offices, one in Ontario, other outside Ontario—Certificates indorsed in blank—Liability to duty—Succession Duty Act (Ontario) 1934, s 6(1)—Companies Act (Ontario) 1937, ss 56, 60, 101, 102, 107. **R v Williams** [1942] 2 95, PC.

CANADA (cont)

Supreme Court of Canada—

Appeal from 'final judgment'—

Judgment granting probate of will—Supreme Court Act (Revised Statutes of Canada 1927, c 35), ss 2(b), 36. *Dansereau v Berget* [1953] 2 1058, PC.

Waters—

Dam—

Flooding—Statutory liability for all damage—Contributory negligence—Mitigation of damages—Railway owned by Crown and worked by company with statutory power to sue—Parties. *R v Southern Canada Power Co Ltd, Southern Canada Power Co Ltd v R* [1937] 3 923, PC.

Writ of summons—

Jurisdiction—

Quebec—Breach of a contract made in London—Action brought in Montreal—Writ not personally served—Code of Civil Procedure (Quebec), art 94. *Trower & Sons Ltd v Ripstein (since decd)* [1944] 2 274, PC.

CANAL

Canal company—

Supply of water to railway company—

Statute restricting supply to mills and works on adjoining land. *See Water and watercourses* (Canal—Canal company—Supply of water to railway company—Statute restricting supply to mills and works on adjoining land).

CANDIDATE

Local government—

Nomination. *See Elections* (Local government—Nomination papers).

Parliamentary election—

Disqualification of candidate—

Validity of election. *See Elections* (Parliamentary—Validity—Disqualification of candidate).

Nomination—

Description of candidate. *See Elections* (Parliamentary—Nomination—Description of candidate).

CANNABIS

Generally. *See Drugs* (Dangerous drugs—Cannabis).

Importation—

Restriction—

Fraudulent evasion. *See Customs and excise* (Importation of prohibited goods—Knowingly concerned in fraudulent evasion of prohibition or restriction—Importation of drugs—Cannabis).

Permitting premises to be used for smoking cannabis. *See Drugs* (Dangerous drugs—Occupier of premises permitting activities in connection with drugs to take place there).

Premises used for smoking cannabis—

Absolute liability. *See Criminal law* (Absolute liability—Statutory offence—Premises used for smoking or dealing in cannabis).

CAPITAL

Advancement—

Application of capital money for advancement of beneficiary. *See Trust and trustee* (Powers of trustee—Advancement).

Annuity—

Estate insufficient—

Power to resort to capital. *See Administration of estates* (Annuity—Estate insufficient—Power to resort to capital).

Company—

Reduction of capital. *See Company* (Reduction of capital).

Excess profits tax—

Computation of capital. *See Excess profits tax* (Capital—Computation).

Expenditure—

Income tax—

Computation of profits. *See Income tax* (Deduction in computing profits—Capital or revenue expenditure).

Income distinguished—

Administration of estates. *See Administration of estates* (Capital or income).

Income tax. *See Income tax* (Capital or income receipts).

Income tax—

Capital or income receipts. *See Income tax* (Capital or income receipts).

Loan capital—

Stamp duty. *See Stamp duty* (Issue of loan capital).

Settlement—

Capital or income. *See Settlement* (Capital or income).

Share capital of company—

Reduction. *See Company* (Reduction of capital).

CAPITAL ALLOWANCES

See Income tax (Capital allowances).

Income tax. *See Income tax* (Capital allowances).

CAPITAL GAINS TAX

Assessment—

Deductions from consideration on sale—

Amount or value of consideration in money or money's worth given for acquisition of asset—Consideration for asset—Variation of trust—Acquisition by beneficiary of absolute vested interest in share of trust fund in place of contingent interest in whole fund—Insurance policy effected by beneficiary as condition of variation—Policy to protect rights of contingent beneficiaries—Whether premium paid to effect policy 'consideration...given...for the acquisition' of absolute interest—Finance Act 1965, Sch 6, para 4(1)(a). *Allison (Inspector of Taxes) v Murray* [1975] 3 561, ChD.

Amount or value of consideration in money or money's worth given for acquisition of asset—Value of consideration—Money's worth—Shares purchased 1932—44—Sale in 1967—Intervening inflation of value of money—No adjustment to purchase price—Finance Act 1965, Sch 6, para 4(1)(a). *Secretan v Hart (Inspector of Taxes)* [1969] 3 1196, ChD.

Expenditure excluded from allowable deductions—Revenue expenditure—Expenditure deductible in computing profits or gains of trade—Expenditure in relation to fixed capital asset of trade—Rent—Lease held by taxpayer company—Liquidation of taxpayer company—Landlord having power of re-entry on liquidation—Arrears of rent owing to landlord—Liquidators obtaining landlord's consent to assignment of lease on payment of arrears in full—Landlord unable to recover full amount of arrears in liquidation—Part of arrears relating to period after commencement of liquidation—Whether sum paid in respect of that part a capital payment for the purpose of enhancing the value of the lease by removing landlord's right of re-entry—Whether sum excluded from allowable deductions as expenditure which would have been deductible in computing profits of trade—Finance Act 1965, Sch 6, paras 4(1)(b), 5(2). *Emmerson (Inspector of Taxes) v Computer Time International Ltd (in liquidation)* [1976] 2 131, ChD.

Expenditure wholly and exclusively incurred in establishing, preserving or defending title to asset—Establishing title—Acquisition of asset—Title not challenged—Variation of trust—Acquisition by beneficiary of absolute vested interest in share of trust fund in place of contingent interest in whole fund—Insurance policy effected by beneficiary as condition of variation—Policy to protect rights of certain contingent beneficiaries—Whether payment of premium expenditure incurred in 'establishing' beneficiary's title—Finance Act 1965, Sch 6, para 4(1)(b). *Allison (Inspector of Taxes) v Murray* [1975] 3 561, ChD.

Expenditure wholly and exclusively incurred in establishing, preserving or defending title to asset—Establishing title—Executors of estate—Expenditure incurred by executors in obtaining valuations and procuring confirmation of title—Valuations necessary for purpose of satisfying Revenue's claim to estate duty—Satisfying claim an essential step before executors could obtain title by confirmation and deal with assets—Sale of assets realising capital gain—Whether cost of obtaining valuations expenditure wholly and exclusively incurred by executors in establishing title to assets—Finance Act 1965, Sch 6, para 4(1)(b). *Inland Revenue Comrs v Executors of Dr Robert Richards* [1971] 1 785, HL.

Time limit. *See* Time limit for assessment, *post*.

Assets—

Cost of acquisition. *See* Computation of chargeable gains—Cost of acquisition of asset, *post*.

Valuation—

Market value—Shares—Shares quoted on London Stock Exchange—Quoted price as proper measure of market value—Special circumstances displacing quoted price as proper measure—Take-over—Valuation of shares at 6th April 1965—Negotiations for take-over current at 6th April 1965—Negotiations well advanced and likely to come to fruition—Information on negotiations not communicated to Stock Exchange or public—Effect of information on shares price—Expert evidence that information should have been communicated—Whether quoted price proper measure of market value—Finance Act 1965, s 44(1)(3). *Crabtree v Hinchcliffe (Inspector of Taxes)* [1971] 3 967, HL.

Computation of chargeable gains—

Contingent liabilities—

Option—Consideration paid for option—Consideration repayable in certain events—Option to purchase land—Consideration to be treated as part payment of purchase price in event of option being exercised—Exercise of option dependent on obtaining planning permission—Purchaser entitled to repayment of consideration in event of failure to obtain planning permission—Whether contingent liability of grantor of option to repay consideration to be taken into account in computing capital gain—Whether contingent liability to be disregarded subject to adjustment in event of consideration becoming repayable—Finance Act 1965, Sch 6, paras 14(5), 15. *Randall v Plumb (Inspector of Taxes)* [1975] 1 734, ChD.

Cost of acquisition of asset—

Consideration deemed to be equal to market value of asset—Acquisition and disposal of asset—Person's acquisition of asset and disposal of it to him deemed to be for consideration equal to market value—Need to establish that disposal had taken place before deeming provision applicable—Issue of stock not constituting 'disposal'—Issue of stock by subsidiary to parent company for consideration exceeding market value—Bargain not at arm's length—Whether acquisition of stock to be deemed to be for consideration equal to market value even though no disposal of stock to parent company—Finance Act 1965, s 22(4). *Harrison (Inspector of Taxes) v Nairn Williamson Ltd* [1976] 3 367, ChD.

Death—

Deemed disposal—

Gains arising from deemed disposal—Time limit for assessment. *See* Time limit for assessment—Chargeable gains which arose or accrued to deceased before his death—Three year time limit—Deemed disposal of assets on deceased's death, *post*.

CAPITAL GAINS TAX (cont)**Disposal of assets—****Company amalgamation—**

Exchange of shares or debentures—Company gaining control of other company—Control—Acquisition by issuing company of majority of shares in other company—Acquisition part of scheme whereby shares acquired were to be immediately disposed of to third party—Majority shareholders of other company becoming shareholders of issuing company—Whether issuing company having gained 'control' of other company—Finance Act 1965, Sch 7, para 6(2). **Floor v Davis (Inspector of Taxes)** [1976] 3 314, ChD.

Person having control of company and exercising control so that value passes out of his shares—

Person having control—Exercise of control—Taxpayer and two relations holding preferred shares in newly-formed company and controlling company—Rights issue of ordinary shares—Taxpayer and relations failing to take up rights—Fourth preferred shareholder acquiring in consequence all issued ordinary shares—Whether 'person having control' including more than one person—Whether failing to take up rights an 'exercise of control'—Interpretation Act 1889, s 1—Finance Act 1965, Sch 7, para 15(2). **Floor v Davis (Inspector of Taxes)** [1976] 3 314, ChD.

Exemptions and reliefs—**Private residences—**

Land occupied and enjoyed with residence as its garden or grounds—Sale of dwelling-house and part of garden occupied with house—Subsequent sale of remainder of garden—Whether gains arising from subsequent sale of garden exempt—Finance Act 1965, s 29(1) (b) (2). **Varty (Inspector of Taxes) v Lynes** [1976] 3 447, ChD.

Settled property—Person entitled to occupy house under terms of settlement—Entitled—Trustees exercising power under discretionary trust to permit beneficiaries to reside in dwelling-house—Beneficiaries occupying house as their main residence—Disposal of house by trustees—Whether beneficiaries 'entitled' to occupy house under the terms of the settlement—Whether gains accruing on disposal exempt—Finance Act 1965, s 29(9). **Sansom v Peay (Inspector of Taxes)** [1976] 3 375, ChD.

Insurance policies—**Rights of insured under policy of insurance—**

Rights not constituting asset on disposal of which gain may accrue—Capital sum derived from assets insured—Deemed disposal of assets—Assignment of insured's rights in consideration of capital sum—Insurance of property against damage by fire—Property damaged by fire—Sum due under policy agreed with insurers—Right to receive that sum assigned to third party for payment of capital sum to insured—Whether capital sum 'derived' from property insured—Whether rights of insured an asset on the disposal of which no gain accrued—Finance Act 1965, s 22(3), Sch 7, para 10(1)(2) (as amended by the Finance Act 1966, s 43, Sch 10, para 11). **Inland Revenue Comrs v Montgomery** [1975] 1 664, ChD.

Settlement—**Beneficiary becoming absolutely entitled to all assets forming part of settled property—**

Absolutely entitled as against trustee—Entitlement subject to satisfying any outstanding charge, lien or other right of trustee to resort to assets for payment of duty, taxes, costs or other outgoings—Outgoings—Rights of trustee limited to personal right of indemnity—Not including right to resort to income for payment in respect of another beneficial interest—Finance Act 1969, Sch 19, para 9. **Stephenson (Inspector of Taxes) v Barclays Bank Trust Co Ltd** [1975] 1 625, ChD.

Absolutely entitled as against trustee—Meaning of 'absolutely entitled'—Entitlement 'but for being an infant'—Beneficiaries entitled contingently on attaining 21 or marrying—Closing date for new beneficiaries to be born—On child attaining 21—Date not reached—Beneficiaries not absolutely entitled as against the trustee—Not assessable as if property vested in them—Finance Act 1965, s 22(5). **Tomlinson (Inspector of Taxes) v Glyns Executor & Trustee Co** [1970] 1 381, CA.

Absolutely entitled as against trustees—Meaning of 'absolutely entitled'—Power to direct how assets shall be dealt with—Power to call for immediate payment of share—Settled property consisting of realty—Beneficiary becoming absolutely entitled to a share of settled property on death of life tenant of that share—Trusts continuing—Whether beneficiary absolutely entitled as against trustee to his share of settled property—Finance Act 1965, s 22(5)—Finance Act 1969, Sch 19, para 9. **Crowe v Appleby (Inspector of Taxes)** [1975] 3 529, ChD.

Deemed disposal and reacquisition of assets by trustees—Two or more beneficiaries—Beneficiaries jointly absolutely entitled as against trustees—Meaning of 'jointly'—Meaning of 'absolutely entitled'—Power to direct how assets shall be dealt with—Beneficiaries sui juris and collectively entitled to require transfer of trust funds subject to trustees' rights of indemnity—Trusts continuing—Beneficiaries having no power so long as trust continues to direct how trustees should manage investments—Particular assets of fund to which each beneficiary entitled not identifiable—Beneficiaries entitled as tenants in common and not joint tenants—Whether beneficiaries jointly absolutely entitled as against trustees to all assets forming trust fund—Finance Act 1965, ss 22(5), 25(3)—Finance Act 1969, Sch 19, para 9. **Stephenson (Inspector of Taxes) v Barclays Bank Trust Co Ltd** [1975] 1 625, ChD.

Exemption—

Private residence—Settled property. *See* Exemptions and reliefs—Private residences—Settled property—Person entitled to occupy house under terms of settlement, *ante*.

CAPITAL GAINS TAX (cont)

Settlement (cont)—

Settled property—

Interest in settled property—No chargeable gain on disposal of interest created by or arising under a settlement—'Settled property' excluding to which persons jointly absolutely entitled as against trustees—Meaning of 'jointly'—Land—Statutory trust for sale—Conveyance of land to joint tenants to tenants to hold for sale for themselves as tenants in common—Disposal of interest by executors of deceased tenants in common—Whether tenants in common 'jointly entitled' to land—Whether disposal of interest created by or arising under a settlement—Finance 1965, ss 22(5), 45(1), Sch 7, para 13(1). *Kidson (Inspector of Taxes) v Macdonald* [1974] 1 849, ChD.

Meaning of 'settled property'—Property held on trust—Exclusion of share to which beneficiary absolutely entitled—Land held on trust for sale—Power to postpone sale—Right to share in notional proceeds of sale of unsold property—Whether possible to segregate share from rest of settled property—Finance Act 1965, s 45(1). *Crowe v Appleby (Inspector of Taxes)* [1975] 3 529, ChD.

Termination of life interest—Deemed disposal of assets forming part of settled property—Life interest in part of settled property—Part in which life interest subsists to be treated as being property under a separate settlement—Part—Meaning—Life interest in share of settled freehold property—Property not appropriated by trustees to separate shares—Death of person having life interest in 1/6th share of property—Whether deemed disposal of all settled property or only 1/6th share thereof—Finance Act 1965, s 25(12). *Crowe v Appleby (Inspector of Taxes)* [1975] 3 529, ChD.

Termination of life interest—Deemed disposal of assets forming part of settled property—Life interest in part of settled property—Part in which life interest subsists to be treated as being property under a separate settlement—Part—Meaning—Life interest in share of settled property—Property not appropriated by trustees to separate shares—Death of person having a life interest in share of settled property—Whether deemed disposal of all settled property or only part thereof—Finance Act 1965, s 25(4)(12). *Pexton (Inspector of Taxes) v Bell* [1976] 2 914, CA.

Shares—

Valuation. *See Assets—Valuation—Market value, ante.*

Short-term gains—

Disposal of asset—

Contract to dispose of asset—Contract for sale of land—Contract not in writing and so unenforceable—Conveyance executed by separate documents—Vendor executing legal charge for full value of property in favour of purchaser—Conveyance of fee simple to purchaser on following day in consideration of release from covenant for repayment under legal charge—Contract for sale constituting disposal although unenforceable—Legal charge to be ignored for purpose of computing gain—Vendor liable for gain assessed on full value of property—Finance Act 1962, ss 12(2), 13(7). *Thompson (Inspector of Taxes) v Salah* [1972] 1 530, ChD.

Disposal within three years of acquisition—Date of acquisition—Conveyance or transfer by way of security—Contract by taxpayer to buy farm—Taxpayer unable to find balance of purchase price—Agreement by bank to lend money provided farm conveyed into name of sub-purchaser—Conveyance by vendor of farm to sub-purchaser in fee simple absolutely—Taxpayer joining in conveyance as purchaser—Taxpayer regarded by all parties as owner of farm and entering into occupation—Purpose of transaction to assist taxpayer in raising finance—Subsequent agreement by sub-purchaser to convey farm to taxpayer for sum equivalent to original purchase price—Taxpayer disposing of part of farm shortly after conveyance from sub-purchaser—Whether original conveyance to sub-purchaser 'a conveyance or transfer by way of security'—Whether date of acquisition of farm by taxpayer date of original contract or date of contract with sub-purchaser—Finance Act 1962, s 12(2), (9). *Beattie v Jenkinson (Inspector of Taxes)* [1971] 3 495, ChD.

Disposal within three years of acquisition—Date of acquisition—Contract to acquire or dispose of asset—Conditional contract—Contract for building lease—Lessees to build six-storey office block within prescribed period—Lease to be granted if building completed within prescribed period—Building duly completed within period—Lease granted—Lease subsequently assigned by lessees—Capital gain—Agreement not conditional contract for purpose of short-term gains tax—Asset acquired at date of contract—Acquisition more than three years prior to disposal—Finance Act 1962, s 10(1) and Sch 9, para 1(3). *Eastham (Inspector of Taxes) v Leigh London Provincial Properties Ltd* [1971] 2 887, CA.

Earned income relief—

Income immediately derived by individual from carrying on of his trade—Wife's earned income allowance—Sale of goodwill of wife's hairdressing business—Whether proceeds of sale income 'immediately derived' from carrying on of trade—Income Tax Act 1952, s 525(1). *Peay (Inspector of Taxes) v Newton* [1971] 2 172, ChD.

Time limit for assessment—

Chargeable gains which arose or accrued to deceased before his death—

Three year time limit—Deemed disposal of assets on deceased's death—Gain arising from deemed disposal—Whether gain to be treated as arising immediately before or after deceased's death—Whether three year or six year time limit applicable—Finance Act 1965, s 24(1)—Taxes Management Act 1970, ss 34(1), 40(1). *Larter (Inspector of Taxes) v Skone James* [1976] 2 615, ChD.

Valuation of assets. *See Assets—Valuation, ante.*

Variation of trusts by the court—

Arrangement to avoid tax. *See Variation of trusts (Capital gains tax).*

CAPITAL MURDER

See Criminal law (Murder—Capital murder).

CAPITAL TRANSFER TAX

Variation of trust—

Protection in consequence of possible shortfall in consequence of tax. *See* **Variation of trust**
(Protection against possible shortfall in consequence of capital transfer tax).**CAR**Insurance. *See* **Motor insurance**.**CAR PARK**

Road—

Whether car park a road. *See* **Road traffic** (Road—Car park).**CARAVAN**

Camping site—

Valuation for rating. *See* **Rates** (Valuation—Caravan camping site).Permission to place on land. *See* **Public health** (Moveable dwellings).

Rates—

Residential caravan. *See* **Rates** (Rateable occupation—

Sale of caravan—

Change of use for planning purposes. *See* **Town and country planning** (Development—Material change of use—Revival of commercial use but for sale of caravans).

Vehicle towing caravan—

Trade licence. *See* **Road traffic** (Trade licence—General trade licence—Motor car used for towing caravan).**CARAVAN SITE**

Compensation—

Loss of private rights—

Confiscatory statutory provision. *See* **Compensation** (Loss of private rights—Confiscatory statutory provision).Development or use of land. *See* **Town and country planning** (Agreement regulating development or use of land—Caravan site).

Enforcement notice—

Appeal against notice. *See* **Town and country planning** (Enforcement notice—Appeal against notice—Caravan site).Appeal to High Court. *See* **Town and country planning** (Enforcement notice—Appeal from Minister to High Court—Caravan site).Magistrates' jurisdiction. *See* **Magistrates** (Jurisdiction—Caravan sites).

Licence—

Town and country planning. *See* **Town and country planning** (Caravan site licence).

Owner—

Negligence—

Exclusion of liability—Exclusion of liability for loss of property of person 'using' the site—Theft of caravan left on site—Liability of owner. *Halbauer v Brighton Corp* [1954] 2 707, CA.**CARD GAMES**Lawfulness. *See* **Gaming** (Lawful and unlawful gaming—Card games).**CARE**

Child—

Local authority. *See* **Child** (Care—Local authority).

Proceedings—

Legal aid. *See* **Legal aid** (Care proceedings in juvenile courts).

Duty to take care—

Negligence. *See* **Negligence** (Duty to take care).**CARE AND CONTROL**Child. *See* **Minor** (Custody—Care and control).Ward of court. *See* **Ward of court** (Care and control).**CARELESS DRIVING***See* **Road traffic** (Careless driving).**CARELESSNESS**Manslaughter. *See* **Criminal law** (Manslaughter—Negligence—Act of carelessness).**CARGO**Admiralty proceedings for damage to cargo. *See* **Admiralty** (Jurisdiction—Action in rem—Claim for loss of or damage done to goods carried in ship).

Bill of lading—

Care of cargo. *See* **Shipping** (Bill of lading—Care of cargo).

Condition of cargo—

Receipt as to condition. *See* **Shipping** (Bill of lading—Receipt as to condition of cargo).

Damage to cargo—

Negligence. *See* **Shipping** (Bill of lading—Cargo damaged by negligence).

Deck cargo—

Scope of contract of carriage. *See* **Shipping** (Bill of lading—Scope of contract of carriage—Deck cargo).Delivery of cargo. *See* **Shipping** (Bill of lading—Delivery of cargo).

Exceptions—

Damage to cargo. *See* **Shipping** (Bill of lading—Exceptions—Damage to cargo).Loss of cargo. *See* **Shipping** (Bill of lading—Loss of cargo).

Quantity of cargo—

Receipt as to quantity. *See* **Shipping** (Bill of lading—Receipt as to quantity of cargo).

CARGO (cont)

Charterparty—

Conditions and warranties—

Obligation to provide cargo. *See Shipping* (Charterparty—Conditions and warranties—Obligation to provide cargo).

Dangerous cargo. *See Shipping* (Charterparty—Dangerous cargo).

Delivery of cargo. *See Shipping* (Charterparty—Delivery of cargo).

C i f contract. *See Sale of goods* (C i f contract).

Discharge of cargo. *See Shipping* (Discharge).

Freight. *See Shipping* (Freight).

Loading and unloading—

Docks regulations. *See Dock* (Loading and unloading).

Loading of cargo—

Obstructions—

Demurrage. *See Shipping* (Demurrage—Obstructions preventing loading of cargo).

Option to load alternative cargo. *See Shipping* (Loading—Loading and stowage of cargo—Supervision of master).

Responsibility of master. *See Shipping* (Loading—Loading and stowage of cargo—Supervision of master).

Readiness to discharge—

Accessibility of cargo. *See Shipping* (Readiness to discharge—Accessibility of cargo).

Lay days—

Commencement. *See Shipping* (Commencement of lay days—Readiness to discharge).

Sale by charterer of ship. *See Sale of goods* (C and f contract—Cargo sold to cargo owners by charterer of ship).

Salvage—

Apportionment of liability to pay salvage reward. *See Sale of goods* (C and f contract).

CARMELITE CONVENT

Charitable object. *See Charity* (Religion—Public benefit—Carmelite convent).

CARRIAGE

Value added tax—

Carriage of passengers from one place to another. *See Value added tax* (Zero-rating—Transport of passengers—Carriage of passengers from one point to another).

CARRIAGE BY AIR

Carriage of goods—

International carriage—

Carriage between places within territories of high Contracting parties to Convention of Warsaw—"High contracting parties"—Carriage by Air Act 1932, s 1(2), Sch 1. **Philippson v Imperial Airways Ltd** [1939] 1 761, HL.

Carriage by successive carriers—Loss of goods—Action for damages—Jurisdiction—Negligence of carriers not mentioned in consignment note—Competence of court to entertain action for damages—Carriage by Air Act 1932, Sch 1, art 28(1), art 30(1).

Rotterdamsche Bank N V v British Overseas Airways Corp [1953] 1 675, QBD.

Consignment note—Incorporation of rules of Convention—Commencement of air carriage—Registered goods—Carriage by Air Act 1932, Sch 1, arts 8, 22(2). **Westminster Bank Ltd v Imperial Airways Ltd** [1936] 2 890, KBD.

Consignment note—Limitation of carriers' liability—Air consignment note not stating volume or dimensions of package—Whether limitation of liability excluded by lack of particulars on air consignment note—Discrepancy between official text of convention and English translation—Carriage by Air Act 1932, Sch 1, art 8(i). **Corocraft Ltd v Pan American Airways Inc** [1969] 1 82, CA.

Consignment note—Limitation of carriers' liability—Whether rules of Warsaw Convention incorporated—Carriage by Air Act 1932, s 1, Sch 1, art 8(q), art 9, art 22(2). **Samuel Montagu & Co Ltd v Swiss Air Transport Co Ltd** [1966] 1 814, CA.

Limitation of carrier's liability—Exception—Wilful misconduct—Breach of safety rules—Error of judgment—Several acts of carelessness—Carriage by Air Act 1932, Sch 1, art 25. **Horabin v British Overseas Airways Corp** [1952] 2 1016, QBD.

Carriage of passengers—

Duty of carriers—

General duty to carry with due care—Special contract excluding liability—Validity—Canadian Transport Act 1938, s 25(1). **Ludditt v Ginger Coote Airways Ltd** [1947] 1 328, PC.

International carriage—

Damage sustained by death of passenger in air accident—Measure of damages—Death of widow leaving infant children—Whether 'damage' limited to financial loss—Carriage by Air Act 1932, Sch 1, art 17. **Preston v Hunting Air Transport Ltd** [1956] 1 443, QBD.

Limitation of carrier's liability—Exception—Carrier's acceptance of passenger without passenger ticket having been delivered—Irrregularity of passenger ticket—Failure to set out agreed stopping places—Effect on limitation of carriers' liability—Carriage by Air Act 1932, Sch 1, art 3(1), (2), art 17, art 22(1). **Preston v Hunting Air Transport Ltd** [1956] 1 443, QBD.

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Negligence—

Exclusion of liability—Contract by correspondence—Subsequent delivery of ticket containing conditions—Charter of private aeroplane—Liability to charter's guests—Evidence of negligence—Res ipsa loquitur. **Fosbroke-Hobbes v Airwork Ltd and British-American Air Services Ltd** [1937] 1 108, KBD.

CARRIAGE BY AIR (cont)

Carriage of passengers (cont)—

Scheduled journey—

Unlawful carriage by non incorporated companies for hire or reward—Aiding and abetting—Company prohibited from landing aircraft—Feeder service arranged by travel agency and operated by 'non-corporation' aircraft companies—Liability of travel agency—Aiding and abetting—Civil Aviation Act 1946, s 23 (1), (2). **Ackroyds Air Travel Ltd v Director of Public Prosecutions** [1950] 1 933, KBD.

Unlawful carriage by non-corporation companies for hire or reward—Meaning of scheduled journey—Systematic service benefits whereof available to members of the public—Passenger carried as member of association, although only joining association for the purposes of holiday tour—Whether benefit of air services was available to members of the public—'Members of the public' means members of the public as such—Air Corporations Act 1949, s 24(2). **Director of Public Prosecutions v Milbanke Tours Ltd** [1960] 2 467, QBD.

International carriage—

Goods. *See* Carriage of goods—International carriage, *ante*.Passengers. *See* Carriage of passengers—International carriage, *ante*.

Private pilot's licence—

Flight for the purpose of public transport—

Hire or reward given or promised for the carriage of passengers—Hire—Profit element—Member of flying club piloting club aircraft carrying non-members as passengers—Passengers paying club for use of aircraft—Payment containing no element of profit for club—Pilot receiving no payment—Whether payment 'hire or reward' given for the carriage of passengers—Air Navigation Order 1974 (SI 1974 No 1114), art 91(6)(a)(i), Sch 9, Part A. **Corner v Clayton** [1976] 3 212, QBD.

CARRIAGE BY ROADGenerally. *See* Carriers.**CARRIAGE BY SEA**Generally. *See* Shipping (Carriage by sea).

Goods—

Breach of contract—

Loss of or damage to goods. *See* Shipping (Carriage by sea—Damages for breach of contract—Loss of or damage to goods).

Freight. *See* Shipping (Freight).Passengers. *See* Shipping (Passengers—Carriage by sea).**CARRIAGE OF GOODS**Carriage by air. *See* Carriage by air (Carriage of goods).

Carriage by rail—

Standard terms and conditions. *See* Carriers (Contract—Carriage of goods—Standard terms and conditions of carriage by rail).

Carriage by road. *See* Carriers (Contract—Carriage of goods).

Hire or reward—

Goods vehicle. *See* Road traffic (Carriage of goods for hire or reward—Goods vehicle).

CARRIAGE OF PASSENGERSCarriage by air. *See* Carriage by air (Carriage of passengers).Carriage by sea. *See* Shipping (Passengers—Carriage by sea).

Contract—

Generally. *See* Carriers (Contract—Carriage of passengers).

Negligence—

Exclusion of liability. *See* Carriers (Negligence—Exclusion of liability—Passengers).

Safety of premises—

Occupier's liability. *See* Occupier's liability (Carriage of passengers—Safety of premises).

CARRIERSAir transport. *See* Carriage by air.

Contract—

Carriage of goods—

Carriage by sea—Exception clause. *See* Contract (Exception clause—Shipping—Exemption of carriers from liability on goods being discharged from ship).

Conditions—Exception clause—Private carrier—Limitation of liability of carrier for loss or damage 'in any case'—Negligent engagement of thief as driver without proper inquiries—Loss due to theft by driver acting in concert with others—Whether carriers entitled to limit liability—Conditions of Carriage of Road Haulage Association Ltd January 1961 revision), cl 7. **John Carter (Fine Worsteds) Ltd v Hanson Haulage (Leeds) Ltd** [1965] 1 113, CA.

Conditions—Exception clause—Loss of goods in transit—No explanation how loss occurred—Fundamental breach of contract not pleaded—Burden of proof. **Hunt & Winterbotham (West of England) Ltd v B R S (Parcels) Ltd** [1962] 2 111, CA.

Conditions—Exception clause—Exception of liability for loss or damage unless declaration made—Loss caused through company's negligence—Liability for negligence not excluded by contract nor by regulations. **Page v London, Midland & Scottish Ry Co** [1943] 1 455, KBD.

Conditions—Exception clause—Exception of liability for loss or damage—Goods lost owing to carriers' negligence—Breach of contract by failure to deliver—Exemption clause only operative in execution of contract. **Bontex Knitting Works Ltd v St John's Garage** [1944] 1 381, CA.

CARRIERS (cont)

Contract (cont)—

Carriage of goods (cont)—

Conditions—Exception clause—Notification of loss out of time allowed by exception clause—Carriage sub-contracted without permission of consignor and without making proper enquiries about sub-contractor—Valuable load of copper wire, untraceable if stolen—Power to sub-contract carriage of such load not conferred by contract—Load lost, probably by theft by sub-contractor—Whether contractor liable in the circumstances for conversion—Road Haulage Association Ltd's Conditions of Carriage, 1961, conditions 1(a), 12(a). **Garnham, Harris & Elton Ltd v Alfred W Ellis (Transport) Ltd** [1967] 2 940, QBD.

Conditions—Implied conditions—Oral contract—No contractual document—No express term in contract absolving carriers from liability for negligence or applying carriers' conditions—Usual practice of carriers to request consignors to sign risk note—No request on this occasion to sign risk note—Previous transactions between same parties—Carriers' conditions exhibited in their office—Consignor had never read conditions—Whether conditions implied in contract of carriage—Ticket cases not applicable. **McCutcheon v David MacBrayne Ltd** [1964] 1 430, HL.

Implied term—Implied warranty that goods not dangerous—Disposal of refuse by barge—Warranty negated by contract—Negligence—Public Health (London) Act 1936, ss 92, 304. **C Burley Ltd v Stepney Corp** [1947] 1 507, KBD.

Implied term—Payment of charges—Delivery of goods by carriers to market salesman—Implied contract by him to pay carriers' charges—Right of carriers to payment of their charges out of proceeds of sale. **World Transport Co v Tealing & Co** [1936] 2 573, KBD.

Power to sub-contract. *See* **Contract** (Sub-contract—Power to sub-contract—Carriage of goods).

Standard terms and conditions of carriage by rail—Goods at owner's risk—Delivery prevented by restraint of labour—Liability of carriers—Standard Terms and Conditions of Carriage of Merchandise by Merchandise Train at Owner's Risk Rates (S R & O 1927 No 1009), conditions 3, 14, 16. **W Young & Son (Wholesale Fish Merchants) Ltd v British Transport Commission** [1955] 2 98, QBD.

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Carriage of passengers—

Carriage by sea—Exception clause. *See* **Contract** (Exception clause—Shipping—Passenger carriage).

Conditions—Notice to passenger—Notice obliterated by date stamp—Effect. **Sugar v London, Midland & Scottish Ry Co** [1941] 1 172, KBD.

Goods vehicle—

Carrier's licence. *See* **Road traffic** (Goods vehicle—Carrier's licence).

Insurance—

Goods in transit—

Employee's reference. *See* **Insurance** (Property insurance—Goods in transit—Employee's reference—Carrier's insurance under goods in transit policy).

Limitation of liability—

Carriage of goods by air. *See* **Carriage by air** (Carriage of goods—International carriage—Consignment note—Limitation of carrier's liability).

Negligence—

Exclusion of liability—

Passengers—Free pass—Contractual animus, not merely a licence—Holder of pass injured while boarding omnibus—Whether condition excluding liability made void by Road Traffic Act 1960, s 151. **Gore v Van der Lann (Liverpool Corp Intervening)** [1967] 1 360, CA.

Passengers—Free pass—Pass exempting carriers and servants from liability for negligence—Passenger travelling on free pass injured owing to the fault of the carriers' servant—Liability of carriers' servant. **Genys v Matthews** [1965] 3 24, Liverpool Ct of Passage.

Passengers—Free pass—Free travelling pass granted to employee of transport board—Condition excluding liability for damage by negligence—Employee injured while boarding omnibus—Whether condition excluding liability made void by Road Traffic Act 1930, s 97. **Wilkie v London Passenger Transport Board** [1947] 1 258, CA.

CASE STATED

Amendment—

Application—

Procedure—Need of affidavit in support of application—Need to submit draft of case to respondent. **Spicer v Warbey** [1953] 1 284, QBD.

Appeal from Crown Court—

Jury verdict—

Appeal by way of case stated—Appeal not rehearing—Question only whether error of law on facts stated in case—Need to show error of law in direction to jury or that verdict of jury perverse—Power of highway authority under local Act to stop up highway—Right of person aggrieved by stopping-up order to lodge objection in Crown Court—Objection to be allowed if jury find objector to be a person aggrieved—Finding of jury that objector a person aggrieved one which a reasonable jury could come to—Manchester General Improvement Act 1851, ss 46, 47, 48—Courts Act 1971, s 10. **Harris Simon & Co Ltd v Manchester City Council** [1975] 1 412, QBD.

CASE STATED (cont)

Application to state a case—

Procedure—

Application left with clerk of court in presence of justices—No separate copy served on justices—Application insufficient—Summary Jurisdiction Act 1879, s 33—Summary Jurisdiction Rules 1915, (S R & O 1915 No 200), r 52. **Goldman v Eade** [1945] 1 154, KBD.

One application where six informations—Sufficiency—Summary Jurisdiction Rules 1915 (S R & O 1915 No 200), r 52. **Director of Public Prosecutions v A E Lamb and B Lamb, Same v A Lamb, Same v R Lamb** [1941] 2 499, KBD.

Refusal of application—

Point of law involved previously decided by judgment in Chancery Division—Judgment not final and binding—Duty to state a Case—Mandamus—Summary Jurisdiction Act 1879, s 33(1)—Administration of Justice (Miscellaneous Provisions) Act 1938, ss 8, 19. **R v Sir Bertrand Watson, ex parte Bretherton** [1944] 2 562, KBD.

Bail. *See* **Criminal law** (Bail—Case stated for High Court).

Chancery Division—

Entry of appeals by way of case stated—

Originating motion—Entry for hearing of motion—Procedure. **Practice Direction** [1975] 3 677, ChD.

Divisional Court—

Jurisdiction. *See* **Divisional Court** (Jurisdiction—Case stated).

Expedited hearing—

Divisional Court. *See* **Divisional Court** (Practice—Expedited hearing—Cases stated).

Form—

Case stated by Lands Tribunal—

Acceptance of short and formal case with signed copy of tribunal's decision annexed. **Practice Direction** [1956] 3 117, CA.

Form where majority decision—

Fact that decision majority conclusion to be omitted. **More O'Ferrall Ltd v Harrow Urban District Council** [1946] 2 489, KBD.

Prescribed form—

Magistrates' courts—Magistrates' Courts (Forms) Rules 1952, (S I 1952 No 2191), Form No 119. **R A H (Transporters) Ltd v Edgar** [1953] 2 999, QBD.

Size of paper—

Foolsap. **Practice Note** [1954] 2 349, QBD.

Income tax. *See* **Income tax** (Case stated).

Jurisdiction—

Divisional Court. *See* **Divisional Court** (Jurisdiction—Case stated).

Justices—

Power of licensing justices to state a case. *See* **Licensing** (Justices—Case stated—Power of licensing justices to state a case).

Lands Tribunal—

Contention not pressed before tribunal—

Change of law—Consideration on appeal—Discretion of court. *See* **Court of Appeal** (Ground of appeal—Contention not pressed in court of first instance—Discretion of court—Lands Tribunal decision—Change in law after decision and before appeal).

Limitation of time—

Application for extension of time—

Case stated out of time—Case not lodged in Crown Office within time prescribed—Notice of appeal not served within time prescribed—Necessity of applying to court to extend time—Magistrates' Courts Rules 1952, (S I 1952, No 2190), r 63—S R C Ord 59, r 33. **Whittingham v Natrass** [1958] 3 145, QBD.

Case stated out of time—Illness of appellant's solicitor—Necessity of applying to court to extend time—Summary Jurisdiction Rules 1915, (S R & O 1915, No 200), r 52. **Ripington v Hicks & Son (Oxford) Ltd** [1949] 1 239, KBD.

Need to comply with statutory requirements—

Case stated out of time—Whether fatal objection—No fault of either party—Summary Jurisdiction Rules 1915 (S R & O 1915, No 200), r 52. **Moore v Hewitt** [1947] 2 270, KBD.

Period of limitation—

Case stated under Summary Jurisdiction Acts—Whether three months' limitation applicable—Summary Jurisdiction Act 1879, s 33—Summary Jurisdiction Rules 1915 (S R & O 1915, No 200), r 52. **Gregory v Cattle** [1943] 1 654, KBD.

Magistrates. *See* **Magistrates** (Statement of case by magistrates court).

Magistrates' courts—

Contents of case—

Preparation of case—Magistrates' Courts Rules 1968 (S I 1968 No 1920), r 68—Magistrates' Courts (Forms) Rules 1968 (S I 1968 No 1919), Sch, Form 148. **Practice Note** [1972] 1 286, QBD.

Form. *See* **Form**—Prescribed form—Magistrates' courts, *ante*.

Jurisdiction—

Power of examining justices to state a case—Committal proceedings—Refusal to commit—Extradition proceedings—Magistrates' Courts Act 1952, s 87(1). **Atkinson v United States Government** [1969] 3 1317, HL.

Power of examining justices to state a case—Preliminary point—Point raised after accused electing to be tried by jury—Summary Jurisdiction Act 1879, s 33(1). **Card v Salmon** [1953] 1 324, QBD.

Jurisdiction to order retrial—

Conviction of appellant and acquittal of co-defendant—Refusal of justices to allow cross-examination of co-defendant who gave evidence incriminating appellant—Conviction wrong in law—Whether jurisdiction to order re-trial—Summary Jurisdiction Act 1857, s 6—Magistrates' Courts Act 1952, s 87(1). **Rigby v Woodward** [1957] 1 391, QBD.

CASE STATED (cont)

Magistrates' courts (cont)—

Limitation of time. *See* Limitation of time, *ante*.

Practice—

Appeals to Chancery Division. *See* Chancery Division, *ante*.Application to state a case. *See* Application to state a case, *ante*.Chancery Division. *See* Chancery Division, *ante*.

Contents of case—

Magistrates' courts. *See* Magistrates' courts—Contents of case, *ante*.

Death before case settled and signed—

Order of quarter sessions 'subject to a Case to be stated'—Death of recorder before Case settled and signed—Court's jurisdiction to order present recorder to enter continuances and hear and determine merits of appeal—Criminal Justice Act 1925, s 20(1). *R v Hallett, ex parte Smith* [1939] 2 552, KBD.Form. *See* Form, *ante*.Remission of case to quarter sessions. *See* Quarter sessions—Remission of case to quarter sessions—Practice, *post*.

Submission of draft to parties—

Desirability of submitting justices' draft to parties. *Cowlishaw v Chalkley* [1955] 1 367, QBD.

Quarter sessions—

Appeal—

Extension of time for appeal—'Special circumstances'—Solicitor's inadvertence or negligence—R S C Ord 59, r 30(2). *Collyer v Dring* [1952] 2 1004, QBD.Inference of fact—Right of appellate court to draw such inferences—Necessity of showing error of law—Supreme Court of Judicature (Consolidation) Act 1925, s 25(2). *Chivers & Sons Ltd v Cambridge County Council, Trustees of the National Institute of Agricultural Botany Registered v Same* [1957] 1 882, CA.Jurisdiction of appeal committee—Application for Case to be stated made seven days after judgment given by appeal committee but after closing of sessions. *Chesterton Rural District Council v Ralph Thompson Ltd* [1944] 1 666, KBD.

Common law power to state a case—

Discretionary power—No power for High Court to compel quarter sessions to state a Case, save where statute so provided—Criminal Justice Act 1925, s 20. *R v Northumberland Quarter Sessions Justices, ex parte Williamson* [1965] 2 87, QBD.

Refusal to state a case—

Mandamus—Power of High Court to issue—Criminal Justice Act 1925, s 20. *R v Somerset Justices, ex parte Ernest J Cole and Partners Ltd* [1950] 1 264, KBD.

Remission of case to quarter sessions—

Practice—Previous practice of High Court only to give decision finally disposing of such a case—Supreme Court of Judicature (Consolidation) Act 1925, s 25(2)—Rating and Valuation Act 1925, s 31(5). *Norwich Rating Authority v Norwich Assessment Committee and Fountain* [1941] 3 225, KBD.

Right of appeal by case stated from quarter sessions—

Statutory provision that judgment of quarter sessions final. *See* Quarter sessions (Appeal from).

Remission of case stated—

Grounds for remission—

Point not argued before magistrate—No evidence tendered on which point could be decided in favour of appellants—Application for remission for hearing of evidence first made to Court of Appeal—Whether grounds for remission—Landlord and Tenant Act 1954, s 25—London Government Act 1939, s 184(1), (2)—Summary Jurisdiction Act 1857, s 6. *London County Council v Farren* [1956] 3 401, CA.Quarter sessions. *See* Quarter sessions—Remission of case to quarter sessions, *ante*.

Restrictive trade practices—

Appeal to Court of Appeal. *See* Restrictive trade practices (Appeal to Court of Appeal by way of case stated).

Right of appeal by—

Party to proceedings—

Informant—Obscene publications—Forfeiture order by justices in respect of certain obscene publications, no order in respect of others—Whether informant was a party to the proceedings within Magistrates' Courts Act 1952, s 87(1). *Burke v Copper* [1962] 2 14, QBD.

Special case—

Arbitration. *See* Arbitration (Special case).**CASH VOUCHERS**

Value added tax—

Value of supply of goods or services—

Payment for goods by means of cash vouchers. *See* Value added tax (Value of supply of goods or services—Supply for consideration in money—Payment for goods by means of cash vouchers).**CASUALTY OFFICER**

Hospital—

Negligence—

Liability of hospital. *See* Hospital (Liability for negligence of members of staff—Casualty officer).**CATALOGUE**

Auction—

Conditions of sale—

Exclusion of liability. *See* Auction (Conditions of sale—Exclusion of liability—Conditions in catalogue excluding warranty unless specifically mentioned and appearing on account).

CATCHMENT BOARD

Land drainage. *See* **Land drainage** (Catchment board).

CATERING

Industrial training—

Levy. *See* **Industrial training** (Levy—Activities of industry—Hotel and catering industry).

CATTLE

Sale of feeding stuffs for use of. *See* **Agriculture** (Feeding stuffs—Sale for use as food for cattle or poultry).

Straying—

Distress damage feasant. *See* **Animal** (Distress damage feasant).

Trespass by. *See* **Animal** (Trespass—Cattle).

CAUSATION

Breach of contract. *See* **Contract** (Breach—Causation).

Homicide. *See* **Criminal law** (Homicide—Causation—Cause of death).

Insurance—

Accident. *See* **Insurance** (Accident insurance—Perils insured against—Causation).

Negligence. *See* **Negligence** (Causation).

Pollution of river. *See* **Water and watercourses** (Pollution of river—Causing poisonous, noxious or polluting matter to enter river).

War injury—

Test of causation. *See* **War injury** (Causation—Test of causation).

CAUSE LIST

See **Practice** (Trial—Cause list).

Solicitor—

Failure to watch cause list—

Personal liability for costs. *See* **Solicitor** (Payment of costs by solicitor personally—Failure to watch cause list).

CAUSE OF ACTION

Generally. *See* **Action**.

Preservation of subject-matter. *See* **Practice** (Inspection of property—Property subject-matter of action or in respect of which question arising).

CAUSING DEATH BY DANGEROUS DRIVING

See **Road traffic** (Dangerous driving—Causing death by dangerous driving).

CAUTION

Adultery—

Investigation of allegations—

Caution by inquiry agent to husband—No denial of adultery by husband—Whether adverse inference to be drawn from absence of denial. *See* **Divorce** (Adultery—Admission—Failure to deny adultery not constituting admission—Allegation of husband's adultery investigated by inquiry agent—Husband cautioned by agent before being questioned).

Fingerprints—

Failure to give caution before taking fingerprints. *See* **Criminal evidence** (Fingerprints—Caution).

Land registration. *See* **Land registration** (Caution against dealings).

Police—

Answers and statements to police. *See* **Criminal evidence** (Admissions and confessions—Answers and statements to police—Caution).

Rectification of register. *See* **Land registration** (Rectification of register—Caution).

CAVEAT

Grant of representation—

Practice. *See* **Probate** (Practice—Non-contentious probate—Grant of representation—Caveat).

Payment—

Caveat against payment—

Admiralty action in rem. *See* **Admiralty** (Practice—Action in rem—Priorities—Caveat payment entered by second mortgagees).

CELLAR

Street—

Cellar under street—

Statutory duty of cellar owner or occupier. *See* **Highway** (Cellars under streets—Statutory duty of owner or occupier to keep cellar openings and cellar in good condition and repair).

CENSORSHIP

Films. *See* **Cinema** (Censorship).

CENSURE

See **Ecclesiastical law** (Censure).

CENSUS

Form of return—

Private household—

Particulars—Whether particulars to be returned must be entered in handwriting of head of household—Whether enumerator required to complete questions in box headed 'for enumerator's use' before delivering form—Whether form ultra vires—Census Act 1920, s 8(1)(a)—Census Order 1965 (S I 1965, No 983), Sch 2, para 6, para 9(d)—Census Regulations 1965 (S I 1965, No 1267), reg 11(1). **Turner v Midgley** [1967] 3 601, QBD QBD.

CENTRAL BANK

Foreign central bank—

Immunity from suit. *See* **Constitutional law** (Foreign sovereign state—Immunity from suit—Central bank of foreign state).

CENTRAL CRIMINAL COURT

Bail. *See* **Criminal law** (Bail—Central Criminal Court).

Removal of trial to. *See* **Criminal law** (Trial—Removal of trial to Central Criminal Court).

CENTRAL ELECTRICITY GENERATING BOARD

See **Electricity** (Central Electricity Generating Board).

CENTRAL FUNDS

Costs—

Award out of central funds—

Criminal proceedings. *See* **Criminal law** (Costs—Award out of central funds).

CENTRAL LAND BOARD

Compulsory acquisition of land by. *See* **Compulsory purchase** (Central Land Board).

CERTAINTY

Contract. *See* **Contract** (Enforceability—Certainty of terms).

Lease—

Duration. *See* **Landlord and tenant** (Lease—Duration—Certainty).

CERTIFICATE

Appeal—

House of Lords—

Criminal appeal. *See* **Criminal law** (House of Lords—Leave to appeal—Certificate).

Architect—

Final certificate. *See* **Building contract** (Architect—Final certificate).

Interim certificate. *See* **Building contract** (Architect—Interim certificate).

Associate. *See* **Practice** (Associate—Certificate of associate).

Auditor. *See* **Auditor** (Certificate).

Building contract. *See* **Building contract**

Civil aid certificate. *See* **Legal aid** (Certificate).

Consent—

Certificate of consent—

Application for gaming licence. *See* **Gaming** (Licensing of premises—Application for licence—Certificate of consent for purposes of application for licence).

Criminal appeal—

Certificate of trial judge. *See* **Criminal law** (Appeal—Certificate of trial judge).

Defence certificate—

Criminal appeal. *See* **Criminal law** (Appeal—Defence certificate).

Established use. *See* **Town and country planning** (Established use—Certification).

Fire. *See* **Fire** (Certificate).

Firearms—

Possession of firearm without a certificate. *See* **Firearms** (Possession—Possession of firearm without a certificate).

Generally. *See* **Firearms** (Certificate).

Insurance—

Motor insurance. *See* **Motor insurance** (Certificate).

Land certificate—

Charge created by deposit. *See* **Land registration** (Charge—Deposit of land certificate).

Legal aid—

Generally. *See* **Legal aid** (Certificate).

Practice—

Chancery Division. *See* **Practice** (Chancery Division—Legal aid certificates).

Libel and slander—

Costs exceeding damages—

Certificate that there was reasonable ground for bringing the action. *See* **Libel and slander** (Costs—Slander of woman—Costs exceeding damages).

Local authority's certificate of habitation—

Evidence of completion of house. *See* **Building contract** (Certificate—Local authority's certificate of habitation—Conclusiveness—Contract provided that certificate should be conclusive evidence of completion of house).

Master of Supreme Court. *See* **Practice** (Master's certificate).

Misfortune—

Discharge of bankrupt. *See* **Bankruptcy** (Discharge—Certificate of misfortune).

National savings. *See* **National savings** (Certificate).

Non-objection—

Licensing. *See* **Licensing** (Certificate of non-objection).

Plating and test certificates for goods vehicles. *See* **Road traffic** (Plating and test certificates for goods vehicles).

Public analyst—

Evidence of analysis under Food and Drugs Act. *See* **Food and drugs** (Samples—Evidence of analysis—Certificate of analyst).

Reconciliation—

Certificate with regard to—

Divorce. *See* **Divorce** (Reconciliation—Certificate with regard to).

Registration—

Building work. *See* **Building control** (Certificate of registration).

Charge created by company registered in England. *See* **Company** (Charge—Registration—Certificate of registration).

CERTIFICATE (cont)

Registration (cont)—

Club—

Application for. *See* **Licensing** (Club—Application for registration certificate).

Search—

Conclusiveness. *See* **Land charge** (Search—Official certificate of search—Conclusiveness).Share certificate. *See* **Company** (Shares—Share certificate).Taxation of costs. *See* **Costs** (Taxation—Certificate).Vehicle test certificate. *See* **Road traffic** (Test certificate).**CERTIORARI**

Acquittal—

Quashing—

Irregularity at trial—Acquittal before evidence given—Mistrial—Defendant properly arraigned and jury sworn—Views as to possibility of conviction expressed by chairman—Whether remedy of certiorari available to quash acquittal. **R v Middlesex Justices, Ex parte Director of Public Prosecutions** [1952] 2 312, QBD.Affidavit evidence. *See* **Evidence**—Affidavit evidence, *post*.

Application—

Expedited hearing. *See* **Divisional Court** (Practice—Expedited hearing—Cases stated—Prerogative orders).

Right of audience—

Litigant in person—Appeal from refusal of certiorari—Whether counsel has exclusive right of audience. **R v Staff Sub-Committee of London County Council's Education Committee, ex parte Schonfeld** [1956] 1 753, CA.Time for application. *See* **Time for application, post**.

Arbitrator—

Jurisdiction of court to issue orders addressed to private arbitrator—

Circumstances in which jurisdiction exercisable. **R v Disputes Committee of the National Joint Council for the Craft of Dental Technicians, ex parte Neate** [1953] 1 327, QBD.

Bias—

Interest other than pecuniary or proprietary interest—

Test of bias—Test whether real likelihood of bias shown. **R v Camborne Justices, Ex parte Pearce** [1954] 2 850, QBD.

Pecuniary interest—

Statutory body—Board set up by statute for (among other functions) determining zoning orders—General rule of law that a person should not be judge in his own cause excluded—Whether zoning order invalidated by pecuniary interest of board. **Jefferies v New Zealand Dairy Production and Marketing Board** [1966] 3 863, PC.Consistory court. *See* **Jurisdiction**—Consistory court, *post*.

Conviction—

Quashing—

Plea of guilty—Irregularity in conviction by justices admitted on affidavit by justices' clerk. **R v Newcastle-under-Lyme Justices, ex parte Whitehouse** [1952] 2 531, QBD.Plea of guilty—Plea of guilty under misapprehension in inferior court. **R v West Kent Quarter Sessions Appeal Committee, ex parte Files** [1951] 2 728, KBD.Plea of guilty—Two informations relating to one offence—Conviction on both informations—Whether certiorari lay to quash second conviction. **R v Campbell, ex parte Nomikos** [1956] 2 280, QBD.Plea of guilty—Two informations relating to same circumstances—Notice of plea of guilty referring to one information—Conviction on both informations—Magistrates' Courts Act 1957, s 1(1). **R v Burnham Justices, Ex parte Anson** [1959] 3 505, QBD.

Costs—

Party not appearing—

Costs not awarded against party who does not appear. **R v Liverpool Justices, Ex parte Roberts** [1960] 2 384, QBD.Matter litigated until after applicants' briefs delivered—Costs awarded against respondents, who did not appear on motion, up to date of notifying that they no longer contested matter. **R v Hastings Licensing Justices, ex parte Lovibond (John) & Sons Ltd** [1968] 2 270, QBD.

Payment by rent tribunal—

Application by landlord for certiorari opposed by tribunal—Tribunal appearing by counsel. **R v Kingston-upon-Hull Rent Tribunal, Ex parte Black** [1949] 1 260, KBD.County court. *See* **Jurisdiction**—County court, *post*.Court-martial. *See* **Jurisdiction**—Court-martial, *post*.Criminal Injuries Compensation Board. *See* **Jurisdiction**—Criminal Injuries Compensation Board, *post*.

Crown Court—

Jurisdiction of High Court. *See* **Crown Court** (Supervisory jurisdiction of High Court—Orders of mandamus, prohibition and certiorari).

Delay—

Discretion—

Refusal of order. **R v Senate of the University of Aston, Ex parte Roffey** [1969] 2 964, QBD.Refusal of order—Unreasonable delay by applicant—Application made within prescribed time limit—Jurisdiction of court to refuse order on ground of delay—Burden on applicant of showing that despite delay in all circumstances order should be granted—Prescribed time limit not an entitlement but a maximum rarely to be exceeded—RSC Ord 53, r 2(2). **R v Herrod, ex parte Leeds City District Council** [1976] 1 273, CA.

CERTIORARI (cont)

Evidence—

Affidavit evidence—

Admissibility of affidavit evidence on application for certiorari—Admissibility to show want of jurisdiction or as part of record to show error of law—Wrong exercise of discretion by inferior tribunal—Magistrates' court—Decision to forfeit surety's recognisance—Affidavits showing justices had failed to consider relevant matter and had taken irrelevant matter into consideration—Whether affidavits admissible to show want of jurisdiction or alternately as part of record to show error of law. *R v Southampton Justices, Ex parte Green* [1975] 2 1073, CA.

Admissibility of affidavit evidence on application for certiorari—Automatic forfeiture of intoxicating liquor and vessels if owner or occupier convicted—Evidence to show that conviction was of only one member of a members' club. *R v Lewes Justices, Ex parte Trustees of the Plumpton and District Club* [1960] 2 476, QBD.

Cross-examination of deponents to affidavits—Special circumstances—R S C Ord 59, r 47—R S C Ord 38. *R v Stokesley (Yorks) Justices, Ex parte Bartram* [1956] 1 563, QBD.

Fresh evidence—

Quarter sessions—Right of way—Application to quarter sessions for declaration that footpath not a public right of way—Refusal of quarter sessions to make declaration—Fresh evidence discovered after hearing—Whether remedy of certiorari available. *R v West Sussex Quarter Sessions, ex parte Albert and Maud Johnson Trust Ltd* [1973] 3 289, CA.

Inquest—

Verdict of suicide—Application for certiorari to quash. *See Coroner* (Inquest—Verdict of suicide—Application for certiorari to quash).

Excess of jurisdiction—

Justices. *See Justices—Excess of jurisdiction, post.*

Fire brigade. *See Jurisdiction—Fire brigade, post.*

Fraud—

Fraud at time when order granted—

Perjury—Certiorari to quash order. *R v Recorder of Leicester, Ex parte Wood* [1947] 1 928, KBD.

Perjury—Witnesses' perjury—Whether a ground for granting certiorari to quash proceedings—Witness not in collusion with party—Facts in dispute. *R v Ashford (Kent) Justices, Ex parte Richley* [1955] 3 604, CA.

Ground of complaint—

Failure to grant adjournment—

Magistrates' court—Application by defendant for adjournment—Purpose of adjournment to enable defendant to have reasonable time to prepare his case—Failure to give defendant reasonable opportunity to prepare case breach of rules of natural justice—Whether failure to grant adjournment ground for certiorari. *R v Thames Magistrates' Court, Ex parte Polemis* [1974] 2 1219, QBD.

Immigration officer's decision to refuse admission to United Kingdom—

Whether certiorari appropriate remedy. *See Commonwealth immigrant* (Admission—Refusal of admission—Discretion of immigration officer—Duty to act fairly).

Industrial Disputes Tribunal. *See Jurisdiction—Industrial Disputes Tribunal, post.*

Jurisdiction—

Ancillary relief—

Applicant convicted of motoring offence and disqualified from holding driving licence—Applicant subsequently convicted of driving while disqualified—Original conviction and disqualification invalid—Whether certiorari available to give ancillary relief. *R v Middleton Justices, Ex parte Collins* [1969] 3 800, QBD.

Arbitration. *See Arbitrator—Jurisdiction of court to issue orders addressed to private arbitrator, ante.*

Bodies amenable to jurisdiction—

Bodies having legal authority to determine rights of subjects—Statutory visitors under mental health legislation—Report to Board of Control by visitors—Applicant seeking order of certiorari to quash report—Whether visitors having 'authority to determine rights of subjects'—Mental Deficiency Act 1913, s 11(2), (4)(a). *R v Statutory Visitors to St Lawrence's Hospital, Caterham, Ex parte Pritchard* [1953] 2 766, QBD.

Bodies having legal authority to determine rights of subjects—Whether necessary that body should have the duty to act judicially. *R v London Borough of Hillingdon, ex parte Royco Homes Ltd* [1974] 2 643, QBD.

Market authority—Rights of public to attend market for purpose of buying and selling goods—Authority having statutory power to regulate market—Grant of licence by authority to erect stall—Decision to terminate licence—Decision affecting common law rights of stallholder—Duty of authority to act judicially in deciding whether to terminate licence—Whether remedy of certiorari available in case of failure to act judicially. *R v Barnsley Metropolitan Borough Council, ex parte Hook* [1976] 3 452, CA.

Consistory court—

Decision of consistory court—Whether remedy of certiorari available to quash decisions of Consistory court. *R v St Edmundsbury and Ipswich Diocese (Chancellor), Ex parte White* [1947] 2 170, CA.

County court—

Certiorari to quash county court decision—Directions of county court judge made without jurisdiction—Appeal against decision of electoral registration officer—Non-compliance with County Court Rules 1936, Ord 43, r 8—County Courts Act 1959, s 107, s 115(1). *R v His Honour Judge Sir Donald Hurst, Ex parte Smith* [1960] 2 385, QBD.

Court-martial—

Breach of procedural military law—Power of High Court to issue certiorari. *R v Secretary of State for War, ex parte Martyn* [1949] 1 242, KBD.

CERTIORARI (cont)

Jurisdiction (cont)—

Criminal Injuries Compensation Board—

Compensation awarded under prerogative, not under statute—Jurisdiction of High Court to issue certiorari. **R v Criminal Injuries Compensation Board, Ex parte Lain** [1967] 2 770, QBD.

Excessive punishment—

Revocation of licence—Market authority—Revocation depriving market trader of right to erect stall at market—Revocation in effect a punishment out of all proportion to gravity of offence—Whether certiorari available to quash decision of authority to revoke licence. **R v Barnsley Metropolitan Borough Council, ex parte Hook** [1976] 3 452, CA.

Exclusion by statute—

Special remedy—Excessive valuation of rateable hereditament—Challenge to basis of valuation list—Fundamental error vitiating list as a whole—Prerogative remedy by certiorari and mandamus available. **R v Paddington Valuation Officer, ex parte Peachey Property Corp Ltd** [1965] 2 836, CA.

Fire brigade—

Exercise of disciplinary power—Refusal of fireman to clean uniform of officer—Fireman cautioned by chief officer—Whether remedy of certiorari available to quash caution order—Fire Services (Discipline) Regulations 1948 (S I 1948, No 545), reg 5(1). **Ex parte Fry** [1954] 2 118, QBD and CA.

Industrial Disputes Tribunal—

Decision of tribunal—Dispute in Scotland—Employer's registered office and award in England—Application for certiorari to quash decision of tribunal—Jurisdiction to hear application. **R v Industrial Disputes Tribunal, Ex parte Kigass Ltd** [1953] 1 593, QBD.

Legal aid committee—

Application for certiorari—Decision of local committee granting certificate—Excess of jurisdiction. **R v Manchester Legal Aid Committee, Ex parte R A Brand & Co Ltd** [1952] 1 480, QBD.

Licensing committee—

Cab licence—Decision of Commissioner of Metropolitan Police to revoke—Reference of matter by commissioner to licensing committee for further investigation—Licensing committee refusing to allow applicant to call witnesses—Licence revoked following report of committee—Applicant alleging breach of rules of natural justice—Whether remedy of certiorari available—London Cab Order 1934 (S R & O 1934, No 1346), para 30(1). **R v Metropolitan Police Comr, Ex parte Parker** [1953] 2 717, QBD.

Minister of Health—

Dispute as to right to superannuation allowance of asylum officer—Dispute to be determined by Minister of Health—Decision to be final—Whether subject to certiorari—Asylums Officers' Superannuation Act 1909, ss 2, 10, 11, 15. **R v Minister of Health, ex parte Committee of Visitors of Glamorgan County Mental Hospital** [1938] 4 32, CA.

Patents Appeal Tribunal—

Decision of tribunal—Whether certiorari will lie to Patents Appeal Tribunal—Patents Act 1949, s 85(2), (10). **R v Patents Appeal Tribunal, Ex parte Champion Paper and Fibre Co** [1957] 1 227, QBD.

Planning authority—

Decision of authority—Permission for development—Grant of permission subject to conditions—Permission granted to applicant subject to conditions—Applicant alleging conditions *ultra vires*—Applicant seeking order of certiorari—Whether remedy of certiorari available. **R v London Borough of Hillingdon, Ex parte Royco Homes Ltd** [1974] 2 643, QBD.

Principles governing grant—

Statutory tribunal—No right of appeal against tribunal's decision—Error of law—Principles on which court will consider application for certiorari to quash tribunal's determination—Point of law of general application—Applications not to be made as if right of appeal—Tribunal to be left to interpret Act in reasonable way. **R v Preston Supplementary Benefits Appeal Tribunal, Ex parte Moore** [1975] 2 807, CA.

Registrar of Building Societies—

Order prohibiting building society making invitations to subscribe for s'es—Investigation—Hearing by registrar of representations by society—Order made—Application for certiorari to quash order—Whether registrar acting in administrative or quasi-judicial capacity—Prevention of Fraud (Investments) Act 1958, s 11(1), (3). **R v Registrar of Building Societies, ex parte A Building Society** [1960] 2 549, CA.

Statutory tribunal's decision—

No certiorari provision in statute—Error going to jurisdiction distinguished from error within jurisdiction—Review of decision for error of law apparent on face of record and within jurisdiction excluded by no certiorari provision—Error going to jurisdiction rendering tribunal's decision a nullity notwithstanding no certiorari clause. **Anisimic Ltd v The Foreign Compensation Commission** [1969] 1 208, HL.

Principles governing grant of certiorari. *See* Jurisdiction—Principles governing grant—Statutory tribunal, *ante*.

Justices—

Bias. *See* Bias, *ante*.

Excess of jurisdiction—

Conviction for careless driving—Disqualification for twelve months—Order for disqualification severable—Certiorari to quash disqualification—Road Traffic Act 1930, s 12(2), as substituted by Road Traffic Act 1934, s 5(2), as amended by Road Traffic Act 1956, s 55(3), Sch 9. **R v Arundel Justices, Ex parte Jackson** [1959] 2 407, QBD.

Error on face of proceedings—Fine in excess of statutory maximum for offence. **R v Willesden Justices, Ex parte Utley** [1947] 2 838, KBD.

Justices sitting in other than judicial capacity—

Issue of certiorari only when justices sitting in a judicial capacity. **R v Barnstaple Justices, Ex parte Carder** [1937] 4 263, KBD.

CERTIORARI (cont)**Justices (cont)—****Natural justice—**

Accused convicted without having opportunity of answering charge—*Certiorari* to quash conviction. *R v Wandsworth Justices, Ex parte Read* [1942] 1 56, KBD.

Clerk passing note to chairman after conclusion of case, but before justices retired to consider decision—Note containing argument on facts in favour of conviction. *R v Stafford Borough Justices, Ex parte Ross* [1962] 1 540, QBD.

Justices interviewing witness in absence of accused and advisers—Conviction of accused—*Certiorari* to quash conviction. *R v Bodmin Justices, Ex parte McEwen* [1947] 1 109, KBD.

Witness summons—

Witness not able to give relevant and admissible evidence—Jurisdiction of court to set aside witness summonses issued under Magistrates' Courts Act 1952, s 77—*R S C Ord* 38, r 19(1), (5). *R v Hove Justices, Ex parte Donne* [1967] 2 1253, QBD.

Witness required to produce documents in respect of which Crown privilege claimed—Jurisdiction of court to quash witness summons issued under Magistrates' Courts Act 1952, s 77. *R v Lewes Justices, Ex parte The Gaming Board of Great Britain* [1971] 2 1126, QBD.

Legal aid certificate—*See* Legal Aid (Certificate—*Certiorari* to quash certificate).

Legal aid committee. *See* Jurisdiction—Legal aid committee, *ante*.

Liverpool Court of Passage. *See* Liverpool Court of Passage (*Certiorari*).

Magistrates. *See* Justices, *ante*.

Natural justice. *See* Natural justice.

Patent appeal tribunal—

Circumstances in which *certiorari* will lie. *See* Patent (Appeal tribunal—*Certiorari* to quash decision of tribunal).

Patents Appeal Tribunal. *See* Jurisdiction—Patents Appeal Tribunal, *ante*.

Planning authority. *See* Jurisdiction—Planning authority, *ante*.

Practice—

Court of Appeal hearing motion. *See* Court of Appeal (*Certiorari*—Practice).

Prejudice—**Test of prejudice—**

Test whether real likelihood of prejudice shown—Report of appellant's history and convictions placed before quarter sessions before appeal decided. *R v Grimsby Borough Quarter Sessions, Ex parte Fuller* [1955] 3 300, QBD.

Registrar of Building Societies. *See* Jurisdiction—Registrar of Building Societies, *ante*.

Review of decision of inferior tribunal—**Principle—**

Consideration of evidence before tribunal—Whether evidence on which tribunal could properly hold that appropriate test was satisfied—Question not one of jurisdiction—Principle applied to prerogative remedy of habeas corpus but applicable also to *certiorari*. *Armah v Government of Ghana* [1966] 3 177, HL.

Statutory power of dismissal—

Whether *certiorari* available to quash dismissal under statutory power—

Ceylon. *See* Master and servant (Dismissal—Statutory power—*Certiorari*).

Statutory tribunal—**Determination of tribunal to be final—**

Application to Foreign Compensation Commission—Application of kind into which commission had jurisdiction to enquire—Error of commission in construing Order in Council—Whether error rendering determination a nullity—Foreign Compensation (Egypt) (Determination and Registration of Claims) Order 1962 (S I 1962, No 2187), art 4(1)(b)—Foreign Compensation Act 1950, s 4(4). *Anisminic Ltd v The Foreign Compensation Commission* [1969] 1 208, HL.

Error of law on face of record—

Discretion over issue of *certiorari*—Normal principle to grant relief to an aggrieved person—No satisfactory alternative relief open to party aggrieved—*Patents Act* 1949, s 9(1). *R v Patents Appeal Tribunal, ex parte JR Geigy Société Anonyme* [1963] 1 850, QBD.

Error not appearing on face of record—Tribunal acting within its jurisdiction—Evidence wrongly admitted—Whether evidence to show error admissible. *R v Agricultural Land Tribunal for the South Eastern Area, Ex parte Bracey* [1960] 2 518, QBD.

Form of record—Affidavit evidence—Admissibility—National Health Service (Transfer of Officers and Compensation) Regulations 1948 (S I 1948 No 1475), reg 12. *R v Northumberland Compensation Appeal Tribunal, Ex parte Shaw* [1952] 1 122, CA.

Medical appeal tribunal—Incorporation of medical report which disclosed facts showing error—Decisions of tribunal to be 'final'—Whether subject to *certiorari*—National Insurance (Industrial Injuries) Act 1946, s 36(3). *Re Gilmore's Application* [1957] 1 796, CA.

Patent application and specification—Whether court will look at these as part of record on application for *certiorari* to Patents Appeal Tribunal. *R v Patents Appeal Tribunal, Ex parte Swift & Co* [1962] 1 610, QBD.

Error on face of record—

Construction of documents—Technical scientific terms—Evidence necessary to inform court of meaning of terms—Patent specifications—Whether part of record—Whether *certiorari* would lie to Patents Appeal Tribunal if expert evidence needed to explain technicalities—*Patents Act* 1949, s 9, s 85(10). *Baldwin & Francis Ltd v Patents Appeal Tribunal* [1959] 2 433, HL.

Time for application—**Extension of time—**

Leave—Application for leave—Notice to intended respondent—*R S C Ord* 59, r 4(2), *Ord* 64, r 7. *R v Ashford (Kent) Justices, Ex parte Richley* [1955] 2 327, QBD.

CEYLON

Appeals to Privy Council—

Jurisdiction—

Right of Privy Council to entertain appeals from Ceylon. **Ibralebbe v Reginam** [1964] 1 251, PC.

Leave—

Jurisdiction of Supreme Court of Ceylon to grant leave—'Civil suit or action in the Supreme Court'—Appeals (Privy Council) Ordinance of Ceylon Legislative, s 3. **Tennekoon, Comr for Registration of Indian and Pakistani Residents v Duraisamy** [1958] 2 479, PC.

Citizenship—

Franchise—

Validity of legislation as to qualifications for citizenship—Ceylon (Constitution and Independence) Order in Council 1946 (as amended to 1947), s 29(2)(b)—Citizenship Act, No 18 of 1948, ss 4, 5—Ceylon (Parliamentary Elections) Order in Council 1946, s 4(1)(a), as amended by Ceylon (Parliamentary Elections) Amendment Act 1949. **Govindan Sellappah Nayar Kodakan Pillai v Punchi Banda Mudanayake** [1955] 2 833, PC.

Constitutional law—

Amendment of constitution—

Amending statute inconsistent with constitution—Amending statute passed in accordance with requirements of constitution—Validity of amending statute—Imposition of Civic Disabilities (Special Provisions) Act 1965—Ceylon (Constitution) Order in Council 1946, s 29. **Kariapper v Wijesinha** [1967] 3 485, PC.

Coup d'état—

Legislation ex post facto—Whether Parliament of independent sovereign State limited by inability to pass legislation contrary to fundamental principles of justice—Separation of judicial, executive and legislative power—Retrospective legislation interfering with the right to jury, and imposing minimum sentence—Infringement of judicial power—Ultra vires—Criminal Law (Special Provisions) Act 1962—Criminal Law Act 1962. **Liyanage v Reginam** [1966] 1 650, PC.

Statute—

Validity of enactment—Amendment of Constitution—Bill containing enactment in conflict with enactment of Constitution—Bill not endorsed with Speaker's certificate of having been passed with required majority—Royal assent given to bill—Whether court may look behind official copy of statute to satisfy itself as to compliance with requirements of Constitution—Whether bill valid in the absence of Speaker's certificate—Nullity of enactment in bill and of orders made by tribunal pursuant to that enactment—Ceylon (Constitution) Order in Council 1946, ss 29(4), 55, as amended by Ceylon Independence Order in Council 1947, arts 3, 6, Sch—Bribery (Amendment) Act, s 41. **Bribery Comr v Ranasinghe** [1964] 2 785, PC.

Criminal evidence—

Admissions and confessions—

Police—Statement voluntarily made in course of police investigation—Criminal Procedure Code (Legislative Enactments of Ceylon 1938 Rev c 16), s 122(3). **Thambiah v Reginam** [1965] 3 661, PC.

Criminal law—

Trial—

Language—Election by accused to be tried by English speaking jury—Part of evidence given in Sinhalese—Speeches in Sinhalese—Summing-up in English—Whether such a departure from provisions of criminal procedure code as amounted to miscarriage of justice—Criminal Procedure Code of Ceylon, s 165B—Criminal Appeal Ordinance of Ceylon, s 5(1). **Hemapala v R** [1963] 3 632, PC.

Election—

No appeal to Crown—

Validity of Parliamentary election—Ceylon (Parliamentary Elections) Order in Council 1946, s 50, s 83. **Senanayake v Navaratne** [1954] 2 805, PC.

Estoppel—

Licensor and licensee—

Licence granted by deputy Viharadhipathi—Implied renewal of licence after death of Viharadhipathi—Implied resumption of possession—Payment of dues by licensee—Whether licensee estopped by his conduct from denying title of licensor—Ceylon Evidence Ordinance 1896, ss 100, 116. **Meeruppe Sumanatissa Terunnanse v Warakapitiye Pangnananda Terunnanse** [1968] 1 651, PC.

Income tax—

Deduction in computing profits—

Expenses incurred in producing income—Costs of litigation—Whether expenses incurred in production of income—Ceylon Income Tax Ordinance 1956, ss 11(1), 12(b). **Inland Revenue Comrs v Appuhamy** [1963] 1 69, PC.

Double taxation relief—

Agreement with United Kingdom for relief—Subsequent Act taxing non-resident companies—Conflict between Act and agreement—General words in Act to be given full meaning—Agreement impliedly abrogated insofar as inconsistent with Act—Double Tax Relief Agreement with United Kingdom Treaty Series No 9 (1950)—Income Tax (Amendment) Act 1959, s 53C(1). **Woodend (K V Ceylon) Rubber and Tea Co Ltd v Inland Revenue Comr** [1970] 2 801, PC.

Judicial officer—

President of labour tribunal appointed by Public Service Commission—

Order of tribunal for re-instatement of dismissed employee—Validity of order—Whether office of president judicial—Industrial Disputes Act 1950, as amended by Industrial Disputes (Amendment) Act 1957, s 31B—Ceylon (Constitution) Order in Council 1946, s 55. **United Engineering Workers Union v Devanayagam** [1967] 2 367, PC.

CEYLON (cont)

Land subject to fidei commissum—

Lease to lessee ignorant of fidei commissum—

Bona fide improvements to land made by lessee—Whether lessee entitled to compensation for improvements. *Hassanally v Cassim* [1960] 2 11, PC.

Moneylending—

Mortgage—

Security for payment of advances made upon promissory notes—Promissory notes not in prescribed form and therefore unenforceable—Inadmissible in evidence to prove the loans—Jurisdiction of court to re-open the transaction—Ceylon Moneylending Ordinance 1918, ss 2, 8, 10, 13, 14. *Sockalingam Chettiar v Ramanayake* [1937] 1 196, PC.

Motor insurance—

Third-party risks—

Claim by injured person against insurers—Repeal of statute under which claim brought before decree against assured—Whether injured person acquired a right against insurers—Whether insurers' liability limited—Ceylon Motor Car Ordinance 1938, ss 128(1), 133(1)—Ceylon Motor Traffic Act 1951, ss 100(1), 105(1)—Ceylon Interpretation Ordinance 1900, s 6(3)(b). *Free Lanka Insurance Co Ltd v Ranasinghe* [1964] 1 457, PC.

Parliament—

Member of House of Representatives—

Bribery—Offering a bribe to a member in his 'capacity' as a member of Parliament—Interpretation of 'in his capacity as such member'—Ceylon Bribery Act 1954, s 14(a). *Attorney-General of Ceylon v De Livera* [1962] 3 1066, PC.

Polygamous marriage—

Right to contract polygamous marriage—

Change of domicile—Right of person domiciled in Ceylon to change religion and personal law and thus to contract valid polygamous marriage, notwithstanding earlier marriage. *Attorney-General of Ceylon v Reid* [1965] 1 812, PC.

Registration of Indian and Pakistani residents—

Permanently settled in Ceylon—

Pakistani Residents (Citizenship) (Amendment) Act, 1950, s 4. *Tennekoon, Comr for Registration of Indian and Pakistani Residents v Duraisamy* [1958] 2 479, PC.

Wife's residence—

Non-residence during war period—Wife not previously resident in Ceylon—Non-residence not an 'interruption' of residence and therefore not excused—Amending Act passed when application for registration pending—Whether amending Act applied to application—Whether Act contained 'express provision' regarding pending applications—Indian and Pakistani Residents (Citizenship) Act (Ceylon) 1949, s 6, as amended by Act No 45 of 1952, s 2(3)—Interpretation Ordinance, s 6(3). *Shanmugam v Comr for the Registration of Indian and Pakistani Residents* [1962] 2 609, PC.

Statute—

Retrospective operation—

Taxing Act—Amending Act imposing tax retrospectively—Recovery provisions of original Ordinance based on tax being payable in advance—Amending Act did not adapt these to tax retrospectively imposed—Whether recovery of tax enforceable—Heavy Oil Motor Vehicles Taxation Ordinance 1935—Heavy Oil Motor Vehicles Taxation (Amendment) Act 1961. *Wijesuriya v Amit* [1965] 3 701, PC.

Supreme Court—

Appeal—

Costs—Security for costs—Notice of tender of security—Failure to give notice on day when petition of appeal lodged—Whether notice given 'forthwith'—Non-compliance with procedural requirement—Respondents not materially prejudiced—Whether relief should be given—Civil Procedure Code of Ceylon, s 756(1) (3). *Sameen v Abeyewickrema* [1963] 3 382, PC.

CHALLENGE

Juror. *See* **Jury** (Juror—Challenge).

CHAMBERS

Assessment of costs. *See* **Costs** (Assessment in chambers).

Chancery Division—

Practice. *See* **Practice** (Chambers proceedings).

Proceedings in chambers. *See* **Practice** (Chambers proceedings).

Publication of information concerning chambers proceedings—

Contempt of court. *See* **Contempt of court** (Publications concerning legal proceedings—Court sitting in private).

Queen's Bench Division—

Practice. *See* **Practice** (Chambers proceedings—Queen's Bench Division).

CHAMPERTY

Champertous agreement—

Solicitor's costs. *See* **Solicitor** (Costs—Champerty—Champertous agreement).

Defence—

Assignment of chose in action void for champerty—

Plaintiff's title to sue depending on the assignment—Whether champerty could properly be raised by way of defence. *Laurent v Sale & Co (a firm)* [1963] 2 63, QBD.

CHANCEL

Repair—

Liability. *See* **Ecclesiastical law** (Chancel—Liability to repair chancel).

CHANCE-MEDLEY

Murder charge—

Provocation and chance-medley. *See* **Criminal law** (1urder—Provocation—Chance-medley).

CHANCERY DIVISION

Appeal—

Decision of land registrar—

Procedure. *See* **Land registration** (Appeal—Procedure—Appeal to nominated judge of Chancery Division from decision of registrar).

Review of exercise of discretion—

Duty of court. *See* **Appeal** (Review of exercise of discretion).

Case stated—

Appeals by way of case stated. *See* **Case stated** (Chancery Division).Chambers. *See* **Practice** (Chambers proceedings).

Contempt of court—

Committal—

Appeal against committal—Notice of appeal—Service. *See* **Contempt of court** (Committal—Appeal against committal—Notice of appeal—Service—Chancery Division).

Costs—

Assessment in chambers. *See* **Costs** (Assessment in chambers—Chancery Division).

Taxation—

Legal aid—Procedure. *See* **Legal aid** (Taxation of costs—Procedure—Chancery Division).Order—Form of order. *See* **Costs** (Taxation—Order—Form of order—Chancery Division).Review of taxation—Procedure. *See* **Costs** (Taxation—Review of taxation—Procedure—Chancery Division).

European Court—

References to—

Practice. *See* **European Economic Community** (Reference to European Court—Practice—Chancery Division).

Jurisdiction—

Grant of remedy or relief where proceedings for such remedy or relief assigned to another Division. *See* **Court** (Jurisdiction—High Court of Justice—Divisions of High Court).Wardship proceedings. *See* **Ward of court** (Jurisdiction—Relationship of jurisdiction over minors of Chancery Division and Probate, Divorce and Admiralty Division—Conflict of jurisdiction).

Minors—

Practice. *See* **Minor** (Practice—Chancery Division—Chambers applications relating to minors).

Motion—

Practice. *See* **Practice** (Motion—Chancery Division).Originating summons. *See* **Originating summons**.

Practice—

Adoption proceedings. *See* **Adoption** (Practice—Chancery Division).Generally. *See* **Practice** (Chancery Division).Summons. *See* **Practice** (Summons—Chancery Division).

Transfer of equity proceedings from High Court to county court—

Jurisdiction. *See* **County court** (Transfer of action—Transfer from High Court—Jurisdiction to order transfer—Equity proceedings).

Wardship—

Minor—

Necessity for application. *See* **Ward of court** (Application to make minor ward of court—Application to Chancery Division—Necessity for application).**CHARACTER**

Accused—

Evidence of character in criminal proceedings. *See* **Criminal evidence** (Character of accused).Direction as to character. *See* **Jury** (Direction to jury—Character of accused).**CHARGE**Company. *See* **Company** (Charge).

Equitable—

Deposit of documents of title—

Common law retaining lien. *See* **Lien** (Deposit of documents of title).National development bonds. *See* **National savings** (National development bonds).

Foreclosure—

Application for foreclosure nisi—

Practice—Affidavit of due execution—No longer required. **Practice Direction** [1969] 2 639, ChD.General equitable charge. *See* **Land charge** (General equitable charge).

Land charge.

See **Land charge**.

Legal aid—

Charge on property recovered for deficiency of costs. *See* **Legal aid** (Charge on property recovered for deficiency of costs).Property recovered in proceedings. *See* **Legal aid** (Costs—Charge on property recovered for deficiency of costs).Legal mortgage. *See* **Mortgage**.

Priority of charge—

Charge on property recovered for deficiency of costs—

Legal aid. *See* **Legal aid** (Charge on property recovered for deficiency of costs—Priority of charge).

Registered land—

Charge created by deposit of land certificate—

Protection on register. *See* **Land registration** (Charge—Deposit of land certificate—Protection on register).

Special charge—

Investment income—

Income tax. *See* **Income tax** (Special charge—Investment income).

CHARGE (cont)

Will—

Gift subject to charge. *See* **Will** (Gift—Gift subject to charge).

Withdrawal—

Criminal proceedings. *See* **Criminal law** (Trial—Withdrawal of charge).

CHARGE TO TAX

Income tax. *See* **Income tax** (Charge to tax).

CHARGEABLE GAINS

Tax. *See* **Capital gains tax** (Computation of chargeable gains).

CHARGES

Water charges. *See* **Water supply** (Charges).

CHARGES SCHEME

British Transport Commission. *See* **British Transport Commission** (Charges scheme).

CHARGING ORDER

Discretion. *See* **Execution** (Charging order—Discretion).

Generally. *See* **Execution** (Charging order).

See **Execution** (Charging order).

Shares—

Charging order absolute on shares standing in name of judgment debtor—

Transfers executed before date of order—Articles of company in regard to transfers not complied with—Effect of charging order. *See* **Company** (Charging order—Effect—Charging order absolute on shares standing in name of judgment debtor—Transfers executed before date of order—Articles of company in regard to transfers not complied with).

Solicitor—

Lien. *See* **Solicitor** (Lien—Money in client account—Charging order).

CHARITY

Accumulation of income—

Charitable trust. *See* **Accumulation** (Excessive period—Charitable trust).

Action—

Attorney-General as party to proceedings. *See* **Practice** (Parties—Proceedings relating to charities—Attorney-General).

Advancement—

Charitable gift in exercise of power of advancement. *See* **Trust and trustee** (Powers of trustee—Advancement—Charitable donation).

Advancement of education. *See* **Education**, *post*.

Advancement of religion. *See* **Religion**, *post*.

Amalgamation—

General purposes—

Gift for general purposes of one of charities amalgamated—Whether gift valid. *Re Dawson's Will Trusts* [1957] 1 177, ChD.

Appeal—

Appeal against order of commissioners—

Nature and scope of appeal—Order following enquiry into charity—Removal of trustee—Contents of report by person who conducted enquiry—Whether report evidence on appeal—Whether appellant entitled to challenge findings in report and adduce evidence on appeal—Charities Act 1960, ss 6, 18(1), 20(1), (7). *Jones v Attorney-General* [1973] 3 518, CA.

Parties—

Attorney-General. *See* **Practice** (Parties—Proceedings relating to charities—Attorney-General—Appeal).

Scheme—

Appeal against order establishing scheme. *See* **Scheme**—Power of commissioners or Secretary of State for Education and Science to establish scheme—Appeal against order establishing scheme, *post*.

Artistic dramatic work—

Company incorporated to present classical, artistic, cultural and educational dramatic works—A further object being to do all such things as might be thought conducive to the attainment of its objects—Whether objects charitable. *Associated Artists Ltd v Inland Revenue Comrs* [1956] 2 583, ChD.

Attorney-General as party to proceedings. *See* **Practice** (Parties—Proceedings relating to charities—Attorney-General).

Benefit to community—

Aged persons—

Gift to persons in certain parish over sixty-five years of age—Charitable Uses Act 1601, preamble. *Re Robinson (decd)* [1950] 2 1148, ChD, *Re Bradbury (decd)* [1950] 2 1150, ChD, *Re Glyn's Will Trusts* [1950] 2 1150, ChD.

Gift to persons in certain parish over 65 years of age—Charitable Uses Act 1901, preamble. *Re Robinson (decd)* [1950] 2 1148, ChD, *Re Bradbury (decd)* [1950] 2 1150, ChD, *Re Glyn's Will Trusts* [1950] 2 1150, ChD.

Gift to local authority to provide flats for married couples or bachelors over 65 years of age and living in the district—Flats to be let at economic rents. *Re Cottam's Will Trusts* [1955] 3 704, ChD.

Animals—

Gift 'to use at her discretion for her work for the welfare of cats and kittens needing care and attention'. *Re Moss (decd)* [1949] 1 495, ChD.

CHARITY (cont)

Benefit to community (cont)—

Animals (cont)—

One-seventh of residuary estate bequeathed to anti-vivisection society—Six other shares given to six other institutions for protecting animals—Former gift non-charitable, latter charitable—Whether general charitable intention in will—Principle of *noscitur a sociis* not applicable. **Re Jenkins' Will Trusts** [1966] 1 926, ChD.

Armed forces—

Advancement of armed forces of Crown—Direction to trustees to 'devote the net proceeds' of the testatrix's residuary estate 'in whatever manner they may consider desirable to promote the defence of the United Kingdom from the attack of hostile aircraft'. **Re Driffill** [1949] 2 933, ChD.

Training boys for the Navy and the Mercantile Marine. **Re Corbyn** [1941] 2 160, ChD.

Charitable purpose—

Need to show gift for charitable purpose as well as benefit to community—Social and educational amenities—Welsh people—Trust to maintain institute to give social, educational, etc, amenities to Welsh people. **Trustees of Sir Howell Jones Williams' Trusts v Inland Revenue Comrs** [1947] 1 513, HL.

Children's home—

Establishment—Gift to local authority of house to establish a children's home—Bequest of fund for benefit of children in home—Alternative purpose—Hostel for young soldiers, sailors, airmen or merchant seamen—Validity—Alternative gift to take effect should local authority discontinue children's home—Whether local authority must first establish children's home. **Re Sahal's Will Trusts** [1958] 3 428, ChD.

'Common Good Fund'—

Bequest to the 'Common Good Fund of the Leven Town Council'—Meaning—Asset held under control of borough authorities for the benefit of borough and its inhabitants—Freedom of town council to spend income and capital—Perpetuity—Benefit of particular class and specified public purpose—Valid gift. **Re Baynes** [1944] 2 597, ChD.

Community—

To strengthen bonds between Union of South Africa and Mother Country and incidentally conduce to appeasement of racial feeling in South Africa. **Re Strakosch (decd)** [1949] 2 6, CA.

Convalescent home—

Convalescent home for members of a trade union and home for aged poor retired members—Trade union consisting of some, but not all, of the persons engaged in the printing industry—No means test for admission to convalescent home—Whether members of trade union could constitute a section of the public for the purpose of the law of charities. **Re Mead's Trust Deed** [1961] 2 836, ChD.

Emigration—

Gift for the promotion of emigration to Dominions of British Empire—Gift confined to persons residing in the borough of Hastings in or prior to 1880, or their descendants—Assistance to be given to any one person or any one family not to exceed specified amount—Whether beneficiaries limited to poor members of class indicated—Public character—Whether class indicated section or portion of general public—Descendants of persons residing in Hastings in or prior to stated year—Whether proof of ancestry introduced purely personal element as essential part of qualification. **Re Tree** [1945] 2 65, ChD.

Employees—

Air raid distress—Fund raised by employees of a company to provide grants for contributors—No means test applied in considering claims—Claims by non-contributors not considered—Gift not for general public purposes nor within 'poor relations' cases—Fund not subject to valid charitable trusts. **Re Trusts of Hobourn Aero Components Ltd's Air-Raid Distress Fund** [1946] 1 501, CA.

Fire brigade—

Provision of fire brigade. **Re Wokingham Fire Brigade Trusts** [1951] 1 454, ChD.

Health and welfare—

Inhabitants of named parish—Provision of public recreation ground. **Re Morgan (decd)** [1955] 2 632, ChD.

High Commissioner—

Residence for High Commissioner for Australia. **Re Spensley's Will Trusts** [1954] 1 178, CA.

Hospital—

Gift to a hospital to provide 'accommodation for the use of relatives who come from a distance of patients who are critically ill'. **Re Dean's Will Trusts** [1950] 1 882, ChD.

Home of rest for nurses of institution. **Re White's Will Trusts** [1951] 1 528, ChD.

Impotent person—

Gifts to each of ten blind children—Charitable Uses Act 1601, preamble. **Re Lewis (decd)** [1954] 3 257, ChD.

Industrial Orthopaedic Society—

Objects of society to provide free medical treatment to its members from their voluntary contributions—Membership of 400,000—Whether main objects of society charitable. **Waterson v Hendon Borough Council** [1959] 2 760, QBD.

Law—

Development and administration of judge-made law—Law reports—Preparation and publication of accurate reports of judicial decisions—Use of law reports to enable court to develop and administer the law—Benefit to members of legal profession in their practice—Charge made for law reports—Whether provision of law reports beneficial to community—Whether falling within the spirit and intendment of the preamble to the Statute of Elizabeth. **The Incorporated Council of Law Reporting for England and Wales v Attorney-General** [1971] 3 1029, CA.

CHARITY (cont)**Benefit to community (cont)—****Music—**

Advancement of composer's works—Trusts for the advancement of the works of Delius, the testatrix's late husband—Gift over to testatrix's O62 brother if nothing further could be undertaken in connection with the furtherance or perpetuation of Delius' works—Whether trusts charitable. *Re Delius' Will Trusts* [1957] 1 854, ChD.

Training of singers—Gift to promote the training of singers—Gift for the benefit of organists and for the advancement of organ music—Whether good charitable gifts. *Re Levien (decd)* [1955] 3 35, ChD.

Nursing—

Nursing authority—Regulation of the profession of nursing in the manner provided by the Nurses Act 1957—Whether charitable object. *General Nursing Council for England and Wales v St Marylebone Corpn* [1959] 1 325, HL.

Promotion of the 'advance of nursing as a profession'—Incidental benefits to individuals—Objects of the Royal College of Nursing—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 8(1)(a). *Royal College of Nursing v St Marylebone Corpn* [1959] 3 663, CA.

Public and charitable purposes—

Public element—Trust for 'charitable purposes'—Beneficiaries limited to employees and ex-employees of a company and their dependants. *Re Cox (H C)(decd)*, *Re Cox (L B)(decd)* [1955] 2 550, PC.

Public purposes—

Gift for purchase of site and erection on it of public hall to be presented to local authority for public purposes—Gift of antiques to be displayed in public hall. *Re Spence's Estate* [1937] 3 684, ChD.

Recreational facilities—

Encouragement of athletic sports of police force—Provision of recreation for police officers—Finance Act 1921, s 30(1)(c), (3) [as substituted by Finance Act 1927, s 24]. *Inland Revenue Comrs v City of Glasgow Police Athletic Assn* [1953] 1 747, HL.

Reform of alphabet—

Trust to research into advantage of reform of alphabet. *Re Shaw (decd)* [1958] 1 245, CA.

Religious, moral, social and physical well-being—

Sufficient section of public—Uncertainty—Members or likely to become members of Methodist Church in two boroughs—Persons benefiting depending on opinion of mission leaders—Poverty—Insufficiency of means—Advancement of education—Finance Act 1947, s 54(1). *Inland Revenue Comrs v Baddeley* [1955] 1 525, HL.

Research—

Literature—Gift to Francis Bacon Society Incorporated to be applied towards finding Bacon-Shakespeare manuscripts—Object of society to study evidence in favour of Bacon's authorship of plays ascribed to Shakespeare—Whether beneficial to community. *Re Hopkin's Will Trusts* [1964] 3 46, ChD.

Surgery—

Promotion of surgery—Incidental benefits to individuals—Gift to Royal College of Surgeons. *Royal College of Surgeons of England v National Provincial Bank Ltd* [1952] 1 984, HL.

War memorial—

Memorial of use to the living—Memorial hall. *Murray v Thomas* [1937] 4 545, ChD.

Charitable gift—

Rule against perpetuities. *See Rule against perpetuities.*

Charitable trust—**Eleemosynary charity—**

Local authority—Power of authority to accept gifts of property—No power to accept property to be held in trust for an eleemosynary charity—Meaning of eleemosynary charity—Gift by will to local authority on trust to make payments to nursing homes for elderly women—Whether constituting a trust for an eleemosynary charity—Local Government Act 1933, s 268(1), (3). *Re Armitage's Will Trusts* [1972] 1 708, ChD.

Invalid trust—

Impersonal trust—Whether effect would be given to testator's directions as a power on which trustees might act. *Re Shaw (decd)* [1958] 1 245, CA.

Resulting trust. *See Trust and trustee* (Resulting trust—Failure of express trust—Gift over on failure of charitable trust).

Validity—

Date of ascertainment—Public benefit—Trust established by will—Trust coming into operation after termination of prior interest—Whether validity as charitable trust to be determined by reference to the law and character of the objects of the trust as at date of testator's death or at date when trust coming into operation. *Re Bushnell (deceased)* [1975] 1 721, ChD.

Will—

Gift for general benefit and general welfare of the children—Home maintained by local authority—Temporary home for orphans, and children committed to local authority as a fit person—Children and Young Persons Act 1933, ss 57, 62, 63, 64 (as amended), 66, 67, 68—Children Act 1948, ss 1, 15, 23, 24. *Re Cole (decd)* [1958] 3 102, CA.

Gift to body not registered as charity—Animal sanctuary—Subsequent registration as a charity with written constitution—Objects in written constitution identical with objects at date of will—Presumption that gift valid charitable disposition—Charities Act 1960, s 5(1). *Re Murawski's Will Trusts* [1971] 2 328, ChD.

Gift to charitable institution—Dissolution of institution after date of will and before testator's death—Validity of gift as purpose trust—Gifts to corporate and unincorporated bodies—Gift to corporate body failing unless evidence that body was to take as trustee—Gift to unincorporated body per se a purpose trust unless evidence that continued existence of donee essential to gift. *Re Finger's Will Trusts* [1971] 3 1050, ChD.

CHARITY (cont)

Charitable trust (cont)—

Will (cont)—

Gift to charitable institution—Dissolution of institution after date of will and before testator's death—Validity of gift as purpose gift—Gifts to corporate and unincorporated bodies—Gift to corporate body incorporated for exclusively charitable purposes—Change only in mechanism for holding and administering fund of charity—Continued existence of charity. **Re Vernon's Will Trusts** [1971] 3 1061, ChD.

Gift to institution which had been dissolved—Institution liable to dissolution—Funds disposed of—Doctrine of lapse. **Re Stemon's Will Trusts** [1969] 2 517, ChD.

Hospital—Private hospital—Gift of income from residuary estate for the benefit of private hospital—Charges made at private hospital, but hospital not conducted for profit—Private hospital established to relieve demand for admission to adjacent public hospital by providing medical and nursing care and treatment under conditions for which there was a public need—Private hospital open to contributors under medical benefit scheme—Whether valid charitable bequest. **Le Cras v Perpetual Trustee Co Ltd (Far West Children's Health Scheme v Perpetual Trustee Co Ltd)** [1967] 3 915, PC.

Hospital—Paying patients' beds—Bequest for 'endowing beds' for paying patients in named hospital—Hospital already had sufficient amenity and private beds—Income of bequest applicable for improvement of services or amenities without increasing existing number of beds—Meaning of endowment—Whether bequest a valid charitable trust—National Health Service Act 1946, s 4, s 5—National Health Service (Pay-Bed Accommodation in Hospitals, etc) Regulations 1953 (S I 1953 No 420), regs 3, 4, 5, 6. **Re Adams (decd)** [1967] 3 285, CA.

Charity Commissioners—

Consent to sale of charity estate. *See* Sale of charity estate—Consent of Charity Commissioners, *post*.

Chartered corporation—

Investments—

Construction of charter and rules—Trustee investments—On their true construction charity could not take power to make investments outside the ordinary trustee range of investments. **Soldiers', Sailors' and Airmen's Families Association v Attorney-General** [1968] 1 448, ChD.

Common investment scheme—

Application—

Two or more charitable trusts having the same trustees may apply to court to make scheme—Charities Act 1960, s 22(2). **Re University of London Charitable Trusts** [1963] 3 859, ChD.

Company—

Objects—

Evidence—Evidence whether objects charitable—Objects set out in memorandum—Outside evidence whether objects could be carried out only in way which exclusively charitable—Regard to circumstances in which company came into existence and sphere in which operated. **The Incorporated Council of Law Reporting for England and Wales v Attorney-General** [1971] 3 1029, CA.

Conditional bequest—

Will—

Condition. *See* Will (Condition—Conditional bequest—Bequest to charity).

Contingent gift—

Hospital—

Effect of National Health Service Act 1946. *See* National health service (Legacy to hospital—Gift to medical school of hospital—Gift over if hospital nationalised or passes into public ownership).

Costs—

Gift to non-existent charity—

Construction of will—Originating summons—Claims by various charities argued—Right to costs out of the estate. **Re Preston (decd)** [1951] 2 421, ChD.

Covenanted payments—

Income tax. *See* Income tax (Annual payment—Covenanted payments to charity).

Cy-près doctrine—

Application of trust fund as National Trust may decide—

Purposes for which fund applicable. **Re Spensley's Will Trusts** [1954] 1 178, CA.

Charity founded by royal charter—

Jurisdiction of court to order scheme. **Re Whitworth Art Gallery Trusts** [1958] 1 176, ChD.

Disclaimer by trustees—

Particular trustees not of the essence of the trust. **Re Lawton** [1936] 3 378, ChD.

Failure of purpose—

Fund for erection and maintenance of new voluntary hospital—Contributions received from identifiable and anonymous donors—No general charitable intention on part of identifiable donors. **Re Ulverston & District New Hospital Building Fund** [1956] 3 164, CA.

Gift to non-existent association—Association without proper constitution or defined membership—Legacy not applicable for a purpose. **Re Thackrah** [1939] 2 4, ChD.

Property given for a specific charitable purpose which failed—Resulting trust for donors—'Reasonable' advertisements and inquiries for donors, leading to application cy-près under Charities Act 1960, s 14(1)(a). **Re Henry Wood National Memorial Trusts** [1967] 1 238, ChD.

CHARITY (cont)

Cy-près doctrine (cont)—

General charitable intention—

Descriptive names of nine residuary legatees—Inference of charitable intention. **Re Satterthwaite's Will Trusts** [1966] 1 919, CA.

Endowment of medical studentship—Gift of fund to Royal College of Surgeons as trustee—Student not to be of Jewish or Roman Catholic faith—College declined to accept gift with that proviso attached—General charitable intention of testatrix to establish studentships with college as trustee—Declaration that college should hold fund on trusts of will omitting provisions as to religious discrimination. **Re Lysaght (decd)** [1965] 2 888, ChD.

Gift to institution—Dissolution of institution after date of will and before testator's death—Circumstances in which general charitable intention will be inferred—Virtually whole estate devoted to charity—Institution merely co-ordinating body for other charities—Testatrix regarding herself as having no relatives. **Re Finger's Will Trusts** [1971] 3 1050, ChD.

Gift to institution—Gift one of a series of legacies to charitable institutions—Institution not identifiable—Residuary gift to another charity. **Re Goldschmidt (decd)** [1957] 1 513, ChD.

Gift to institution—Institution which never existed. **Re Knox** [1936] 3 623, ChD.

Gift to institution—Several bequests to institutions for welfare of animals—One institution not a charity in law—Whether general charitable intention disclosed. **Re Jenkins' Will Trusts** [1966] 1 926, ChD.

Purpose unascertainable—Application under scheme approved by court. **Re Gardner's Will Trusts** [1936] 3 938, ChD.

Unconditional gift for particular purpose—Purpose impracticable. **Re Good's Will Trusts** [1950] 2 653, ChD.

Voluntary hospital—Appeal for funds for erection and maintenance of voluntary hospital in certain area—Failure of object of appeal—Trusts affecting funds. **Re Hillier** [1954] 2 59, CA.

Gift over—

Scheme defeating gift over—Whether scheme defeating gift over will be ordered. **Re Hanbey's Will Trusts** [1955] 3 874, ChD.

Gift to holder of office—

Holder of office for the time being—Scheme. **Re Pipe** [1937] 3 536, ChD.

Impossibility of determining which of two claimants entitled—

Gift to 'Disabled Soldiers Sailors and Airmen's Association'—Association of that name not in existence—Claim by two charities caring for disabled ex—servicemen. **Re Songest (decd)** [1956] 2 765, [1956] 3 489, CA.

Insufficiency of gift—

Gift to provide stipend for a third curate—Insufficiency of gift due to increase in stipend—Variation of trust—Augmentation of stipends of two curates. **Re Baron Burton's Charity** [1938] 3 90, ChD.

Occasions for applying property cy—près—

Original purposes of charitable gift—Separate charitable gifts in same instrument disposing of entire income—Division of income into fixed annual sum for one charity and residue for other charity—Distortion in relative value of gifts resulting from inflation—Whether disposition of income a single charitable gift—Whether original purposes ceasing to provide suitable and effective method of using property regard being had to the spirit of the gift—Charities Act 1960, s 13(1). **Re Lepton's Will Trusts** [1971] 1 799, ChD.

Relief of poverty—

Employees' health and relief fund. **Gibson v South American Stores (Gath & Chaves) Ltd** [1949] 2 985, CA.

Surplus assets—

Fund for relief of flood victims—Application of surplus assets. **Re North Devon and West Somerset Relief Fund Trusts** [1953] 2 1032, ChD.

Gift of residue—Particular charitable purpose—Surplus after satisfying prescribed purpose—Direction of scheme. **Re Raine (decd)** [1956] 1 355, ChD.

Dominant purpose—

Charitable and non-charitable purposes—

Dominant purpose non-charitable—Trust of premises as hostel for distinguished foreign visitors, as air zone for the health of the town and as meeting place for scientists connected with a certain society—Trust of income of estate to maintain premises and for promotion of arts—Gift to legatees of right to reside on premises. **Re Corelli (decd)** [1943] 2 519, ChD.

Ecclesiastical corporation—

Rates—

Rateable occupation—Premises left empty. *See* Rates (Rateable occupation—Premises left empty—Intention to occupy—Charity—Ecclesiastical corporation).

Education—

Alphabet—

Research into and propaganda on advantages of reform of alphabet—Whether for advancement of education—Whether beneficial to the community. **Re Shaw (decd)** [1958] 1 245, CA.

Anthroposophical society—

Bequest to unincorporated society—Gift to society to be used for specified purposes—Society free to expend both capital and income of gift. **Re Price** [1943] 2 505, ChD.

Archaeology—

British School of Egyptian Archaeology—Diffusion of, and education of students in, special branch of knowledge—Contributors to be supplied with school's publications—Discontinuance of school—Application of surplus assets. **Re British School of Egyptian Archaeology** [1954] 1 887, ChD.

CHARITY (cont)**Education (cont)—****Art or science of government—**

Advancement of education or other charitable purposes in connection with art or science of government—Trustees to be members of Proportional Representation Society—Society empowered to remove trustees and nominate others—Objects of society not charitable—Whether trust rendered not charitable. **Re The Trusts of the Arthur McDougall Fund** [1956] 3 867, ChD.

Boy Scouts movement—

Furtherance by helping to purchase camping sites and outfits. **Re Webber (decd)** [1954] 3 712, ChD.

Chess—

Gift for encouragement of chess playing by boys or young men under the age of 21 years—Definite geographical limitation—Educational value. **Re Dupree's Trusts** [1944] 2 443, ChD.

Educational purposes—

Fine arts etc.—Teaching, promotion, and encouragement of appreciation of the fine arts, and also of self-control, elocution, oratory, deportment, and the arts of personal contact, social intercourse, and public, private, professional, and business life. **Re Shaw's Will Trusts** [1952] 1 49, ChD.

Religious, moral, social and physical well-being. **Inland Revenue Comrs v Baddeley** [1955] 1 525, HL.

University—Students' union—Donations by union to outside bodies and purposes—Validity—University founded by royal charter—Objects of university exclusively educational—Charter providing for establishment of students' union—Constitution of union expressing objects to be promotion of any matter of interest to members—General meeting of union adopting budget authorising donations to non-educational charity and to fund for political campaign—Educational process including the reaching of corporate conclusions on social and economic matters—Objects of union to be construed in context of objects of university—Objects confined to charitable and educational purposes—Financing adoption outside university of union's corporate conclusions not part of educational process. **Baldry v Feintuck** [1972] 2 81, ChD.

University—Students' union—Union formed to promote, encourage and co-ordinate social, cultural and athletic activities of members to add to comfort and enjoyment of students—Membership not confined to college students but including staff of college and associated hospital—Members elected and paying subscriptions—College supplementing union funds and providing and maintaining union premises—Whether union purposes charitable. **London Hospital Medical College v Inland Revenue Comrs** [1976] 2 113, ChD.

Exemption from death duty—

New South Wales. *See* **New South Wales** (Death duty—Dutiable estate—Exemption—Gift of residuary estate to educational institution).

Impracticability of trust—

Bursaries at free school—Trust to assist pupils of school of Scottish education authority to continue their education at a secondary school by provision of bursaries—Education authority bound to provide free education under Education (Scotland) Act 1946—Provision of ancillary facilities to public education not within contemplation of testator—Whether trust invalid. **Re Mackenzie (decd)** [1962] 2 890, ChD.

Law—

Law reports—Preparation and publication of accurate reports of judicial decisions—Use of law reports—Whether provision of law reports for the advancement of education. **The Incorporated Council of Law Reporting for England and Wales v Attorney-General** [1971] 3 1029, CA.

Political object—

Advancement of adult education—Particular reference to Labour Party's memorandum annexed to the will—Dominating object of trust. **Re Hopkinson (decd)** [1949] 1 346, ChD.

Promotion of settlor's own theories by educational means—Trust for 'advancement and propagation of teaching of Socialised Medicine'—Direction to further 'knowledge of Socialist application of medicine' and to demonstrate that 'full advantage of Socialised medicine can only be enjoyed in a Socialist State'—Lectures to be given on 'Socialised health and medicine'—Publication and distribution of literature on or connected with 'Socialised medicine'—Whether educational purpose—Whether trust charitable. **Re Bushnell (deceased)** [1975] 1 721, ChD.

Psychological healing—

Gift for medical education—Validity. **Re Osmund (decd)** [1944] 1 262, CA.

Public element—

Bequest for education of the youth of certain Presbyterians—Whether for benefit of public or of individuals—Whether bequest charitable. **Davies v Perpetual Trustee Co (Ltd)** [1959] 2 128, PC.

Evidence—Admissibility of evidence to support or negative existence of educational value of gift—Gift by testator of studio, paintings and old furniture, etc to form exhibition—Evidence of experts that collection of inferior quality and of no public interest—Whether gift charitable in law. **Re Pinion (decd)** [1964] 1 890, CA.

Family trust—Gift for education of descendants in perpetuity of three named individuals—Specified class comprising twenty-eight members—Special direction as to kind of education—Principle of 'poor relations' cases not to be extended—Gift lacking public character. **Re Compton** [1945] 1 198, CA.

Family trust—Selection of beneficiaries—Primary trust for the education of relatives of grantor, provided they were young, deserving and of the Islamic faith. **Mohamed Falil Abdul Caffoor (Trustees of the Abdul Gaffoor Trust) v Comr of Income Tax, Colombo** [1961] 2 436, PC.

Initial class of objects of public character—Right of preference to limited class. **Re Koettgen (decd)** [1954] 1 581, ChD.

CHARITY (cont)

Education (cont)—

Public element (cont)—

Public nature of bond between beneficiaries—Gift for the education of the children of past and present members of limited company. **Oppenheim v Tobacco Securities Trust Co Ltd** [1951] 1 31, HL.

Research—

Gift to Francis Bacon Society Incorporated to be applied towards finding Bacon—Shakespeare manuscripts—Object of society to study evidence in favour of Bacon's authorship of plays ascribed to Shakespeare—Whether for advancement of education. **Re Hopkins' Will Trusts** [1964] 3 46, ChD.

Staff training college—

College in effect a department of commercial company. **Re Leverhulme** [1943] 2 143, ChD.

Zoo—

Zoological gardens. **North of England Zoological Society v Chester Rural District Council** [1959] 3 116, CA.

Eleemosynary charity. *See* Charitable trust—Eleemosynary charity, *ante*.

Ex gratia payment—

Power of court and Attorney-General—

Power to authorise charity trustees to make payment out of charity funds in pursuance of moral obligation. **Re Snowden (decd)** [1969] 3 208, ChD.

Failure of object—

Impracticability—

House given by testatrix for convalescent home—Gift over if at any time it should prove impracticable to carry on convalescent home—Devise not accepted because impracticable to use house as convalescent home—Whether gift over effective on initial failure of the devise. **Re Adams (decd)** [1967] 3 285, CA.

Named charity ceasing to exist—

Bequest for work of particular hospital—Hospital for treatment of tuberculosis opened by Australian Red Cross Society—Hospital redundant and closed down to knowledge of testatrix after date of her will—No hospital endowments through which hospital could sustain its existence—Proceeds of sale of its buildings and land received by the society as part of the society's general funds—No general charitable intention—Whether testatrix' residuary gift payable to society—Whether gift lapsed. **Re Slatter's Will Trusts** [1964] 2 469, ChD.

Boys' home—Home existed at date of will—Home sold before date of testatrix's death and proceeds paid to other charities under power in trust deed—Residuary bequest to named charity—Whether residuary bequest given on valid charitable trusts. **Re Roberts (decd)** [1963] 1 674, ChD.

Gift—

Anonymous donors—

Whether ground for inferring general charitable intention. **Re Ulverston & District New Hospital Building Fund** [1956] 3 164, CA.

General purposes of charity—

Indefinite gift of income—Implication of trust for general purposes of charity. **Re Levy (decd)** [1960] 1 42, CA.

Named charity amalgamated with another having similar purposes—Lapse. **Re Dawson's Will Trusts** [1957] 1 177, ChD.

Named charity—

Hospital carried on, at date of will, by charitable institution named in will—Name and objects of charity altered before death of testatrix—Vesting of hospital in Minister of Health before death of testatrix—Application of gift to new objects of charity. **Re Bagshaw (decd)** [1954] 1 227, ChD.

Hospital—

Effect of National Health Service. *See* **National Health Service** (Hospital—Vesting in Minister of Health—Effect).

House to house collection—

Collection—

Appeal to public by means of visits from house to house—Collecting without licence—Offence—Accused having made collection in one place only—Whether necessary to prove accused had gone or was about to go from one house to another—House to House Collections Act 1939, ss 1(3), 1(1). **Hankinson v Dowland** [1974] 3 655, QBD.

Company selling articles on door to door basis—Part of proceeds paid to a charity—Whether a 'collection'—House to House Collections Act 1939, s 11. **Emanuel v Smith** [1974] 2 529, QBD.

Unauthorised use of badges etc—

Display or use of badge or document so nearly resembling prescribed badge or document as to be calculated to deceive—'Calculated to deceive'—Meaning—Proper direction to jury—House to House Collections Act 1939, s 5. **R v Davison** [1972] 3 1121, CA.

Use in connection with any appeal made to the public in association with representation that appeal is for a charitable purpose—'Any appeal'—Meaning—Whether limited to appeals made by way of house to house collection—House to House Collections Act 1939, s 5. **R v Davison** [1972] 3 1121, CA.

Income—

Indefinite gift of income in perpetuity—

Whether charity entitled to call for corpus—Question of construction. **Re Levy (decd)** [1960] 1 42, CA.

Income tax—

Generally. *See* **Income tax** (Charity).

India. *See* **India** (Income tax—Charity).

Law reports. *See* **Benefit to community—Law—Development and administration of judge-made law—Law reports, ante**.

CHARITY (cont)

Lease—

Lease or licence. *See* **Licence** (Licence to occupy premises—Charity).

Mortmain—

Assurance by will—

Land—Land vested in Official Trustee—Mortmain and Charitable Uses Act 1891, ss 5, 6. **Re Gorham's Charity** [1939] 1 600, ChD.

Assurance to charity exempt from law of mortmain—

Assurance or copy not sent to Minister of Education—Whether void after six months from taking effect—Education Act 1944, s 87(1), (2). **Re No 12 Regent Street, Oxford** [1948] 2 568, ChD.

Bequest of money on educational trusts—

Asset representing testator's rights under agreement for dissolution of partnership—Business to be carried on by other partners—Testator entitled under agreement, on breach of certain conditions, to wind up business and repay himself his debt—Assets of business, at time of testator's death, including equity of redemption of business premises—Whether testator's rights under agreement 'a charge or incumbrance affecting or to affect land'—Charitable Uses Act 1735, s 3. **Fyfe v Garden** [1946] 1 366, HL.

Asset representing testator's rights under agreement for dissolution of partnership—Whether 'a charge or incumbrance affecting or to affect' land—Charitable Uses Act 1735, s 3. **Re Nicol** [1944] 2 181, CA.

Non-charitable object—

Gift to the Royal College of Surgeons—

Subsidiary or incidental object of college not charitable. **Royal College of Surgeons of England v National Provincial Bank Ltd** [1952] 1 984, HL.

Uncertainty—

Welfare benefit or assistance of members of His Majesty's navy (whether past present or future). **Re Meyers (decd)** [1951] 1 538, ChD.

Old people's home—

Tenancy—

Licence distinguished. *See* **Licence** (Licence to occupy premises—Charity—Old people's home run by a society).

Parties to proceedings—

Attorney-General. *See* **Practice** (Parties—Proceedings relating to charities—Attorney-General).

Poverty. *See* Relief of poverty, *post*.

Power—

Collateral power—

Objects of power not exclusively charitable—Gift by will to trustees of residuary estate on trusts for accumulation or for payment of income, and power after certain period to pay, or apply capital—Class of beneficiaries defined to include some clearly charitable objects and also some which might not be charitable objects in law—Whether provisions valid. **Re Wootton's Will Trusts** [1968] 2 618, ChD.

Power to revoke and vary trusts—

Exception of one clause—Other clauses with similar provisions—Construction of power to vary—Recourse to capital. **Re Brunner's Declaration of Trust** [1941] 2 745, ChD.

Practicability of object—

Date for ascertainment—

Bequest of residue on trust to found and maintain convalescent home—Trust to take effect after death of tenant for life. **Re Wright (decd)** [1954] 2 98, CA.

Inquiry—Form of inquiry. **Re White's Will Trusts** [1954] 2 620, ChD.

Date of ascertainment—

Mission work—Gift to named church for 'mission work' in district—Bequest to take effect on death of life tenant—Church demolished and district laid waste by enemy action after death of testator. **Re Moon's Will Trusts** [1948] 1 300, ChD.

Financial practicability—

Vested gift in remainder subject to defeasance—Whether reversionary value of gift is the test of financial practicability—Assumption that gift will not be defeated. **Re Tacon (decd)** [1958] 1 163, CA.

Home—

Gift of cottage for old persons' home—Capable of being converted to bedsitters and flatlets—Whether home meant home in which there was provision of organised care and attention. **Re Payling's Will Trusts** [1969] 3 698, ChD.

Premises—

Lease or licence—

Old people's home. *See* **Licence** (Licence to occupy premises—Charity—Old people's home run by a society).

Proceedings—

Parties—

Attorney-General—Local charity—Local inhabitants—Action against trustees—Action to establish existence of charitable trust—Local authority—Park held by local authority—Action by local inhabitants for declaration that park held by local authority subject to charitable trust—Whether action 'charity proceedings'—Whether local inhabitants proper plaintiffs—Charities Act 1960, s 28. **Hauxwell v Barton-upon-Humber Urban District Council** [1973] 2 1022, ChD.

Attorney-General—Practice. *See* **Practice** (Parties—Proceedings relating to charities—Attorney-General).

Public benefit—

Requirement of public benefit—

Section of the public—Determination whether potential beneficiaries constitute a section of the public—Relevance. **Dingle v Turner** [1972] 1 878, HL.

CHARITY (cont)**Rates—**

Generally. *See* **Rates** (Charitable and other organisations).

Northern Ireland—

Exemption. *See* **Northern Ireland (Rates—Exemption—Charity)**.

Recreational charity—

Holiday centre—

Holiday centre for miners, their wives and families—Provision enabling trustees to admit members of public to surplus accommodation—Public benefit—Recreational Charities Act 1958, s 1, s 2(1). **Wynn v Skegness Urban District Council** [1966] 3 336, ChD.

Registration—

Control by the court—

Control by court in exercise of its charitable jurisdiction—Statutory corporation—Industrial training board—Board established for charitable purposes—Board subject to control of Minister in certain matters specified by statute—Whether board subject to control of the court in the exercise of its jurisdiction with respect to charities—Charities Act 1960, s 45(1). **Construction Industry Training Board v Attorney-General** [1972] 2 1339, CA.

Relief of poverty—

Implied purpose—

Fund to help persons to become self-supporting—Implication of poverty. **Re Central Employment Bureau for Women and Students' Careers Assn Incorporated** [1942] 1 232, ChD.

Poor relations—

Relations in needy circumstances—Immediate gift. **Re Scarisbrick's Will Trusts** [1951] 1 822, CA.

Relatives in special need—Direction in will—Trustees to pay and apply whole or any part or parts of residuary estate for or towards the maintenance and benefit of any relatives of testatrix whom the trustees 'shall consider to be in special need'—Residuary estate to be paid and applied 'in such manner and at such time or times as my Trustees shall in their absolute and uncontrolled discretion think fit'—Proviso that trustees under no legal obligation nor accountable in relation to carrying out of bequest—Whether charitable trust of final residue for relief of poverty among relations of testatrix—Whether special power of appointment exercisable in favour of relations of testatrix who were 'in special need'. **Re Cohen (decd)** [1973] 1 889, ChD.

Requirement of public element—

Club members—Bequest for the assistance of fellow members of the testator's club who might fall on evil days—Analogy of poor relations cases. **Re Young's Will Trusts** [1955] 3 689, ChD.

Poor employees—Employees' health and relief fund—Funds provided by company for assistance of necessitous employees and their dependents—Right of company to revoke trust deed and hold fund freed from the trust—Application of cy-près doctrine. **Gibson v South American Stores (Gath & Chaves) Ltd** [1949] 2 985, CA.

Poor employees—Trust to provide pensions to poor employees of a company—Whether valid charitable trust. **Dingle v Turner** [1972] 1 878, HL.

Similar purposes—

Gift 'for the permanent aid of distressed gentlefolk and similar purposes—Whether charitable nature of gift effected by reference to 'similar purposes'. **Re Young (decd)** [1950] 2 1245, ChD.

Suffering and helpless persons—

Gift for the sick and wounded—Possibility that rich might benefit—Validity. **Re Hillier** [1944] 1 480, ChD.

Training and recreation—

Religious, moral, social and physical training and recreation—Persons lacking means to indulge in activities. **Inland Revenue Comrs v Baddeley** [1955] 1 525, HL.

Widows and orphans—

Gift for the benefit of widows and orphaned children of deceased officers and deceased ex-officers of a bank. **Re Coulthurst's Will Trusts** [1951] 1 774, CA.

Working classes—

Localisation of gift—Gift 'for the working classes and their families' in certain area—Reference by testator to 'my general charitable intention'—Effect of localisation of gift. **Re Sanders' Will Trusts** [1954] 1 667, ChD.

Religion—

Bishop—

Gift 'to His Eminence the Archbishop of Westminster Cathedral London for the time being to be used by him for such purposes as he in his absolute discretion thinks fit'. **Re Flinn (decd)** [1948] 1 541, ChD.

Gift to 'the Bishop for the time being of the Windward Islands'—'To be used by him as he thinks fit in his diocese'. **Re Rumball (decd)** [1955] 3 71, CA.

Certainty—

Persons holding certain beliefs—Gift for persons engaged in evangelistic work—Eligibility restricted to protestants in religion—Description not operating by way of forfeiture—Description of persons to be selected—Gift valid. **Re Mylne** [1941] 1 405, ChD.

Charitable institution—

Unitarian church—Whether a 'charitable institution'. **Re Nesbitt's Will Trusts** [1953] 1 936, ChD.

CHARITY (cont)

Religion (cont)—

Charitable or religious purposes—

Gift to archbishop—Gift for 'educational or charitable or religious purposes for Roman Catholics in the British Empire'—Absolute discretion of trustee—Whether good charitable trust. **Re Ward** [1941] 2 125, CA.

Choir—

For the benefit of the choir—Gift of part of residue—General charitable intent—Scheme. **Re Royce** [1940] 2 291, ChD.

Church—

'For benefit of church and parish'—Support of church school—Upkeep of graves and bier house—No faculty for bier house. **Re Norton's Will Trusts** [1948] 2 842, ChD.

Gift to 'St Peter's Church, Staines'. **Re Gare (decd)** [1951] 2 863, ChD.

Social club attached to church—Rules giving control of club to members. **Re Topham** [1938] 1 181, ChD.

Exclusively charitable purposes—

Religious, social and physical well-being—Ambit too wide to include only charitable purposes. **Inland Revenue Comrs v Baddeley** [1955] 1 525, HL.

Priests—

Relief of infirm, sick and aged priests. **Re Forster** [1938] 3 767, ChD.

Promotion of religion—

Spiritual teaching—Oxford Group—Evidence the group existed for promotion of religion. **Re Thackrah** [1939] 2 4, ChD.

Public benefit—

Carmelite convent—Association of strictly cloistered and purely contemplative nuns. **Gilmour v Coats** [1949] 1 848, HL.

Community house—Gift for the furtherance of the work and purposes of the community—Community of persons leading simple pious lives—Object to do the will of God by practical Christianity—Community open to persons of any creed or who had none—Help given to any member of the public in need—Whether valid charitable gift for advancement of religion. **Re Banfield (decd)** [1968] 2 276, ChD.

Establishment of a 'retreat house'. **Re Warre's Will Trusts** [1953] 2 99, ChD.

Presumption—Presumption that gift for religious purposes is for public benefit unless contrary shown—Need to show that religious purposes adverse to foundations of all religion and subversive of morality—Trust for publication and distribution to public of works of H—Evidence that H's writings of no intrinsic worth and unlikely to extend knowledge of Christian religion—No evidence that writings inculcated doctrines adverse to foundations of all religion or subversive of morality—Whether valid charitable trust. **Re Watson (decd)** [1973] 3 678, ChD.

Synagogue—Ancillary social activities. **Neville Estates Ltd v Madden** [1961] 3 769, ChD.

Scope of gift—

Parish work—Gift to vicar and churchwardens for parish work—Words too wide to be restricted to charitable purposes. **Farley v Westminster Bank Ltd** [1939] 3 491, HL.

Society to form nucleus of universal brotherhood—

Theosophical Society. **Berry v St Marylebone Corpn** [1957] 3 677, CA.

Vicar—

'For his work'—Evidence of donee's work admissible—Gift to an individual 'for benevolent work'—Gift to 'the vicar' for a certain church 'to be used for his work in the parish'. **Re Simson's Estate** [1946] 2 220, ChD.

Vicar and churchwardens—

A certain vicar and churchwardens for time being of named church 'for purposes in connection with the said church'—Added directions as to user—Requirements of children in parish—Prohibition of aid from overseas missions. **Re Eastes (decd)** [1948] 1 536, ChD.

Removal of trustee—

Appeal against commissioners' order—

Attorney-General as defendant. *See Practice* (Parties—Proceedings relating to charities—Attorney-General—Appeal—Removal of trustee—Appeal against order of Charity Commissioners removing trustee).

Nature and scope of appeal. *See Appeal*—Appeal against order of commissioners—Nature and scope of appeal, ante.

Sale of charity estate—

Consent of Charity Commissioners—

Absence of consent at date of contract—When sale is made—Charitable Trusts Amendment Act 1855, s 29. **Milner v Staffordshire Congregational Union (Incorporated)** [1956] 1 494, ChD.

Wholly maintained by voluntary contributions—Charity partially maintained by voluntary contributions and partially by endowment—Transfer at times when not a 'mixed charity'—Charitable Trusts Act 1853, s 62. **Neville Estates Ltd v Madden** [1961] 3 769, ChD.

Sale of land—

Consent to sale. *See Sale of land* (Condition—Consent to sale required by statute).

Scheme—

Establishment—

Power of commissioners or Secretary of State for Education and Science to establish scheme—Appeal against order establishing scheme—Certificate of commissioners or Secretary of State or leave of judge—Appeal by person interested in charity or by inhabitants of area in case of a local charity in that area—Whether certificate or leave required—Charities Act 1960, s 18(11), (12). **Childs v Attorney-General** [1973] 2 108, CA.

General charitable intention—

Purpose unascertainable—Application under scheme approved by court. **Re Gardner's Will Trusts** [1936] 3 938, ChD.

CHARITY (cont)

Scheme (cont)—

Gift over from one charity to another—

Scheme defeating gift over—Whether court will direct scheme and so defeat gift over. *Re Hanbey's Will Trusts* [1955] 3 874, ChD.

Investment—

Extension of powers of investment—Charity regulated by statute—Jurisdiction of court—Trustee Act 1925, s 57(1). *Re Shipwrecked Fishermen and Mariners' Royal Benevolent Society Charity* [1958] 3 465, ChD.

Extension of powers of investment—Evidence of stockbroker or expert. *Re Allen's Settlement* [1959] 3 673, ChD.

Investment clause—Power for governors to alter scheme by resolution—No alteration to involve deviation from 'main principles' of scheme—Alteration of investment clause by resolution, so as to extend range of investments—Whether valid. *Re The Jewish Orphanage Endowments Trusts* [1960] 1 764, ChD.

Jurisdiction—

Direct gift without any trust—Residuary gift to non-existent body—General charitable intention—Valid bequest to be applied in accordance with directions to be given under royal prerogative. *Re Bennett (decd)* [1959] 3 295, ChD.

Jurisdiction of court to vary trusts—Consolidation of several trust funds—Extension of powers of investment—Trustee Act 1925, s 57(1). *Re Royal Society's Charitable Trusts* [1955] 3 14, ChD.

Jurisdiction of court to vary trusts—Enlargement of powers of investment—Interim order—Proposed change in legislation as to trustee securities. *Re Royal Naval and Royal Marine Children's Homes, Portsmouth* [1959] 2 716, ChD.

Modification—Jurisdiction to modify—Scheme having force of statute—City of London Parochial Charities Act 1883, s 34. *Trustees of the London Parochial Charities v Attorney-General* [1955] 1 1, ChD.

Stamp duty—

Moral, social and physical well-being—

Whether object charitable—Finance Act 1947, s 54(1). *Inland Revenue Comrs v Baddeley* [1955] 1 525, HL.

Petition on breach of trust—

Liability to duty—Charities Procedure Act 1812, s 3. *Re Elsie Inglis (London) Memorial Fund* [1954] 1 411, ChD.

Town and country planning—

Benefit to community—

Promotion of industry, commerce and art—Town and Country Planning Act 1947, s 85(1). *Crystal Palace Trustees v Minister of Town and Country Planning* [1950] 2 857, ChD.

Land held on charitable trusts—

Use of land for charitable purposes—Land owned by company and used for school—Shares of company held by trustees under provisions of trust deed—School conducted on non-profit-making basis under deed—Payment by pupils of full fees—Town and Country Planning Act 1947, s 85(1). *The Abbey, Malvern Wells Ltd v Minister of Town and Country Planning* [1951] 2 154, ChD.

Trustee—

Character of trustee—

Whether affecting charitable nature of trust. *Re The Trusts of the Arthur McDougall Fund* [1956] 3 867, ChD.

Power of trustee—

Subscriptions in response to appeal—Appeal for assistance of widow—Whether trustee can insist on the purchase of annuity. *Re Johnson* [1938] 2 173, ChD.

Profit from trust—

Directors of charitable corporation—Directors empowered to make bye-laws—Validity of bye-laws permitting directors to be paid for professional services. *Re French Protestant Hospital* [1951] 1 938, ChD.

Remuneration for professional services. *See Trust and trustee* (Profit from trust—Directors of charitable corporation).

Removal of trustee—

Appeal against commissioners' order—Nature and scope of appeal. *See Appeal*—Appeal against order of commissioners—Nature and scope of appeal—Order following enquiry into charity—Removal of trustee, *ante*.

Restriction of objects by nature of trustee—

Appointment of National Trust as trustee—Discretion as to objects—Restriction to charitable uses necessarily charitable. *Re Spensley's Will Trusts* [1954] 1 178, CA.

Uncertainty—

Absolute discretion of trustees—

Scheme—Scheme to be settled by trustees in their absolute discretion—Will setting out 'rough outline' of scheme—Wishes mentioned in outline merely precatory—Trust void for uncertainty. *Re Warre's Will Trusts* [1953] 2 99, ChD.

Chapel and school—

Meaning of 'School'—'Upkeep'—Surplus income. *Re Strickland's Will Trusts* [1937] 3 676, CA.

Charitable and non-charitable purposes—

Benevolent purposes—Gift for charitable, benevolent, educational or religious purposes—Validity. *Attorney-General of New Zealand v New Zealand Insurance Co Ltd* [1936] 3 888, PC.

Discretionary trust—

Trust including charitable institutions—Trust invalid. *Inland Revenue Comrs v Broadway Cottages Trust* [1954] 3 120, CA.

CHARITY (cont)

Uncertainty (cont)—

Gift to institution closed in lifetime of testatrix—

Funds of charity applied *cy-près*—Whether gift to endowment or towards maintenance of particular premises. **Re Lucas (decd)** [1948] 2 22, CA.

Hospital—

Bequest by will of testator who died in 1938 to 'hospital' and/or hospitals and/or charitable institutions—Whether gift a valid charitable gift. **Re Smith's Will Trusts** [1961] 3 824, ChD, [1962] 2 563, CA.

Institution established for charitable benevolent, educational or religious purposes—

Validity of gift to institution. **Attorney-General of New Zealand v New Zealand Insurance Co Ltd** [1936] 3 888, PC.

Intention to create charitable trust—

Document not clearly showing dispositive intention—Testator signed document expressing desire to build on his land, and provide funds for, a technical college to be built in conjunction with borough council—Executors entered into contract for sale of land—Action brought by council for declaration of charitable trust and injunction—Whether council had *locus standi* to sue to establish charitable trust. **Re Belling (decd)** [1967] 1 105, ChD.

Memorial—

Gift to parish council for purpose of providing some useful memorial to testator—Validity. **Re Endacott (decd)** [1959] 3 562, CA.

Misdescription—

Will giving many charitable gifts to institutions. **Re Tharp** [1943] 1 257, CA.

Objects—

Trustees' discretion—Gift to editors of missionary magazine—'For such objects as they may think fit'—Trustees of charity. **Re Norman** [1947] 1 400, ChD.

Opinion of trustees—

Trust for such other organisation or body not being registered as a charity but in the opinion of the testatrix the trustees having charitable objects—Whether a valid charitable trust. **Re Wootton's Will Trusts** [1968] 2 618, ChD.

Provision of annual dinner for trustees—

Gift of annual sum to provide annual dinner for trustees of charity—Gift of sum of money for each member of committee attending meeting. **Re Coxen (decd)** [1948] 2 492, ChD.

Purposes partly charitable and partly non-charitable—

Employment of gift in discretion of committee—Whether gift void for uncertainty. **Re Taylor** [1940] 2 637, ChD.

Mausoleum—Gift to hospital to be added to existing fund—Existing fund not wholly applicable to charitable purposes. **Re Dalziel** [1943] 2 656, ChD.

Such charitable institution or institutions or other charitable or benevolent object or objects—'Or benevolent'—Validity. **Chichester Diocesan Fund and Board of Finance (Incorporated) v Simpson** [1944] 2 60, HL.

Uncertainty in description of persons to benefit—

Male students of British and Christian parentage—Uncertainty as to persons to benefit not fatal to gift. **Re Gott** [1944] 1 293, ChD.

Superannuation fund—Uncertainty as to persons to benefit fatal to gift. **Re Flavel's Will Trusts** [1969] 2 232, ChD.

Unincorporated association—

Rules—

Alteration—No express power to alter rules—Whether rules could be altered by resolution of general meeting of members. **Re Tobacco Trade Benevolent Assn** [1958] 3 353, ChD.

Trust for members of synagogue—

No limit as to time. **Neville Estates Ltd v Madden** [1961] 3 769, ChD.

Validation by statute—

Imperfect trust provision—

Donations for two specific objects and 'worthy causes' in memory of certain persons—Specific objects achieved—Whether trusts of surplus were validated—Charitable Trusts (Validation) Act 1954, s 1(1), (2), s 2(3). **Re Gillingham Bus Disaster Fund** [1958] 2 749, CA.

Gift of share of income of fund to regiment subject to gift of whole income to widow for life—Widow's right to challenge validity of gift—Date of accrual of right—Charitable Trusts (Validation) Act 1954, s 3(2) (3). **Re Thomas's Will Trust** [1969] 3 1492, ChD.

Objects partly charitable and partly not charitable—Institution whose main object charitable but whose other objects might or might not be charitable—Whether trust validated—Charitable Trusts (Validation) Act 1954, s 1(1), s 3(1), (2), (3). **Re Harpur's Will Trusts** [1961] 3 588, CA.

Objects partly charitable and partly not charitable—Property could be used exclusively for charitable purposes—Trust to provide convalescent home for members of trade union and home for poor retired members—Charitable Trusts (Validation) Act 1954, s 1(1), (2). **Re Mead's Trust Deed** [1961] 2 839, ChD.

Trust for employees—Benevolent or welfare purposes—No express reference to a charitable purpose—Whether trust was imperfect trust provision—Whether trusts validated—Charitable Trusts (Validation) Act 1954, s 1, s 2, s 3. **Re Wykes' Will Trusts** [1961] 1 470, ChD.

Trust for employees—Private discretionary trust for benefit of employees and former employees of company and their dependants—Initially void for uncertainty—Whether trust validated by Act of 1954—Charitable Trusts (Validation) Act 1954, s 1(1). **Re Saxone Shoe Co Ltd's Trust Deed, Re Abbott's Will Trusts** [1962] 2 904, ChD.

Trust for employees—Scheme for administration of fund for benefit of employees of company—Charitable Trusts (Validation) Act 1954, s 1(1), (2), s 2(1). **Vernon v Inland Revenue Comrs** [1956] 3 14, ChD.

Trust for employees—Scheme for administration of fund for benefit of employees of company—Rule against perpetuities—Whether trusts validated. **Re Flavel's Will Trusts** [1969] 2 232, ChD.

CHARITY (cont)

Validation by statute (cont)—

Preservation of rights of adverse claimants—

Uncertain class of next of kin—Date when rights accrue—Charitable Trusts (Validation)
Act 1954, s 3(1), (2), (3). *Re Harpur's Will Trusts* [1961] 3 588, CA.

Variation of trust—

Charitable trust. *See* **Trust and trustee** (Variation of trusts by the court—Charitable trust).

CHARITY COMMISSIONERS

Consent to sale of land by charity. *See* **Sale of land** (Condition—Consent to sale required by statute—Sale by charity).

CHARITY TRUSTEE

See **Charity** (Trustee).

CHARTERPARTY

Arbitration—

Commencement. *See* **Arbitration** (Commencement—Charterparty).

Arbitration clause—

Appointment of arbitrator—

Qualification—Commercial man. *See* **Arbitration** (Arbitrator—Appointment—Qualification—Commercial man).

Scope. *See* **Arbitration** (Agreement—Arbitration clause—Scope—Clause in charterparty).

Baltic charterparty—

Time charterparty—

Exceptions. *See* **Shipping** (Time charterparty—Exceptions—Baltic charterparty).

C i f contract—

Documents to be tendered. *See* **Sale of goods** (C i f contract—Documents to be tendered).

Conflict of laws—

Proper law. *See* **Conflict of laws** (Contract—Proper law of contract—Charterparty).

Counterclaim—

Pleading. *See* **Pleading** (Counterclaim—Charterparty).

Frustration—

Force majeure. *See* **Contract** (Frustration—Force majeure—Charterparty).

Generally. *See* **Shipping** (Charterparty).

Port charter—

Demurrage—

Time lost waiting for berth. *See* **Shipping** (Demurrage—Time lost waiting for berth—Port charterparty).

Sale of chartered ship. *See* **Shipping** (Charterparty—Sale of chartered ship).

Time charterparty. *See* **Shipping** (Time charterparty).

CHASSIS

Motor tractor. *See* **Road traffic** (Motor tractor—Chassis).

CHATTEL

Adverse detention—

Conversion. *See* **Conversion** (Acts amounting to conversion—Adverse detention of chattel).

Bill of sale. *See* **Bill of sale**.

Finding—

Larceny by finding. *See* **Criminal law** (Larceny—Finding).

Personal chattels—

Gift of—

Will, by. *See* **Will** (Gift—Personal chattels).

Intestacy—

Rights of surviving spouse. *See* **Intestacy** (Rights of surviving spouse—Personal chattels).

Rates—

Chattels enjoyed with land. *See* **Rates** (Rateable occupation—Chattels enjoyed with land).

CHEAT

Conspiracy to commit common law cheat. *See* **Criminal law** (Conspiracy—Common law cheat).

CHECK TRADING

Emergency legislation. *See* **Emergency legislation** (Check trading).

CHEMIN DE FER

Lawfulness. *See* **Gaming** (Lawful and unlawful gaming—Chemin de fer).

CHEMIST

National Health Service—

Supply of drugs. *See* **National Health Service** (Pharmaceutical services).

CHEQUE

Accord and satisfaction—

Acceptance of lesser sum—

Intention of payee—Endorsement. *See* **Accord and satisfaction** (Acceptance of lesser sum—Intention of payee—Cheque).

Bank's position. *See* **Bank** (Cheque).

Dishonour—

Obtaining pecuniary advantage by deception—

Deception. *See* **Criminal law** (Obtaining pecuniary advantage by deception—Deception—Implied representation—Cheque).

CHEQUE (cont)

Dishonour (cont)—

Obtaining property by deception—

Dishonesty—Recklessness. *See* **Criminal law** (Obtaining property by deception—Dishonestly—Belief of defendant—Recklessness—Cheque—Representation by defendant that there were or would be sufficient funds in account to meet cheque on first presentation).Forgery. *See* **Criminal law** (Forgery—Cheque).Generally. *See* **Bill of exchange** (Cheque).**CHES**

Gift for promotion of—

Whether charitable purpose. *See* **Charity** (Education—Chess—Gift for encouragement of chess playing by boys or young men under the age of 21 years).**CHIEF CONSTABLE**Police. *See* **Police** (Chief constable).**CHIEF REGISTRAR OF FRIENDLY SOCIETIES**

Building society—

Powers of control in respect of. *See* **Building society** (Chief Registrar—Controls exercisable by Chief Registrar).**CHILD**

Adopted child—

Will. *See* **Will** (Children—Adopted child).Adoption. *See* **Adoption**.Affiliation. *See* **Affiliation**.

Applications relating to children—

Matrimonial causes—

Practice. *See* **Practice**—Matrimonial causes—Applications relating to children, *post*.

Baptism—

Refusal to baptise child—

Whether offence triable by consistory court. *See* **Ecclesiastical law** (Consistory court—Jurisdiction—Offence charged not involving matter of doctrine, ritual or ceremonial—Charge of serious neglect of duty—Refusal to baptise child).Blood test to determine paternity. *See* **Paternity** (Blood test).

Care—

Local authority—

Assumption by authority of parental rights—Illegitimate child—Right of access of mother or father—Jurisdiction of court—Application by father to court for access—Whether court having discretion to grant access—Children Act 1948, s 2(1)(b)—Guardianship of Minors Act 1971, ss 9(1), 14(1). *Re K (an infant)* [1972] 3 769, FamD.Assumption by authority of parental rights—Illegitimate child—Custody—Right of putative father—Authority having assumed parental rights of mother—Application of putative father for custody of child—Whether justices having jurisdiction to entertain application—Children Act 1948, s 2(1)—Guardianship of Minors Act 1971, ss 9(1), 14(1). *R v Oxford City Justices, Ex parte H* [1974] 2 356, QBD.Assumption by authority of parental rights—Wardship proceedings—Exclusion of prerogative jurisdiction over wards in relation to duties or discretions vested by statute in local authority—Validity of authority's assumption of parental rights—Statutory procedure not followed—Doubts by authority as to efficacy of original resolution vesting parental rights in itself—Second resolution passed to remedy defect—Mother's solicitor led to believe that second resolution a mere formality and that notice of objection to first resolution would be accepted as notice of objection to second resolution—Refusal of authority to accept second notice of objection served out of time—Estoppel—Mother deprived of protection conferred on her by statute—Child made ward of court on application of mother—Application by authority for order de-warding child without trial—Whether jurisdiction of court over wards of court ousted by statutory rights and duties of authority—Children Act 1948, ss 2, 4(3). *Re L (AC)(an infant)* [1971] 3 743, ChD.Child boarded out with foster parents—Parental rights assumed by authority—Request by local authority to return child—Child made ward of court on application of foster parents—Jurisdiction of court to review decisions of local authority—Children Act 1948, s 1(1)(a), s 2(1), s 13(1)(a)—Law Reform (Miscellaneous Provisions) Act 1969, s 9. *Re M (an infant)* [1961] 1 788, CA.Child fined for offences—Power of court to order local authority to pay fine incurred by child. *See* **Children and young persons** (Fine—Imposition—Court's power to order parent or guardian to pay fine instead of child or young person—Child placed in care of local authority pursuant to care order).Jurisdiction of court in divorce proceedings. *See* **Divorce** (Custody—Jurisdiction—Child committed to care of local authority).Limitation of actions—Whether child in care is in custody of a parent. *See* **Limitation of action** (Persons under disability).Place of safety order. *See* **Children and young persons** (Detention—Place of safety order).Ward of court—Committal of ward to care of local authority—Access—Powers of court and local authority with regard to control of access—Power of court to make specific order as to access by parent—Whether control of access entirely a matter for local authority's discretion—Children Act 1948, ss 12, 13(2)—Family Law Reform Act 1969, s 7(2)(3)—Matrimonial Causes Act 1973, s 43(5). *Re Y (a minor) (child in care : access)* [1975] 3 348, CA.

CHILD (cont)**Care (cont)—****Local authority (cont)—**

Ward of court—Interlocking of court's inherent jurisdiction over wards with local authority's duty of care terminable by parent desiring to take over care—Court's duty to consider conflicting claims of parents and welfare of child—Child remaining in local authority's care and also a ward of court—Local authority undertaking to apply for directions before change in care of child—Access—Form of order—Children Act 1948, s 1(3). **Re G (Infants)** [1963] 3 370, ChD.

Wardship proceedings—Application to make child in care ward of court—Jurisdiction of court to make order where child already subject of care order—Circumstances in which order should be made—Danger to child from step-father—Order enabling local authority to have recourse to High Court to assist them in discharging duties—Children and Young Persons Act 1969, s 1. **Re B (a minor) (wardship: child in care)** [1974] 3 915, FamD.

Wardship proceedings—Application to make child in care ward of court—Application by putative father—Opposition by mother—Application by local authority that child cease to be ward of court—Scope of court's wardship jurisdiction restricted so as not to encroach on local authority's statutory discretion—Children Act 1948, s 1. **Re C (A) (an infant)** [1966] 1 560, ChD.

Wardship proceedings—Application to make child in care ward of court—Jurisdiction of court to make wardship order—Child boarded out with foster parents—Indication by parents of child that they wanted to have the child in their care—Foster parents applied to make child ward of court and for directions as to custody—Local authority proposed to place child in residential school—Jurisdiction of court—Children Act 1948, s 1(3). **Re S (an infant)** [1965] 1 865, CA.

Wardship proceedings—Parties—Respondent—Local authority having child in care, not children's officer, is appropriate respondent—Law Reform (Miscellaneous Provisions) Act 1949, s 9. **Re L (an infant)** [1963] 1 176, ChD.

Proceedings in juvenile court—

Generally. *See* **Children and young persons** (Care—Proceedings in juvenile court).

Legal aid. *See* **Legal aid** (Care proceedings in juvenile courts).

Resumption of care by parent—

Child boarded out with foster parents—Illegitimate daughter a few months old—Cottage where mother lived unsuitable for child—Mother wanted child back and a series of meetings with child arranged—Return of child requested by mother—Cottage changed for more suitable one—Foster parents with whom child had been living for over five years applied to make her a ward of court and for care and control—Welfare of child best served in the long term by child being returned to mother—Wardship confirmed, care and control given to mother—Law Reform (Miscellaneous Provisions) Act 1949, s 9. **Re R (M) (an infant)** [1966] 3 58, ChD.

Child boarded out with foster parents—Mother's desire to take over care—Intention to board out child with putative father and his wife—Obligation of foster parents to return child—Children Act 1948, s 1(1)(b), (3), s 13 (1)(a). **Re A B (an infant)** [1954] 2 287, QBD.

Child boarded out with foster parents—Notice given by child's parent to local authority of wish to resume care of child—Application by local authority to make child ward of court and commit care and control to foster parents—Application by mother for order that child cease to be ward with a view to child being returned to her—Jurisdiction of court to make interim order placing infant in charge of any person whom it thought proper—Children Act 1948, s 1(3). **Re R (K) (an infant)** [1963] 3 337, ChD.

Child boarded out with foster parents—Notice given by child's parent to local authority of wish to resume care of child—Child unwilling to return to parent—Whether local authority under absolute obligation to secure return—Whether court will order local authority to return child—Children Act 1948, s 1(3). **Krishnan v London Borough of Sutton** [1969] 3 1367, CA.

Child boarded out with foster parents—Records required to be kept in respect of child—Privilege—Records privileged and should not be disclosed other than in exceptional cases—Boarding-Out of Children Regulations 1955 S 1 1955 No 1377, reg 10(1)(a). **Re D (infants)** [1970] 1 1088, CA.

Care and control—

Ward of court. *See* **Ward of court** (Care and control).

Care and upbringing—

Arrangements required before decree absolute of divorce between parents. *See* **Divorce** (Decree absolute—Arrangements for care and upbringing of children).

Divorce—

Whether child a child of family. *See* **Divorce** (Infant—Child of the family).

Child of the family—**Divorce—**

Acceptance of child as one of the family. *See* **Divorce** (Infant—Child of the family—Acceptance of child as one of the family).

Arrangements for care and upbringing. *See* **Divorce** (Infant—Child of the family—Arrangements for care and upbringing).

Compromise of action—

Approval of court. *See* **Practice** (Compromise of action—Approval of court—Approval on behalf of infant).

Contributory negligence. *See* **Negligence (Contributory negligence—Child).****Court proceedings in relation to child—****Proceedings in private—**

Publication of information—Contempt of court. *See* **Contempt of court** (Publications concerning legal proceedings—Court sitting in private—Wardship or adoption proceedings).

CHILD (cont)

Criminal offence—

Compensation—

Parent or guardian's liability. *See* **Criminal law** (Compensation—Compensation order—Children and young persons).Parent or guardian's liability. *See* **Sentence** (Compensation—Parent or guardian's liability).Sentence. *See* **Sentence** (Youthful offender).Cruelty. *See* **Criminal law** (Child—Cruelty).

Custody—

Conflict of laws—

Ward of court. *See* **Ward of court** (Jurisdiction).Divorce proceedings. *See* **Divorce** (Custody).Wardship jurisdiction. *See* **Ward of court**

Damages—

Damages recovered by child—

Jurisdiction of court to postpone entitlement until after attainment of majority. *See* **Variation of trusts** (Jurisdiction—Damages recovered by infant).Loss of expectation of life. *See* **Damages** (Personal injury—Loss of expectation of life).Loss of future earnings. *See* **Damages** (Personal injury—Loss of future earnings—Child).Dangerous machinery. *See* **Safe system of working** (Dangerous machinery—Child).

Diplomat's child—

Wardship proceedings. *See* **Ward of court** (Jurisdiction—Diplomat's child).

Education—

Divorced parents—

Choice of school. *See* **Divorce** (Infant—Education—Choice of school).Generally. *See* **Education**.

Evacuee—

Failure to care for child evacuee—

Offence. *See* **Billeting** (Offence—Failure to care for child evacuee).

Evidence—

Criminal proceedings. *See* **Criminal evidence** (Child).Family allowance. *See* **Family allowance**.

Fine—

Court's power to order parent or guardian to pay fine instead of child. *See* **Children and young persons** (Fine—Imposition—Court's power to order parent or guardian to pay fine instead of child or young person).

Foster child—

Duty of person maintaining foster child to notify local authority—

one month by person other than relative or guardian—Children maintained by respondent by agreement with parents under which children should spend occasional week-ends with parents—Children at no time more than twenty-eight successive days with respondent—Whether respondent proposed to maintain children as foster children—Meaning of undertaken in definition of foster child—Test of continuity—Children Act 1958, s 2(1), 3(a), s 3(1). **Surrey County Council v Battersby** [1965] 1 273, QBD.Generally. *See* **Minor**.Gross indecency. *See* **Criminal law** (Gross indecency—Child).

Guardian ad litem—

Variation of trusts. *See* **Variation of trusts** (Infant).

Illegitimate child—

Whether included in term 'descendants'. *See* **Document** (Construction—Words descriptive of family relationship—Group life assurance scheme—Descendant—Words descriptive of family relationship, where used as terms of art in legal documents, construed as beIncome tax relief. *See* **Income tax** (Child relief).Injunction. *See* **Injunction** (Children).

Kidnapping—

Foreign child—

Removal by parent from foreign jurisdiction—Wardship proceedings. *See* **Ward of court** (Jurisdiction—Kidnapping).Legitimacy—Generally. *See* **Legitimacy**.

Legitimacy—

Succession to intestate's estate. *See* **Intestacy** (Succession—Legitimacy).Legitimation. *See* **Legitimation** (Declaration of legitimacy).

Limitation of action—

Extension of time from which limitation period begins to run. *See* **Limitation of action** (Persons under disability).

Loss of expectation of life—

Damages. *See* **Damages** (Personal injury—Loss of expectation of life).

Maintenance—

Divorce proceedings. *See* **Divorce** (Financial provision—Child—Maintenance).

Molestation—

Injunction. *See* **Injunction** (Husband and wife—Molestation—Molestation of child).

Negligence—

Child spectator at game or competition—

Duty of care.

Contributory negligence—

Test—Seven year old boy running across road from behind parked van—Collision with motor bicycle—Whether contributory negligence. **Jones v Lawrence** [1969] 3 267, Assizes.Test—Thirteen year old girl crossing road at a signal of halted lorry driver without pausing to see if vehicle wrongly overtaking lorry on far side despite driver's signal—Whether contributory negligence. **Gough v Thorne** [1966] 3 398, CA.Generally. *See* **Negligence** (Children).

Parent's liability—

Firearms—Child allowed to have .410 gun. **Newton v Edgerley** [1959] 3 337, Assizes.

CHILD (cont)

Negligence (cont)—

Parent's liability (cont)—

Firearms—Son under seventeen allowed possession of air gun while not supervised by adult—Son mentally retarded academically but otherwise normal—Father gave son adequate instruction and forbade use of gun on highway—Son fired gun negligently in field separated from highway—Whether father guilty of negligence—*Air Guns and Shot Guns*, etc, Act 1962, s 1(3), s 4. **Gorely v Codd** [1966] 3 891, Assizes.

Firearms—Son under seventeen allowed possession of air gun while not supervised by adult—Father forbade use of gun outside house—Son fired gun negligently outside house—Whether father guilty of negligence. **Donaldson v McNiven** [1952] 2 691, CA.

Trespasser—

Duty of occupier to child trespasser. *See* **Occupier's liability** (Child trespasser).

Next friend. *See* **Minor** (Next friend).

Occupier's liability. *See* **Occupier's liability** (Children).

Paternity—

Divorce—

Child of the family. *See* **Divorce** (Infant—Paternity—Child of the family).

Generally. *See* **Paternity**.

Place of safety order. *See* **Children and young persons** (Detention—Place of safety order).

Practice—

Court proceedings in relation to children—

Matrimonial causes. *See* **Practice**—Matrimonial causes, *post*.

Proceedings in private—Publication of information—Transcripts—Leave to obtain. **Practice Direction** [1972] 1 1056, FamD.

Matrimonial causes—

Applications relating to children—Application for order prohibiting removal of child out of England and Wales—Ex parte application to registrar—Application to remove child out of England and Wales—Application to judge—Matrimonial Causes Rules 1971 (S I 1971 No 953), rr 94 (1), (3), 97, 114(1)(a) (as amended by the Matrimonial Causes (Amendment) Rules 1973 (S I 1973 No 177), r 4). **Practice Direction** [1973] 2 400, FamD.

Applications relating to children—Applications where court welfare officer's report requested—Date of hearing of applications where estimated length of hearing exceeding one half hour—Date to be fixed on basis of date when report likely to be received. **Practice Direction** [1972] 2 352, FamD.

Applications relating to children—County court divorce causes—Causes proceeding in London—Reservation to circuit judge who first deals with matter. **Practice Direction** [1972] 3 255, FamD.

Applications relating to children—Reservation to judge who first deals with matter. **Practice Direction** [1972] 1 1056, FamD.

Removal of child from jurisdiction—

Magistrates' jurisdiction. *See* **Magistrates** (Jurisdiction—Removal of child from jurisdiction).

Removal outside jurisdiction—

Practice. *See* **Adoption** (Practice—Application for removal or return of child).

Rule against perpetuities. *See* **Rule against perpetuities** (Children—Presumption that woman past age of child-bearing).

School—

Negligence—

Liability of local education authority. *See* **Education** (Local education authority—Negligence).

Settlement—

Income tax. *See* **Income tax** (Settlement—Children).

Trespasser—

Duty of occupier to child trespasser. *See* **Occupier's liability** (Child trespasser).

Variation of settlement—

Adopted child. *See* **Variation of settlement** (Adopted child).

Ward of court. *See* **Ward of court**.

Welfare—

Adoption—

Dispensing with consent of parent or guardian. *See* **Adoption** (Dispensing with consent of parent or guardian—Consent unreasonably withheld—Test of unreasonableness—Welfare of child).

Wilful ill-treatment. *See* **Children and young persons** (Cruelty to persons under 16—Wilfully assaulting, ill-treating, neglecting, abandoning or exposing child).

CHILDREN AND YOUNG PERSONS

Approved school order—

Appeal—

Jurisdiction—Order against young person aged sixteen—Appeal by parent to quarter sessions—Young person over seventeen when appeal heard—Jurisdiction to hear appeal—Children and Young Persons Act 1933, s 62 (1)(a). **Rugman v Drover** [1950] 2 575, KBD.

Insertion of name of local authority in whose district child or young person resident—

Determination of place of residence—Material date for purpose of ascertaining place of residence—Children and Young Persons Act 1933, ss 62, 66(1), 90(2). **South Shields Corp'n v Liverpool Corp'n** [1943] 1 338, KBD.

If residence unknown, name of local authority in whose district offence committed—Residence of boy unknown—Power, on appeal, to name local authority within whose district offence committed—Children and Young Persons Act 1933, s 70(2), s 90(2). **Barnsley Corp'n v Lancashire County Council** [1956] 3 671, QBD.

CHILDREN AND YOUNG PERSONS (cont)

Approved school order (cont)—

Insertion of name of local authority in whose district child or young person resident (cont)—
 If residence unknown, name of local authority in whose district offence committed—
 Residence of young person unknown—Power, on appeal, of court of summary jurisdiction
 or quarter sessions to name local authority within whose district offence committed—
 Children and Young Persons Act 1933, s 70(2), s 90(2), (3). *Isle of Wight County Council
 v Warwickshire County Council* [1953] 1 525, QBD.

Jurisdiction—

Appeal. *See* Approved school order—Appeal—Jurisdiction, *ante*.

Order against young person under seventeen years when found guilty of offence punishable
 in case of adult with imprisonment but over seventeen years when order made—Whether
 jurisdiction to make order—Children and Young Persons Act 1933, s 57(2)(a). *Hamlyn v
 Pearce* [1962] 2 436, QBD.

Care—

Proceedings in juvenile court—

Conditions to be satisfied before making order—Neglect or ill-treatment of child or young
 person—Probability of neglect, etc., [[n71157408 having regard to fact that 'the court or
 another court' has found neglect or ill-treatment of another child or young person belonging
 to same household—Meaning of 'the court'—Whether necessary that finding of neglect or
 ill-treatment in relation to other child should have been made by the court in earlier
 proceedings—Whether open to court hearing proceedings to make finding in relation to
 other child—Children and Young Persons Act 1969, s 1(2)(a), (b). *Surrey County Council
 v S* [1973] 3 1074, CA.

Care and control—

Ward of court. *See* Ward of court (Care and control).

Compensation order—

Power of court to order parent or guardian to pay compensation instead of child or young person.
See Sentence (Compensation—Parent or guardian's liability).

Cruelty to persons under 16—

Wilfully assaulting, ill-treatment, neglecting, abandoning or exposing child—
 Accused charged with wilfully ill-treating child—Neglect to obtain medical attention after
 child's fatal fall—Judge's direction to jury—Neglect equated with ill-treatment—Effect—
 Children and Young Persons Act 1933, s 1. *R v Hayles* [1969] 1 34, CA.

Detention—

Interim order—

Application—Persons who may make application—Parent—Discharge of place of safety
 order—Power of justices to discharge place of safety order on making of application for
 interim order—Interim order a care order—Right to apply for care orders limited to local
 authority, constable or authorised person—Whether parent may apply for an interim order—
 Children and Young Persons Act 1969, ss 1(1), 20(1), 28(6). *R v A Justice for Lincoln
 (Kesteven), ex parte M (a minor)* [1976] 1 490, QBD.

Place of safety order—

Application—Abuse of process—Use of statutory provision for purpose not intended—
 Application following discharge of care order—Child in care of local authority—Juvenile
 court discharging care order on application of child's father—Court refusing to admit
 evidence of father's behaviour to other children—Local authority applying immediately for
 place of safety order—No change in circumstances of child—Justice making order having
 heard evidence of father's behaviour to other children—Whether application for place of
 safety order an abuse of process—Children and Young Persons Act 1969, s 28(1). *R v A
 Justice for Lincoln (Kesteven), ex parte M (a minor)* [1976] 1 490, QBD.

Fine—

Imposition—

Court's power to order parent or guardian to pay fine instead of child or young person—Child
 placed in care of local authority pursuant to care order—Child then committing several
 offences—Child living in local authority home at time—Justices imposing fines for offences
 and ordering local authority to pay them as child's guardian—Whether local authority his
 'guardian'—Children and Young Persons Act 1933, ss 55(1), 107(1). *R v Croydon Juvenile
 Court Justices, ex Ex Croydon London Borough Council* [1973] 1 476, QBD.

Fit person order—

Consent of local authority—

Order committing child to care of local authority—Supervision order in force when fit person
 order made—Need for consent of local authority to making of fit person order—Need for
 recital of such consent in fit person order—Children and Young Persons Act 1933, s 76(1),
 as substituted by Children Act 1948, s 5(1). *R v Darlington County Borough Juvenile
 Court, Ex parte West Hartlepool Corp* [1957] 1 398, QBD.

Local authority—

Jurisdiction of court in divorce proceedings. *See* Divorce (Custody—Jurisdiction—Child
 committed to care of local authority—Father and mother subsequently divorced—
 Application to court by mother for direction that child should continue to live with foster
 parents found by her).

Subsequent wardships proceedings—

Jurisdiction of court—Whether prerogative jurisdiction of court over ward of court ousted by
 statutory rights vested in local authority when nominated a fit person—Children and Young
 Persons Act 1933, ss 62(1)(b), 76(1)—Family Allowances and National Insurance Act 1956,
 s 5(1). *Re T (A J J)(an infant)* [1970] 2 865, CA.

Subsequent wardship proceedings—

Overlapping jurisdictions. *See* Ward of court (Previous custody order of magistrates made
 under jurisdiction conferred by guardianship legislation—Circumstances in which High
 Court will make different order under wardship jurisdiction—Minors in charge of local
 authority under fit person order).

Indictable offences—

Committal for trial. *See* Trial of persons under 17—Committal for trial, *post*.

CHILDREN AND YOUNG PERSONS (cont)

Indictable offences (cont)—

Sentence. *See* **Sentence** (Young person).Juvenile court. *See* **Magistrates** (Juvenile court).

Protection—

Child living apart from his parents—

'Foster child'—Meaning—Public Health Act 1936, s 206(3). **Wallbridge v Dorset County Council** [1954] 2 201, ChD.

Probation order—

Order to parent to exercise proper care and guardianship—Indecent acts by young persons—

Absence of knowledge by parents—Inference from young persons' conduct—Jurisdiction to make orders—Children and Young Persons Act 1933, s 62(1)(c), (d). **Bowers v Smith, Evans v Same, Flack v Same** [1953] 1 320, QBD.

Recognition of foreign marriage—

Potentially polygamous marriage—Fit person order—Nigerian girl of thirteen validly married by Nigerian Moslem law—marriage recognised in England—Whether girl, living with her husband, exposed to moral danger or in need of care and protection—Children and Young Persons Act 1933, s 62—Children and Young Persons Act 1963, s 2. **Mohamed v Knott** [1968] 2 563, QBD.

Trial of persons under 17—

Committal for trial—

Sufficient evidence to put accused on trial—Committal without consideration of the evidence—Whether committal valid—Criminal Justice Act 1967, s 1—Children and Young Persons Act 1969, s 6(1). **R v Coleshill Justices, Ex parte Davies** [1971] 3 929, QBD.**CHOIR**

Gift for benefit of choir—

Charitable purpose. *See* **Charity** (Religion—Choir—For the benefit of the choir).**CHOSE IN ACTION**

Assignment—

Covenant of indemnity—

Validity—Effect of limited release—Notice to one of two covenantors—One covenantor bankrupt—Bankruptcy Act 1914, s 118—Law of Property Act 1925, ss 81, 136. **Josselson v Borst (Gliksten, Third Party)** [1937] 3 722, CA.

Debt—

Equitable assignment—Assignment of part of debt—Assignor's action against debtor for whole debt—Whether joinder of assignee necessary. **Walter & Sullivan Ltd v J Murphy & Sons Ltd** [1955] 1 843, CA.Equitable assignment—Notice—Sufficiency—'To facilitate our accountancy and banking arrangements'. **James Talcott Ltd v John Lewis & Co Ltd, and North American Dress Co Ltd** [1940] 3 592, CA.Legal assignment—Date of completion of legal assignment by notice—Priority—Sufficiency of equitable assignment where garnishee order nisi served—Consideration—Law of Property Act 1925, s 136(1). **Holt v Heatherfield Trust Ltd and G & T Bridgewater Ltd** [1942] 1 404, KBD.Legal assignment—Notice—Validity—Date of assignment not stated in notice—Law of Property Act 1925, s 136(1). **Van Lynn Developments Ltd v Pelias Construction Co Ltd** [1968] 3 824, CA.Legal assignment—Notice—Validity—Date of assignment wrongly stated in notice—Law of Property Act 1925, s 136(1). **W F Harrison & Co Ltd v Burke** [1956] 2 169, CA.Legal assignment—Writing—Form—Letters—Assignment in pursuance of insurer's right of subrogation after payment made pursuant to indemnity policy—Validity. **Re Miller, Gibb & Co Ltd** [1957] 2 266, ChD.

Equitable assignment—

Assignment by form of claim under indemnity policy—Whether consideration to support assignment. **Re Miller, Gibb & Co Ltd** [1957] 2 266, ChD.Right to allotment of shares of limited company—Direction to company to allot to nominees—Validity. **Letts v Inland Revenue Comrs** [1956] 3 588, ChD.

Expectancy—

Voluntary settlement of interests under marriage settlement—Sum appointed under special power in marriage settlement after voluntary settlement—Trustee of voluntary and marriage settlements same person—Whether trustee can be permitted to retain appointed sum when requested to hand it over to settlor of voluntary settlement. **Re Brooks' Settlement Trusts** [1939] 3 920, ChD.

Foreign assignment—

Law applicable to assignments made abroad—Whether facts constitute assignment. **Finska Angfartygs Aktiebolaget v Baring Bros & Co Ltd** [1940] 1 20, HL.

Right of action—

Legal assignment—Assignee's right of action—Notice of legal assignment not given before action began—No title to sue. **Compania Colombiana de Seguros v Pacific Steam Navigation Co, Empresa de Telefonos de Bogota v Pacific Steam Navigation Co** [1964] 1 216, QBD.Legal assignment—Marine insurance—Assignment by assured to insurers, who had paid on policy, of assured's right of action—Validity. **Compania Colombiana de Seguros v Pacific Steam Navigation Co, Empresa de Telefonos de Bogota v Pacific Steam Navigation Co** [1964] 1 216, QBD.

Statutory order to pay—

Notice—Treaty of Peace Order 1919 (SR & O 1919 No 1517)(as amended), art 1(17). **Holland v German Property Administrator** [1937] 2 807, CA.

CHOSE IN ACTION (cont)

Locality—

Debt—

Debtor's sole residence abroad—Effect of express provision for payment at place other than debtor's place of residence. **Re Helbert Wagg & Co Ltd, Re Prudential Assurance Co Ltd** [1956] 1 129, ChD.

Notice of assignment—

Debt. *See* Assignment—Debt—Legal assignment—Notice, *ante*.

Rights included in chose in action—

Rights of party to apply for costs of action—

Whether included in chose in action. **Re An Application by Marly Laboratory Ltd** [1952] 1 1057, CA.

Sole beneficiary in intestacy—

Whether interest in property a chose in action. *See* Administration of estates (Beneficial interest—Unadministered estate—Sole beneficiary—Nature of sole beneficiary's interest).

Transfer by enemy. *See* Trading with the enemy (Transfer of chose in action by enemy).

CHURCH

Churchyard—

Disused burial ground—

Erection of building. *See* Burial (Burial ground—Disused—Erection of building on disused burial ground).

Enlargement—

Building on disused burial ground. *See* Burial (Burial ground—Disused—Prohibition of erection of any building on any disused burial ground—Exception—Enlargement of church).

Erection of building on disused burial ground. *See* Burial (Burial ground—Disused—Erection of building on burial ground).

Generally. *See* Ecclesiastical law.

Rates—

Rateable occupation—

Empty accommodation held available to provide residence for minister. *See* Rates (Rateable occupation—Premises left empty—Intention to occupy—Charity—Ecclesiastical corporation).

Union of churches. *See* Ecclesiastical law (Union of churches).

CHURCH IN WALES

Dis-establishment. *See* Ecclesiastical law (Church in Wales—Dis-establishment).

C I F CONTRACT

Generally. *See* Sale of goods (C i f contract).

Passing of property—

Reservation of right of disposal. *See* Sale of goods (Passing of property—Reservation of right of disposal—C i f contract).

CINEMA

Censorship—

Indecent films—

Test to be applied—Local authority's rules prohibiting exhibition of films tending to deprave or corrupt persons likely to see them—Exhibition of films indecent at common law not prohibited—Whether correct test of censorship for films—Whether rules ultra vires—Obscene Publications Act 1959, s 1(3)(b), proviso. **R v Greater London Council, ex parte Blackburn** [1976] 3 184, CA.

Local authority—

Delegation of powers—Local authority delegating powers of censorship to British Board of Film Censors—Local authority retaining right of appeal from board—Whether delegation of powers ultra vires the local authority—Whether board 'such other body' with power to designate films as works unsuitable for children—Cinematograph Act 1952, s 3(1). **R v Greater London Council, ex parte Blackburn** [1976] 3 184, CA.

Film—

British film—

Film of which the maker a British company—Company incorporated in England—Nominee of foreign company—Whether 'makers' of film British company—Cinematograph Films Act 1938, s 25(1), s 44(1). **Re F G (Films) Ltd** [1953] 1 615, ChD.

Production—

Lighting—Negligence—Excessive lighting—Injury to artistes—Liability of cameraman—Common employment. **Russell v Criterion Film Productions Ltd** [1936] 3 627, KBD.

Storage—

Premises used for storage—Storage of inflammable substance—Storage in cave—Whether cave 'Premises' within the Celluloid and Cinematograph Film Act 1922, s 1(1). **Gardiner v Sevenoaks Rural District Council** [1950] 2 84, KBD.

Title—

Registration—Contract by registered holder of title including provision not to object to film being produced under that title after a period had elapsed and granting licence in respect of rights necessary to give effect to that provision—What constituted an objection for the purposes of the contract—Remedies for breach of the provision of the contract. **Board of Governors of the Hospital for Sick Children v Walt Disney Productions Inc** [1966] 2 321, ChD.

Licence—

Licence to use premises specified in the licence—

Powers of justices—Whether provisional licence can be granted in respect of premises to be built—Cinematograph Act 1909, s 2(1), s 5. **R v Barnstaple Justices, Ex parte Carder** [1937] 4 263, KBD.

CINEMA (cont)

Licence (cont)—

Sunday performance—

Condition—Prohibition of admission of child under 16—Whether ultra vires—Sunday Entertainments Act 1932, s 1(1). **Associated Provincial Picture Houses Ltd v Wednesbury Corp** [1947] 2 680, CA.

Condition—Prohibition of admission of child under 16—Whether ultra vires or unreasonable—Sunday Entertainments Act 1932, s 1—Defence (General) Regulations 1939, reg 42B. **Harman v Butt** [1944] 1 558, KBD.

Obscenity—

Film—

Test of obscenity—Publication. *See* **Criminal law** (Obscene publications—Test of obscenity—Tendency to deprave and corrupt persons likely to read, see or hear matter contained or embodied in article—Persons reading, seeing or hearing matter as result of publication to them—Film).

CIRCUIT JUDGE

Deputy circuit judge. *See* **Judge** (Circuit judge—Deputy circuit judge).

Immunity from suit. *See* **Judge** (Immunity from suit).

Offences triable by circuit judge in Crown Court. *See* **Crown Court** (Distribution of court business—Classification of offences—Offences triable by High Court judge, circuit judge, recorder).

CIRCULAR SAW

Factory. *See* **Factory** (Circular saw).

CIRCUS

Trapeze artiste—

Right to industrial injury benefit—

Whether employed under contract of service. *See* **Industrial injury** (Insurable employment—Employment under contract of service—Trapeze artiste in circus).

CITATION

Faculty. *See* **Ecclesiastical law** (Faculty—Citation).

Probate proceedings. *See* **Probate** (Citation).

CITIZENSHIP

Deprivation—

Retrospective legislation. *See* **Sierra Leone** (Constitution—Discrimination—Race).

Qualifications—

Ceylon. *See* **Ceylon** (Citizenship—Franchise—Validity of legislation as to qualifications for citizenship).

CIVIL ACTION

Burden of proof. *See* **Burden of proof** (Civil action).

Generally. *See* **Action**.

Perjury—

Right of injured party. *See* **Perjury** (Civil action).

Trial—

Practice. *See* **Practice** (Trial).

CIVIL DEFENCE

Volunteer—

War injury—

Compensation. *See* **War injury** (Compensation—Civil defence volunteer).

CIVIL OFFENCE

Commission by person subject to military law. *See* **Court-martial** (Civil offence).

CIVIL WAR

Marine insurance. *See* **Marine insurance** (Excepted perils—Civil war).

CLASS GIFT

Settlement. *See* **Settlement** (Class gift).

CLAUSE PARAMOUNT

Incorporation in charterparty. *See* **Shipping** (Charterparty—Incorporation of paramount clause).

CLEANER AND DYER

Personal contract—

Right to sub-contract. *See* **Contract** (Personal contract—Right to sub-contract).

CLEARANCE AREA

See **Housing** (Clearance area).

CLERK

Justices. *See* **Magistrates** (Clerk).

CLERK OF THE CHANCERY LISTS

See **Practice** (Chancery Division—Revision of system for listing causes and matters—Appointment of clerk of the lists).

CLINIC

National Health Service. *See* **National Health Service** (Hospital—Institution for the reception and treatment of persons—Clinic maintained in connection with any such institution).

CLOCKS

Will—

Gift—

Personal chattels. *See* **Will** (Gift—Personal chattels—Articles of personal use).**CLOSE COMPANY**Taxation. *See* **Income tax** (Close company).**CLOSING HOURS**Shop. *See* **Shop** (Hours of closing).**CLOSING ORDER**Generally. *See* **Housing** (Closing order).

Rent Act—

Effect. *See* **Rent restriction** (Possession—Premises unfit for human habitation).**CLOTHING**

Accommodation for clothing—

Factory. *See* **Factory** (Accommodation for clothing).Rationing. *See* **Rationing** (Clothing).**CLUB**

Entertainment—

Music and dancing—

Licensing. *See* **Entertainment** (Music and dancing licence).

False trade description—

Whether applicable to transactions with members. *See* **Members' club**—Transactions with members—Application of Trade Descriptions Act 1968, *post*.Gaming. *See* **Gaming** (Club).

Guests of member—

Whether members of the public for purposes of music and dancing licence. *See* **Entertainment** (Music and dancing licence—Registered club—Public dancing and music—Club applying for special order of licensing exemption for social evenings with entertainmen

Income tax—

Mutuality principle—

Members' club. *See* **Income tax** (Profits—Mutuality principle—Members' club).

Libel—

Publication—

Duty of club proprietors to remove defamatory matter from walls. *See* **Libel and slander** (Publication—Notice on wall of premises—Club premises).

Licensing—

Incorporated members' club—

Sale of intoxicating liquor without licence to members. *See* **Licensing** (Sale of liquor by retail without licence—Incorporated members' club).

Intoxicating liquor—

Generally. *See* **Licensing**.Public dancing, music or other entertainment. *See* **Entertainment** (Music and dancing licence).

London—

Music and dancing licence. *See* **Entertainment** (Music and dancing licence—London—Club).

Members' club—

Parties to action—

Representation order—Action by club servant for injury on club premises—Assistant honorary secretary and chairman of house committee made defendants—Order authorising them to defend action in representative capacity—RSC Ord 16, r 9. **Campbell v Thompson** [1953] 1 831, QBD.

Property of club—

British Legion club—Club property held on trust for club members—Change to working men's club—Changed entity—Ownership of club property—Whether held on trust for members of new or old club. **Re Conveyances Dated 13th June 1933, 17th August 1933 and 2nd September 1950** [1969] 3 1175, CA.

Safety of premises—

Implied warranty—Member injured through faulty construction of club premises—Liability of management committee for breach of warranty. **Shore v Ministry of Works** [1950] 2 228, CA.

Transactions with members—

Application of Trade Descriptions Act 1968. **John v Matthews** [1970] 2 643, QBD.

Negligence—

Unincorporated members' club—

Member injured by fall down unlighted steps—Liability of committee—Liability of steward. **Prole v Allen** [1950] 1 476, Assizes.

Proprietary club—

Music and dancing licence. *See* **Entertainment** (Music and dancing licence—Proprietary club).Whether registrable for purpose of having gaming machines. *See* **Gaming** (Club—Registration—Registration for purposes of having gaming machines—Refusal to register or renew registration—Proprietary club).

Registered club—

Permitted hours—

Extension. *See* **Licensing** (Permitted hours—Extension—Registered club).

CLUB (cont)

Registration—

Certificate—

Application. *See* **Licensing (Club—Application for registration certificate).**

Failure of solicitor to notify client of refusal of registration. *See* **Solicitor (Negligence—**

Registration of club—Failure to notify client of refusal of registration).

Generally. *See* **Gaming (Club—Registration).**

Striking off register. *See* **Licensing (Club—Striking off register).**

Value added tax—

Generally. *See* **Value added tax (Club).**

Grant of right over or licence to occupy land. *See* **Value added tax (Exemptions—Land—Grant of right over or licence to occupy land—Members' club).**

COAL

Distribution—

Licensed merchant—

Person carrying on undertaking whose name in register—Unincorporated body—Committee registered as licensed merchant—Agent of committee—Whether committee 'person'—Interpretation Act 1889, s 19—Coal Distribution Order 1943 (SR & O 1943 No 1138), arts 2, 78. *Davey v Shawcroft* [1948] 1 827, KBD.

Mining. *See* **Coal mining.**

Royalties—

Crown leases and grants—

Canada. *See* **Canada (Mines and minerals—Coal—Royalties—Crown leases and grants).**

Sale. *See* **Weights and measures (Coal).**

Sea-borne coal—

Right to take coal from foreshore. *See* **Foreshore (Rights over foreshore—Acquiring sea-borne coal).**

COAL MINING

Acquirement by Coal Commission—

Compensation—

Disposal as between beneficial interests under settlement—Coal Act 1938, Sch III, Pt IV, para 21(2). *Re Duke of Leeds Will Trusts* [1947] 2 200, ChD. *Williams v Sharpe* [1949] 2 102, CA.

Disposal as between beneficial interests under settlement—'Conventional rate of interest'—Appropriate rate. *Re Lucas* [1947] 2 213, ChD.

Disposal as between beneficial interests under settlement—Will directing accumulation of rents and royalties—Coal Act 1938, Sch III, Pt IV, para 21(2), (6). *Re Blandy-Jenkins (decd)* [1948] 1 582, ChD.

Disposal of compensation as between freeholder and lessee—Effect of non-registration of interest and failure to make claim—Costs—Coal (Registration of Ownership) Act 1937, s 1(3), sched I, para 1—Coal Act 1938, ss 7(3), 39, Sch III, Pts II, IV, paras 6, 21(6), 22(1)(as amended by Coal Act 1943, s 13). *Public Trustee v Manchester Corp'n* [1949] 2 498, ChD.

Payment and disposal of compensation—Acquisition of interest—Application to court to determine manner in which compensation to be held and disposed of—Costs. *Williams v Sharpe* [1949] 2 102, CA.

Interests vesting in Coal Commission—

Exception—'Retained interest'—Lease granted to one company—Subsequent lease granted to another company—Concurrent leases—'Retained interest' within meaning of Coal Act 1938—Coal Act 1938, ss 1(1), (2), 2(1), (2), 3(1), (2), (3), 5(1), (2). *Mitford Co Ltd v Coal Commission* [1940] 3 125, ChD.

Lease—Lessees to make annual payments for surface damage—Prior sales of surface by lessors with reservation of right to let down surface without compensation—Right of Coal Commission to receive surface damage payments—Rents and royalties or payments under collateral agreement—Coal Act 1938, ss 3, 4, Sch II, Part I, para 1, Pt II, para 5. *Halifax v The Coal Commission* [1945] 2 13, ChD.

Rents and royalties—Apportionment of rents and royalties—Footage rents and payments for wayleaves—Apportionment on time basis—Apportionment Act 1870, s 2—Coal Act 1938, ss 1(2), 3, 5(1), 8. *The Coal Commission v Earl Fitzwilliam's Royalties Co* [1942] 2 56, ChD.

Ancillary rights—

Grant—

Right of way—Right previously enjoyed under lease—Terms found to be too onerous—Lease determined by colliery owner—Whether entitled to grant of right of way under statute—Mines (Working Facilities and Support) Act 1923, s 3—Mining Industry Act 1926, s 13(2). *Re Consett Iron Co Ltd's Application* [1938] 1 439, Ry & Can Com.

Coal Commission—

Unification of ownership of coal in hands of commission. *See* **Acquirement by Coal Commission, ante.**

Compensation—

Acquisition of property by Coal Commission. *See* **Acquirement by Coal Commission—Compensation, ante.**

Nationalisation of industry. *See* **Nationalisation of industry—Compensation, post.**

Construction and maintenance of roads in mines—

Statutory duty. *See* **Statutory duty—Road—Construction and maintenance, post.**

COAL MINING (cont)

Contract of service—

Hours of work—

Winding times—Necessity for workmen to be present in time to be taken down in cage—
 Plaintiff present in time but not taken down—Whether plaintiff an absentee—*Coal Mines
 Regulation Act 1908, s 1. Bارسy v Doncaster Amalgamated Collieries Ltd* [1939] 3 938,
 CA.

Variation—

Scheme of working—Employment terminable on 14 days' notice—Scheme of working
 reorganised—Alteration in scheme of working not part of original contract—Employees
 terminating altered scheme by less than 14 days' notice—Notice reasonable—No breach
 of contract by employees—Employers and Workmen Act 1875, s 9. *Dorman Long & Co
 Ltd v Carroll* [1945] 2 567, KBD.

Dangerous machinery—

Duty to fence. *See* Statutory duty—Machinery—Dangerous machinery—Duty to fence, *post*.

Delegation of duty—

Common employment. *See* Vicarious liability (Common employment—Coal mine).

Flooding—

Liability for flooding—

Flooding after defendants' mine abandoned—Due to presence of artificial work outside their
 land—No right in defendants to interfere with artificial work. *Westhoughton Coal and
 Cannel Co Ltd v Wigan Coal Corp Ltd* [1939] 3 579, CA.

Lease—

Rent and fluctuating royalties for coal mined—

Statutory deductions—New South Wales. *See* New South Wales (Coal mining—Lease—Rent
 and fluctuating royalties for coal mined—Statutory deductions).

Machinery—

Statutory duty. *See* Statutory duty—Machinery, *post*.

Maintenance of machinery—

Statutory duty. *See* Statutory duty—Machinery—Maintenance of machinery, *post*.

Manager—

Absent manager—

Liability for breach of statutory duty. *See* Statutory duty—Breach—Provisions as to safety—
 Liability of absent manager, *post*.

Duty—

Security of road and working place. *See* Statutory duty—Security of road and working
 place—Duty of manager, *post*.

Mine-owner—

Duty to provide safe system of working—

Delegation of duty—Mine-owner prohibited by statute from taking part in technical
 management—*Coal Mines Act 1911, s 2(4). Wilsons and Clyde Coal Co Ltd v English*
 [1937] 3 628, HL.

Mining lease—

Assignment—

Mine-owner—Rents and royalties—Outgoings—Execution of statutory drainage works—
 Deduction of cost from rents and royalties—*Doncaster Area Drainage Act 1929, ss 12(1),
 (3), 33. Dalton Main Collieries Ltd v Rossington Main Colliery Co Ltd, and Amalgamated
 Denaby Collieries Ltd* [1941] 1 544, CA.

Rent—

Obligation to supply free coal—Assessment of rent—Whether value of supply of coal to be
 excluded—*Finance (1909–10) Act 1910, s 20. Hatherton v Inland Revenue Comrs*
 [1936] 1 608, KBD.

Nationalisation of industry—

Colliery company—

Interim income—Income tax—*Coal Industry Nationalisation Act 1946, s 22(2), (3)—Coal
 Industry (No 2) Act 1949, s 1(2). Whitworth Park Coal Co Ltd (in liquidation) v Inland
 Revenue Comrs, Ramshaw Coal Co Ltd (in liquidation) v Same, Brancepeth Coal Co Ltd
 (in liquidation) v Same* [1959] 3 703, HL.

Compensation—

Adjustment proposal—Time for service—Date when amount of compensation is 'finally
 determined'—*Coal Industry Nationalisation (Company Adjustment) Regulations 1948 (SI
 1948 No 2360), reg 2(5). Re Doncaster Amalgamated Collieries Ltd* [1955] 1 442,
 ChD.

Right to interim income pending compensation—Ascertainment of profits and gains for last
 accounting period—'Last complete accounting period'—Accounts of company made up
 quarterly, but embodied in annual account—*Coal Industry Nationalisation Act 1946, s 22(3)
 (c). Re New Rock Colliery Co Ltd* [1949] 2 1070, CA.

Valuation of transferred interests—Compensation unit of nine houses—Notional sale in open
 market—Notional sale of unit as a whole, not in separate lots—*Coal Industry Nationalisation
 Act 1946, s 13(4). Cottages Ltd v Minister of Fuel and Power* [1952] 1 80, KBD.

Valuation of transferred interests—Price if sold in the open market by a willing seller to a
 willing buyer—Open market—All relevant circumstances—Regulations controlling prices—
 Whether regulations to be taken into account—*Coal Industry Nationalisation Act 1946, s
 13(4), (5). Priestman Collieries Ltd v Northern District Valuation Board* [1950] 2 129,
 KBD.

Workmen's compensation—Contribution—Miner suffering from gradual disease—
 Compensation paid by National Coal Board—Right of board to contribution from miner's
 employers before nationalisation—Workmen's Compensation Act 1925, s 43(1)(c)(iii)—
*Coal Industry Nationalisation Act 1946, s 7(1), s 10(3), Sch II. National Coal Board v
 Amalgamated Anthracite Collieries Ltd* [1951] 1 844, CA.

COAL MINING (cont)

Nationalisation of industry (cont)—

Transfer of assets—

Interest in farm—Option to purchase granted to colliery concern—Acquisition of assets of colliery concern by National Coal Board—Purported exercise of option by National Coal Board—Coal Industry Nationalisation Act 1946, ss 5(1), (2), 7, Sch I, Pts I, II, paras 9, 14, Sch II. **National Coal Board v Hornby** [1949] 2 615, ChD.

Refuge holes—

Statutory duty to provide. *See* Statutory duty—Provision of refuge holes, *post*.

Regulation of production—

Regulation by quota—

Scheme—Output quota—Export and inland supply—Excess of sum of export and inland supply over output quota—Penalty—Coal Mines Act 1930. **Williams v Crumlin Valley Collieries Ltd** [1936] 3 387, KBD.

Scheme—

Annual basic tonnage—Equitable addition or deduction so as to represent trade of the mine—'Trade of the mine'. **Re The Coal Mines Act 1930, Re Forest of Dean District (Coal Mines) Scheme 1930, Cannop Colliery Co Ltd v Executive Board** [1937] 1 82, ChD.

Restrictions on working coal—

Removal of restrictions—

Jurisdiction—Railway and Canal Commission—Restrictions and rights of pre-emption—Coal under and extending for 100 yards back from turnpike road—Inclosure Act 1845—Mines (Working Facilities and Support) Act 1923, ss 1, 4—Mining Industry Act 1926, s 13. **Re An Application by Walsall Wood Colliery Co Ltd** [1939] 3 864, Ry & Can Com.

Roof support—

Statutory duty. *See* Statutory duty—Support of roof, *post*.

Security of road and working place—

Statutory duty. *See* Statutory duty—Security of road and working place, *post*.

Service agreement. *See* Master and servant (Contract of service—Coal mining service agreement).

Shot-firing—

Statutory duty. *See* Statutory duty—Shot-firing, *post*.

Statutory duty—

Breach—

Breach by employee—Civil liability of mine-owners—'Reasonably Practicable to avoid or prevent breach'—Coal Mines Act 1911, ss 29, 102 (1),(3),(8). **Yelland v Powell Duffryn Associated Collieries Ltd** [1941] 1 278

Breach by employer—Breach by employer of statutory directions—Negligence of employer—Contributory negligence of employee—Apportionment of liability—Coal Mines Act 1911, s 74—Coal Mines (Training) General Regulations 1945 (SR & O 1956 No 1217), reg 4(1)(c). **Laszczyk v National Coal Board** [1954] 3 205, Assizes.

Defence—Impracticable to avoid or prevent contravention—Support to be set during holing—Impracticable to set supports, but possible to work coal manually instead of mechanically—Negligence at common law not basis of action—Finding of liability based on negligence not maintainable where action fought solely on breach of statutory duty—Mines and Quarries Act 1954, s 157—Coal and Other Mines (Support) Order 1965 (SI 1956 No 1763), Sch 1, reg 10. **Morris v National Coal Board** [1963] 3 644, CA.

Provisions as to safety—Liability of absent manager—Under-manager appointed as manager—Coal Mines Act 1911, s 3(2), s 75. **Bassett v Evans** [1956] 2 899, QBD.

Provisions as to safety—Liability of absent manager—Whether responsible for contravention of safety provision while on leave—Coal Mines Act 1911, s 3(2), s 75. **Bassett v Evans** [1956] 2 899, QBD.

Machinery—

Dangerous machinery—Duty to fence—Exposed and dangerous parts—Machinery only dangerous while moving—Duty of workman to see that fence was in position—Standard of care to be applied to workmen—Impracticability of preventing statutory breach—Coal Mines Act 1911, ss 55, 102(8). **Caswell v Powell Duffryn Associated Collieries Ltd** [1939] 3 722, HL.

Dangerous machinery—Duty to fence—Exposed and dangerous parts—Not kept securely fenced—Injury to workman—Workman acting in wrong manner—Liability of employers—Coal Mines Act 1911, ss 55, 102. **Carey v Ocean Coal Co Ltd** [1937] 4 219, KBD.

Dangerous machinery—Duty to fence—Exposed and dangerous parts—Not reasonably practicable to avoid or prevent breach—Coal Mines Act 1911, ss 55, 102(8). **Coltness Iron Co Ltd v Sharp** [1937] 3 593, HL.

Maintenance of machinery—'Patent' defect—Projecting hook on conveyor belt—No evidence as to when defect occurred—Defence of impracticability of avoiding contravention—Mines and Quarries Act 1954, s 81(1), s 157. **Sanderson v National Coal Board** [1961] 2 796, CA.

Maintenance of machinery—Winch operated by hand—Absence of stalls to steady winch—Whether winch 'properly maintained'—Absolute obligation—Mines and Quarries Act 1954, s 81(1). **Hamilton v National Coal Board** [1960] 1 76, HL.

Provision of refuge holes—

Failure to provide refuge holes—Proceedings against manager by person other than inspector of mines and without consent in writing of Secretary of State—Whether information properly laid—Coal Mines Act 1911, ss 44, 75, 102(5). **Davies v May** [1937] 2 582, KBD.

Provision of safe means of egress 'available to the persons employed in every seam'—

Breach of duty—Means of egress—Unsafe airway—Coal Mines Act 1911, s 36. **Amalgamated Denaby Collieries Ltd v Christen** [1939] 2 395, KBD.

Provision of ventilation—

Deliberate stopping of fan for repair—Liability of manager—Coal Mines Act 1911, s 29(1), s 75. **McCarthy v Lewis** [1957] 1 556, QBD.

COAL MINING (cont)

Statutory duty (cont)—

Road—

Construction and maintenance—Duty to avoid sudden changes of direction, height, width and gradient save insofar as the system of working the mine renders it inadvisable—Liability for obstruction on road—Mines and Quarries Act 1954, s 34(1)(a). **Lister v National Coal Board** [1969] 3 1077, CA.

Construction and maintenance—Duty to keep free from obstructions—Rope forming part of haulage system left in situ when haulage system not in use—Whether rope an 'obstruction'—Mines and Quarries Act 1954, s 34(1)(b). **Cook v National Coal Board** [1961] 3 220, CA.

Haulage road—Duty to keep clear of obstructions—'Obstruction'—Fatal accident on underground haulage railway—Collision with damaged truck—Negligence of fellow servant—Defence of common employment—Whether damaged truck 'obstruction'—Coal Mines Act 1911, ss 47, 102(8)—General Regulations (Coal Mines) 1913 (SR & O 1913 No 748), regs 58, 98, 103. **Alexander v Tredegar Iron & Coal Co Ltd** [1945] 2 275, HL.

Security of road and working place. *See* Statutory duty—Security of road and working place, *post*.

Safety precautions at entrance to shafts—

Barriers to be maintained—Banksman falling from inside shaft—Whether statutory duty limited to surface entrance—Mines and Quarries Act 1954, s 31(2). **Rodgers v National Coal Board** [1966] 3 124, Assizes.

Security of road and working place—

Bogie derailed by stone fallen from roof—Scope of protection under Coal Mines Act 1911, s 49—Whether accident caused by breach of statutory duty—Coal Mines Act 1911, s 49. **Grant v National Coal Board** [1956] 1 682, HL.

Breach of duty—Defence—Not reasonably practicable to avoid or prevent breach—Test—Coal Mines Act 1911, ss 49, 102(8). **Edwards v National Coal Board** [1949] 1 743, CA.

Duty of manager—Duty of keeping road secure—Roof supported according to normal practice but only across part of width—Rest of roof tested by knocking—Fall of stone not reasonably to be expected—Whether failure to fulfil duty to take such steps as were necessary for keeping road secure—Mines and Quarries Act 1954, s 48(1), (2). **Soar v National Coal Board** [1965] 2 318, CA.

Duty of manager—Onus of proof of information obtained and steps taken—Fall of dirt and rock from roof injuring workman—No evidence by mine manager—Whether breach of statutory duty established—Mines and Quarries Act 1954, s 48(1). **Beisack v National Coal Board** [1965] 1 895, Assizes.

Duty of manager—Overall planning—Foreseeability of particular danger—Stone falling from roof—Fall caused by steel strut being put directly in contact with roof of limestone seam and biting into roof when attempt made to move conveyor motor—Mines and Quarries Act 1954, s 48(1). **Robson v National Coal Board** [1968] 3 159, Assizes.

Duty of manager—Roof and road secure immediately before fall of stone from roof—Fall caused by accident of damaged tub running off rail and colliding with prop supporting roof girder—Electrician injured when about to remove light fitting from fallen girder—Second fall of stone—Whether mine manager in breach of statutory duty—Mines and Quarries Act 1954, s 48(1). **Brown v National Coal Board** [1962] 1 81, HL.

Fall of roof occasioned by explosion of most abnormal character—Whether roof made secure—Whether reasonably practicable to avoid breach—Coal Mines Act 1911, s 49, s 102(8). **Jackson v National Coal Board** [1955] 1 145, Assizes.

Reconstruction of disused roadway—Fall of stone from roof—Availability of timber for roof support—'Removal of roof supports'—Provision of temporary supports—Coal Mines Act 1911, s 49, s 51, s 52(1)—General Regulations (Coal Mines) 1913 (SR & O 1913 No 748), reg 8. **Wraith v National Coal Board** [1954] 1 231, Assizes.

Support of every place where any mineral is worked—'Working place'—Market man in drawing-off shift removing prop from support bar—Whether a working place ceases, by reason of danger and intention that falls should occur, to be a working place—Long wall face—'Proper' control of movement of strata in mine—Mines and Quarries Act 1954, s 48(1), (5), s 53. **Venn v National Coal Board** [1967] 1 149, Assizes.

Working place—Fall of stone from coal face—Duty to make 'secure' sides of working place—Whether duty applicable to coal face—Coal Mines Act 1911, s 49, s 50(2). **Gough v National Coal Board** [1959] 2 164, HL.

Workman sent to make roof and sides secure—Fall of stone from roof—Whether 'reasonably practicable to avoid or prevent breach'—Coal Mines Act 1911, s 49, s 102(8). **Walsh v National Coal Board** [1955] 3 632, CA.

Shot-firing—

Breach of statutory duty by shot-firer—Defence—Impracticable to avoid or prevent contravention—Shot-firing—Shot-firer's duty to ensure all persons out of danger zone—Shot-firer detailing man to check, but not checking personally—Meaning of 'impracticable'—Coal Mines (Explosives) Order 1956 (SI 1956 No 1767), Sch, reg 35(2)(b)—Mines and Quarries Act 1954, s 157. **Jayne v National Coal Board** [1963] 2 220, Assizes.

Breach of statutory duty by shot-firer—Liability of mine-owner, manager, and under-manager—General Regulations 1913 (SR & O 1913 No 748), reg 1, made under Coal Mines Act 1911, s 86(1)—Explosives in Coal Mines Order 1934 (SR & O 1934 No 6), cl 2(a)(as amended by S R & O 1937 No 1049, S R & O 1938 No 1409), cl 2(h). **Harrison v National Coal Board** [1951] 1 1102, HL.

Breach of statutory duty by shot-firer—Plaintiff himself in breach of safety regulations—Liability of mine owner—General Regulations 1913 (SR & O 1913 No 748), reg 1, made under the Coal Mines Act 1911, s 86—Explosives in Coal Mines Order 1934 (SR & O 1934 No 6), cl 2(a), cl 2(h). **National Coal Board v England** [1954] 1 546, HL.

COAL MINING (cont)

Statutory duty (cont)—

Shot-firing (cont)—

Shot fired by unqualified miner—Apparatus operated by pair of pliers—Cable left in wrong position by authorised shot-firer—Liability of employers—General Regulations 1913 (SR & O 1913 No 748), reg 28, made under Coal Mines Act 1911, s 86—Explosives in Coal Mines Order 1934 (SR & O 1934 No 6), cl 2(h), (i). **Alford v National Coal Board** [1952] 1 754, HL.

Supply of materials for support—

Construction and maintenance of apparatus—Roof support—Girder—Bent girder—Whether unsuitable for support—Whether 'apparatus'—Duty to have suitable materials readily available—Mines and Quarries Act 1954, s 51(3), s 81(1). **Grimstead v National Coal Board** [1965] 3 446, QBD.

Support of roof—

Person on whom duty rests—Coal Mines Act 1911, ss 49, 50, 102(8)—General Regulations (Coal Mines) 1913 (SR & O 1913 No 748), regs 6, 7, 8. **Caulfield v P W Pickup Ltd** [1941] 2 510, Assizes.

Vehicles—

Safety measures to prevent accidents—'Running away' of vehicles—Mines and Quarries Act 1954, s 41. **Jones v National Coal Board** [1965] 1 221, Assizes.

Ventilation. *See* Statutory duty—Provision of ventilation, *ante*.

Ventilation—

Statutory duty. *See* Statutory duty—Provision of ventilation, *ante*.

Working facilities—

Ancillary rights. *See* Ancillary rights, *ante*.

Application for right to work seams underground—

Application to let down surface—'Hampering' of working—Evidence—Mines (Working Facilities and Support) Act 1923, s 3(1)—Costs—General rule. **Re An Application by the National Coal Board** [1952] 1 678, ChD.

Application to work and to let down surface—Deep mining—Subsidence—Basis of compensation to surface owners—Compensation for consequential damage—Costs—Mines (Working Facilities and Support) Act 1923, s 6(1), (5)—RSC Ord 54 o, r 12. **Re An Application of the National Coal Board** [1959] 3 58, ChD.

Conditions of grant—

Land vested in large number of owners having varied interests—Practicability of obtaining sufficient and enforceable rights from owners—Effect of Coal Act 1938—Position of Coal Commission—Coal Act 1938, ss 18, 22(5). **Re Sherwood Colliery Co Ltd** [1939] 1 88, Ry & Can Com.

Interim order—

Jurisdiction—Mines (Working Facilities and Support) Act 1923—RSC Ord 54 o, r 12. **Re An Application of the National Coal Board** [1958] 2 351, ChD.

Working of mine—

Letting down surface without compensation—

Plea of custom or prescription—Invalid plea. **Wolstanton Ltd, and Duchy of Lancaster v Newcastle-under-Lyme Borough Council** [1940] 3 101, HL.

Seam passing underground—

Seam passing under railway—Notice of intention to work—Counter-notice—Assessment of compensation—Statutory liability of mine owner to make good surface damage to railway if minerals worked—Hypothetical working and damage to be taken into account in assessing compensation—Mines (Working Facilities and Support) Act 1923, ss 15, 78(1), (2), (5), 78A(1), 79A(1), (2), 79B. **London & North Eastern Ry Co v B A Collieries Ltd** [1945] 1 51, HL.

Seams passing under sanitary works—Notice of intention to work—Particular seams not specified—Validity of notice—Waterworks Clauses Act 1847, s 22—Public Health Act 1875 (Support of Sewers) Amendment Act 1883. **Bolsover Urban District Council v Bolsover Colliery Co Ltd** [1947] 1 130, ChD.

Surface working—

Express reservation of underground working only—Whether implied right to enter upon surface excluded. **Re Wilson Syndicate Conveyance** [1938] 3 599, ChD.

Working places—

Security of—

Statutory duty. *See* Statutory duty—Security of road and working place, *ante*.

Workman—

Minimum wage—

Rate of minimum wage applicable in particular case—Whether within jurisdiction of the court or the trade tribunal. **McCarthy v Penrikyber Navigation Colliery Co Ltd** [1937] 4 597, CA.

COAST PROTECTION

Powers and duties of coast protection authority—

Duty to protect land against erosion or encroachment by sea—

Statute giving coast protection authority power to make order prohibiting excavation on seashore—Company extracting sand from seashore—Evidence that seashore being eroded—Extraction of sand one of possible causes of erosion—Order made by coast protection authority prohibiting extraction of sand except under licence—Whether order ultra vires—Coast Protection Act 1949, s 18. **British Dredging (Services) Ltd v Secretary of State for Wales and Monmouthshire** [1975] 2 845, QBD.

Works scheme—

Coast protection charges—

Time within which cost to be apportioned after completion of work to be specified in scheme—Whether mandatory or directory provision—Whether determination after nearly two years was substantial compliance with time limit of six months—Coast Protection Act 1949, s 7(4)(b)(5). **Cullimore v Lyme Regis Corp**n [1961] 3 1008, QBD.

COAST PROTECTION (cont)

Works scheme (cont)—

Compulsory acquisition of land—

Validity—Draft scheme incorporating plan providing for acquisition only of land on which wall and groynes to stand—Scheme adopted as, slightly amended—Amendments involved compulsory acquisition of strip on landward side of wall of more than eight acres and construction of promenade, some twelve feet wide, along length of strip—Compulsory power necessary to acquire land for promenade, but land for coast protection works obtainable by negotiation—Whether works scheme or compulsory purchase order valid—Whether land required for coast protection work—Coast Protection Act 1949 ss 4(3)(a), 6(1)(a) (2)(a)(c), 14. **Webb v Minister of Housing and Local Government** [1965] 2 193, CA.

CODICIL

Reviving revoked will. *See* **Will** (Revival—Codicil reviving revoked will).

Revocation of bequest in will. *See* **Will** (Codicil).

Revocation of will. *See* **Will** (Revocation—Codicil).

Revocatory clause—

Construction. *See* **Will** (Construction—Revocatory clause in codicil).

COHABITATION

Presumption of marriage from cohabitation. *See* **Marriage** (Presumption of marriage from cohabitation).

Resumption—

Amounting to condonation—

Divorce proceedings. *See* **Divorce** (Condonation—Cohabitation).

COIN COLLECTION

Will—

Gift—

Personal chattels. *See* **Will** (Gift—Personal chattels—Articles of personal use).

COINAGE

Currency control. *See* **Currency control**.

Offence. *See* **Criminal law** (Coinage offence).

COLLATERAL ADVANTAGE

Mortgage. *See* **Mortgage** (Collateral advantage).

COLLATERAL CONTRACT

See **Contract** (Collateral contract).

COLLECTION

Exhibition in public place—

Removal of article from collection. *See* **Criminal law** (Removal of articles from public building—Collection intended for permanent exhibition to public).

House to house—

Charitable purpose. *See* **Charity** (House to house collection).

COLLECTIVE BARGAINING

Generally. *See* **Industrial relations** (Collective bargaining).

Individual contracts of service. *See* **Master and servant** (Contract of service—Collective agreement).

Trade union—

Agreement between employer and unions. *See* **Trade union** (Collective agreement—Joint negotiating committee of employer and unions).

COLLEGE

See **Education** (College).

Generally. *See* **Education** (College).

University—

College incorporated by royal charter—

Whether a university. *See* **University** (What constitutes a university—Qualities and attributes—College incorporated by royal charter with limited right to confer degrees).

COLLISION

Admiralty—

Action in personam. *See* **Admiralty** (Jurisdiction—Action in personam—Collision).

Jurisdiction. *See* **Admiralty** (Jurisdiction—Collision).

Contributory negligence—

Collision at sea. *See* **Negligence** (Contributory negligence—Collision at sea).

Vehicles on road. *See* **Negligence** (Contributory negligence—Collision between vehicles on road).

Damages—

Interest—

Collision at sea. *See* **Interest** (Damages—Collision at sea).

Fatal accident—

Collision at sea—

Action by alien—Competency. *See* **Fatal accident** (Action—Competency—Alien—Action by alien against another alien—Collision between foreign vessels on high seas).

Negligence—

Collision at sea. *See* **Shipping** (Negligence in collision cases).

Shipping—

Collision regulations. *See* **Shipping** (Collision regulations).

COLLISION (cont)

Shipping (cont)—

Damages. *See* **Shipping** (Damages in collision cases).Generally. *See* **Shipping** (Collision).

Vehicles on road—

Proof of negligence. *See* **Negligence** (Proof of negligence—Collision between vehicles on road).**COLLUSION**Divorce. *See* **Divorce** (Collusion).**COLONIAL COURTS**Trinidad and Tobago. *See* **Trinidad and Tobago** (Colonial courts).**COLONIAL GOVERNMENT**

Public authorities—

Liability on debenture—

Mauritius. *See* **Mauritius** (Public authorities—Colonial government).**COLONIAL LEGISLATION***See* **Statute** (Colonial legislation).**COLONIAL STOCK**

Petition of right—

Right of person interested in colonial stock to present petition of right. *See* **Petition of right** (Colonial stock).

Transfer—

Right to unpaid interest. *See* **Stock** (Transfer of stock).**COLONY**

Colonial courts—

Trinidad and Tobago— *See* **Trinidad and Tobago** (Colonial courts).**COLOUR**Discrimination on grounds of colour. *See* **Race relations** (Discrimination).Trade mark. *See* **Trade mark** (Mark—Representation or description of external appearance of goods—Colour scheme).**COMMENCEMENT**Statute. *See* **Statute** (Commencement).**COMMERCIAL COURT**

Damages—

Interest. *See* **Interest** (Damages—Commercial cases).

Practice—

Date for hearing—

Waiting list—Vacated dates—Setting down for trial—Summonses—Estimated duration—Commercial Court Users Liaison Committee. **Practice Note** [1968] 1 399, QBD.

Pleading—

Particulars—Marine insurance. *See* **Pleading** (Particulars—Marine insurance).

Summons for transfer of action—

Directions on, or soon after, summons for transfer of action to commercial list—Time estimate to be given on entering summons for transfer or directions—Applications for directions may by consent be heard in judge's private room. **Practice Direction** [1962] 3 527, QBD.**COMMISSION**Agent. *See* **Agent** (Commission).

Auctioneer—

Generally. *See* **Auctioneer** (Commission).

Sale by court—

Administration proceedings. *See* **Administration of estates** (Practice—Sale by court—Commission).

Estate agent—

Generally. *See* **Estate agent** (Commission).

Charge on deposit and purchase moneys for commission—

Registration as general equitable charge. *See* **Land charge** (General equitable charge—Charge on land—Estate agents' contract giving charge on deposit and purchase moneys for their commission).Payable under contract of employment. *See* **Master and servant** (Remuneration—Commission).**COMMISSION OF INQUIRY***See* **Inquiry** (Commission of inquiry).**COMMISSIONERS OF CUSTOMS AND EXCISE***See* **Customs and excise** (Commissioners of Customs and Excise).**COMMITTAL**Breach of warrant of arrest of vessel. *See* **Admiralty** (Arrest of vessel—Breach of arrest—Contempt of court—Attachment or committal of master).Committal of offender to quarter sessions for sentence. *See* **Quarter sessions** (Committal of offender to quarter sessions for sentence).

Contempt of court—

Generally. *See* **Contempt of court** (Committal).

Summary committal—

Criminal contempt. *See* **Contempt of court** (Criminal contempt—Jurisdiction—Summary committal).

COMMITTAL (cont)

Contempt of court (cont)—

Wardship proceedings. *See* **Ward of court** (Contempt of court in wardship proceedings—Committal).

Custody order—

Committal for breach of order—

Refusal of magistrates to stay execution of order. *See* **Minor** (Custody—Order—Breach—Breach by father of order made in favour of mother).

Fugitive accused of extradition crime. *See* **Extradition** (Committal).

Indictment—

Quashing of indictment following committal. *See* **Indictment** (Committal).

Non-payment of judgment debt. *See* **Debt** (Non-payment of judgment debt—Committal).

Proceedings—

Depositions. *See* **Criminal evidence** (Committal for trial—Depositions).

Generally. *See* **Criminal law** (Committal—Preliminary hearing before justices).

Guilty plea—

Admissibility in evidence. *See* **Criminal evidence** (Admissions and confessions—Plea of guilty at magistrates' court).

Judges' Rules. *See* **Criminal evidence** (Admissions and confessions—Committal proceedings—Judges' Rules).

Jurisdiction of justices to state a case. *See* **Case stated** (Magistrates' courts—Jurisdiction—Power of examining justices to state a case—Committal proceedings).

Newspaper report—

Disclosure of accused's previous convictions. *See* **Criminal evidence** (Character of accused—Newspaper report—Report of committal proceedings).

Quarter sessions—

Committal to quarter sessions for sentence—

Appeal. *See* **Quarter sessions** (Appeal to—Appeal against committal of offenders to quarter sessions for sentence).

Sentence—

Committal to Crown Court for sentence. *See* **Crown Court** (Committal of offender to Crown Court for sentence).

Trial—

Committal for trial—

Crown Court. *See* **Crown Court** (Committal for trial at Crown Court).

Generally. *See* **Criminal law** (Committal).

Young person. *See* **Children and young persons** (Trial of persons under 17—Committal for trial).

Wardship proceedings—

Contempt of court. *See* **Ward of court** (Contempt of court in wardship proceedings—Committal).

COMMITTEE

Legal aid committee—

Powers in relation to grant of legal aid certificate. *See* **Legal aid** (Certificate—Grant—Matters to be taken into consideration by legal aid committee in determining whether to grant or refuse certificate).

Local authority—

Appointment. *See* **Local authority** (Appointment of committees).

Meeting—

Presence of non-member. *See* **Meeting** (Committee meeting—Presence of non-member).

COMMITTEE OF INSPECTION

Bankruptcy. *See* **Bankruptcy** (Committee of inspection).

COMMON GAMING HOUSE

See **Gaming** (Gaming house—Common gaming house).

COMMON INVESTMENT FUNDS

Investment of funds in court. *See* **Public trustee** (Investment of funds in court).

COMMON LAW CHEAT

Conspiracy. *See* **Criminal law** (Conspiracy—Common law cheat).

COMMON MARKET

See **European Economic Community**.

COMMON MISTAKE

Contract. *See* **Contract** (Mistake—Common mistake).

See **Mistake** (Mistake of fact—Common mistake).

COMMONS

Animals straying on to highway. *See* **Animal** (Negligence—Highway—Animal straying on to highway—Defence—Common land).

Compulsory purchase—

Authorisation—

Procedure. *See* **Compulsory purchase** (Authorisation—Procedure—Common).

Registration—

Claims to rights of common—

Declaration that claimant had no rights as claimed—Locus standi of applicant. *See* **Declaration** (Jurisdiction—Locus standi of applicant—Sufficiency of interest to support claim—Commons registration).

COMMONS (cont)

Registration (cont)—

Common land and rights of common—

Effect of registration—Conclusive evidence of matters registered—Provisional registration—Whether evidence of matters registered although not conclusive evidence—Commons Registration Act 1965, s 10. *Cooke v Amey Gravel Co Ltd* [1972] 3 579, ChD.

Land subject to rights of common—Rights of common—Non-registration—Effect—Rights not exercisable—No rights of common over land registered within statutory period—Land registered by authority as common land shortly before expiry of statutory period—Objection to registration by owner of land—Hearing by commissioner—Whether open to commissioner to consider whether rights of common existed at date of registration—Whether rights extinguished in consequence of failure to register them within statutory period—Whether commissioner precluded from finding that land common land as being land subject to rights of common—Commons Registration Act 1965, ss 1(2)(b), 22(1). *Central Electricity Generating Board v Clwyd County Council* [1976] 1 251, ChD.

Disputed claims—

Jurisdiction—Commons Commissioner—Residual jurisdiction of High Court—Circumstances in which residual jurisdiction exercisable—Application for registration not made bona fide. *Wilkes v Gee* [1973] 2 1214, CA.

Town or village green—

Land on which inhabitants of any locality have customary right—Right to indulge in lawful sports and pastimes—Custom—Use of land since time immemorial—Evidence of long usage—Usage as of right—Evidence that right confined to inhabitants of locality—Land in town centre—Indirect evidence that land used as of right by local inhabitants for sports and pastimes between 1651 and 1875—Inference of customary right since time immemorial—Commons Registration Act 1965, ss 1(1), 22(1). *New Windsor Corp v Mellor* [1975] 3 44, CA.

Right of common—

Abandonment—

Evidence of abandonment—Necessity for person entitled to right to demonstrate fixed intention never thereafter to assert right—Suspension of right—Effect of suspension—Common of pasture on down—Requisitioning of down by Ministry during period of war—Arrangement between Ministry and commoners' association to allow commoners to graze down under control of association—Continuation of arrangement with owners of down after termination of requisition—Whether continuation of arrangement evidence of intention to common rights. *Tehidy Minerals Ltd v Norman* [1971] 2 475, CA.

Creation—

Prescription—Lost modern grant—Presumption of grant—Conditions giving rise to presumption—Circumstances in which presumption will be displaced—Proof that existence of grant impossible—Direct evidence that no such grant made not displacing presumption. *Tehidy Minerals Ltd v Norman* [1971] 2 475, CA.

Prescription—Lost modern grant—Presumption of grant—Period of enjoyment of right—Length of period necessary to establish presumption. *Tehidy Minerals Ltd v Norman* [1971] 2 475, CA.

Prescription—Statutory prescription—Period of enjoyment—Common of pasture on down—Requisitioning of down by Minister during period of war—Effect of requisition—Whether interruption of enjoyment—Period of enjoyment not period next before the suit or action—Prescription Act 1832, ss 1, 4. *Tehidy Minerals Ltd v Norman* [1971] 2 475, CA.

Extinguishment—

Right of common appurtenant—Common of pasture—Purchase of part of land over which right extended by owner of common of pasture—Whether right of pasturage over whole of land thereby extinguished. *White v Taylor* [1967] 3 349, ChD.

COMMONWEALTH

Colony—

Sierra Leone—

Colony and protectorate—Independent state created by Sierra Leone Independence Act 1961, s 1—Prior Order in Council establishing constitution—Independent state combining Crown colony and protectorate—Colony a settlement within British Settlements Act 1887—Protectorate subject to jurisdiction under Foreign Jurisdiction Act 1890, s 1—Validity of Order in Council as within power to establish laws and institutions for peace, order and good government—British Settlements Act 1887, s 2. *Buck v Attorney-General* [1966] 1 882, CA.

Court—

Judgments, orders and other documents required for use in. *See Practice* (Document—Documents for use abroad—Certification—Judgment, orders and other filed documents for use in foreign or Commonwealth courts).

Extradition—

Fugitive offenders. *See Extradition* (Fugitive offender).

Immigrant. *See Commonwealth immigrant.*

Precedent—

House of Lords decision—

Whether to be applied in commonwealth country. *See Precedent* (Commonwealth country).

COMMONWEALTH CITIZEN

Detention—

Illegal entrant. *See Immigration* (Detention—Illegal entrant).

COMMONWEALTH IMMIGRANT

Admission—

Condition—

Appeal against condition of admission. *See Appeal*—Appeal against condition of admission, *post*.

COMMONWEALTH IMMIGRANT (cont)

Admission (cont)—

Condition (cont)—

Ceasing to have effect on examination on re-entry—Condition extant on re-entry without examination—Commonwealth Immigrants Act 1962, Sch 1, Pt 1, para 2(6). *Qureshi v Harrington* [1970] 1 262, QBD.

Examination by immigration officer—

Time of examination—Examination to take place within 24 hours of immigrant's landing—Onus of proving time of arrival in country—Notice refusing admission—Commonwealth Immigrants Act 1962, Sch 1, para 1(2), para 2(3). *R v Brixton Prison Governor, Ex parte Ahsan* [1969] 2 347, QBD.

Grounds for admission—

Attendance on course of study—Refusal of admission although genuine intention to attend course. *See* Admission—Refusal of admission—Power to refuse admission—Immigrant seeking admission on ground of attendance on course of study—Immigrant showing genuine intention to attend course, *post*.

Attendance on course of study—Right of immigration officer to interrogate and test immigrant as to his suitability to attend course of study—Commonwealth Immigrants Act 1962, s 2(3)(b). *R v Chief Immigration Officer Bradford Airport, Ex parte Ashiq Hussain* [1969] 3 1601, QBD.

Immigrant in position to support himself otherwise than by taking employment or engaging for reward in business etc.—Proof—Immigrant having monetary resources to draw on or relative in England who genuinely able to undertake financial responsibility for immigrant's stay in England—Commonwealth Immigrants Act 1962, s 2(3)(c). *R v Lympe Airport Chief Immigration Officer, Ex parte Amrik Singh* [1968] 3 163, QBD.

Refusal of admission—

Application to make infant seeking admission ward of court—Wardship jurisdiction not exercisable so as to interfere with statutory control of immigration—Commonwealth Immigrants Act 1962, s 2(1). *Re A (an infant)* [1968] 2 145, ChD. and CA.

Discretion of immigration officer—Duty to act fairly—Child under sixteen of Commonwealth citizen—Dispute over age of immigrant—Examination by immigration officers and medical officer who formed view immigrant was over sixteen years old—Refusal of admission—Whether rules of natural justice apply—Mandamus, not certiorari nor habeas corpus, appropriate remedy if further investigation to be ordered—Commonwealth Immigrants Act 1962, s 2(2)(b), s 3(1), Sch 1, paras 1(1), 2(1), (3). *Re K (H)(an infant)* [1967] 1 226, QBD.

Discretion of immigration officer—Exercise of discretion—Factors to be considered—Immigrant refused admission for period of admission requested—Whether part of immigration officer's duty to consider whether applicant for admission entitled to admission for shorter period than requested—Commonwealth Immigrants Act 1962, s 2(1), as substituted by Commonwealth Immigrants Act 1968, s 2(1). *R v Secretary of State for Home Affairs, Ex parte Harnaik Singh* [1969] 2 867, QBD.

Notice of refusal—Delivery of notice to immigrant—Notice delivered by immigration officer to immigrant's legal adviser at airport—Immigrant illiterate and having no knowledge of English—Immigrant in another part of airport at time notice delivered—Whether necessary that notice should be delivered by hand to immigrant personally—Commonwealth Immigrants Act 1962, Sch 1, para 2(1). *R v Chief Immigration Officer of Manchester Airport, Ex parte Insah Begum* [1973] 1 594, CA.

Notice of refusal—Time within which notice to be given—Notice to be given not later than 12 hours after conclusion of immigrant's examination—Examination not concluded until all information to hand—Commonwealth Immigrants Act 1962, Sch 1, para 2(3). *R v Chief Immigration Officer of Manchester Airport, Ex parte Insah Begum* [1973] 1 594, CA.

Power to refuse admission—Immigrant seeking admission on ground of attendance on course of study—Immigrant showing genuine intention to attend course—Immigration officer concluding that primary purpose of entry not attendance on course but settlement in United Kingdom—Whether genuine intention of attending course precluding officer from refusing admission—Commonwealth Immigrants Act 1962, s 2(3)(b). *R v Immigration Appeals Adjudicator, Ex parte Perween Khan* [1972] 3 297, QBD.

Power to refuse admission—Power not exercisable when person ordinarily resident in United Kingdom—Pakistani seaman deserting ship and living in United Kingdom for two years in contravention of statutory conditions imposed for entry to United Kingdom—Seaman subsequently paying short visit abroad—Admission refused on return—Whether seaman a person 'ordinarily resident' in United Kingdom—Commonwealth Immigrants Act 1962, s 2(2)(a), as substituted by the Commonwealth Immigrants Act 1968, s 2(1). *Re Abdul Manan* [1971] 2 1016, CA.

Removal of immigrant—Detention pending further examination or removal—Power of detention discretionary—Power to order removal not conditional on detaining immigrant throughout period prior to removal—Commonwealth Immigrants Act 1962, Sch 1, paras 1(2), 3(4), 4. *R v Secretary of State for the Home Department, Ex parte Anosike* [1971] 2 1405, QBD.

Removal of immigrant—Directions for removal—Time for giving directions—Whether directions must be given within reasonable time—Commonwealth Immigrants Act 1962, Sch 1, paras 3(2), (3) and 4(1). *R v Secretary of State for the Home Department, Ex parte Mohammed Rafiq* [1970] 3 821, QBD.

Appeal—

Appeal against condition of admission—

Determination of appeal—Decision in accordance with 'immigration rules applicable'—Immigration rules—Validity—Rules 'being rules published and laid before Parliament'—Command paper setting out rules presented to Parliament—Whether rules 'laid before Parliament'—Immigration Appeals Act 1969, ss 8(1), 24(2). *R v Immigration Appeal Tribunal, Ex parte Joyles* [1972] 3 213, QBD.

Recommendation for deportation against. *See* Deportation—Recommendation for deportation—Appeal, *post*.

COMMONWEALTH IMMIGRANT (cont)

Commonwealth citizen other than person holding United Kingdom passport—

United Kingdom passport—

Passport issued to holder by government of United Kingdom—Passport issued by Governor of Mauritius—Whether holder of passport holder of United Kingdom passport—Commonwealth Immigrants Act 1962, s 1(2)(b), (3). **R v Secretary of State for the Home Department, ex parte Shadoo Bhuroshah** [1967] 3 831, CA.

Conspiracy to evade immigration controls. *See* **Criminal law** (Conspiracy—Act injurious to public interest—Immigration controls—Evasion).

Deportation—

Immigrant refused admission to United Kingdom. *See* Admission—Refusal of admission—Removal of immigrant, *ante*.

Recommendation for deportation—

Appeal—Appellant committed to quarter sessions for sentence—Sentenced to three months' imprisonment—Recommendation for deportation made—No right of appeal against recommendation to Court of Criminal Appeal unless right of appeal against rest of sentence—Criminal Appeal Act 1907, s 21—Commonwealth Immigrants Act 1962, s 8(4). **R v Lynch** [1965] 3 925, CCA.

Appeal—Appeal lies against recommendation alone, not sentence—Recommendation not part of punishment—Legal aid—Procedure—Acknowledgment of notice to be attached to papers—Commonwealth Immigrants Act 1962, s 7(1), s 8(1), (4). **R v Edgehill** [1963] 1 181, CCA.

Prohibition of making recommendation where court satisfied that offender was ordinarily resident in United Kingdom for continuous period of five years ending with date of conviction—Exclusion of period of detention of six months or more under sentence of any court—Construction of 'ordinarily resident' and 'any court'—Offender to be invited to give evidence concerning residence—Commonwealth Immigrants Act 1962, s 7(2). **R v Edgehill** [1963] 1 181, CCA.

Recommendation made while prior deportation order was still in force—Jurisdiction—Deportation order remained in force notwithstanding deportee had left country and returned, until revoked or until it ceased to have effect by statute (s 11(3))—Whether jurisdiction to recommend deportation while prior deportation order in force—Commonwealth Immigrants Act 1962, s 9(1), (3), s 11(1), (3). **R v Kelly** [1966] 3 282, CCA.

Sentence of life imprisonment—Whether recommendation for deportation appropriate in case of fixed sentence of life imprisonment—Jurisdiction of Court of Criminal Appeal to deal with recommendation—Criminal Appeal Act 1907, s 21—Homicide Act 1957, s 9(1)—Commonwealth Immigrants Act 1962, s 8(4). **R v Assa Singh** [1965] 1 938, CCA.

Generally. *See* Immigration

Grounds for admission. *See* Admission—Grounds for admission, *ante*.

Refusal of admission. *See* Admission—Refusal of admission, *ante*.

Removal of immigrant refused admission to United Kingdom. *See* Admission—Refusal of admission—Removal of immigrant, *ante*.

COMMONWEALTH PREFERENCE

See Customs and excise (Duties—Commonwealth preference).

COMMORIENTES

Administration of estates. *See* Administration of estates (Commorientes).

COMMUNION VESSEL

Sale—

Faculty. *See* Ecclesiastical law (Faculty—Sale of chattel—Communion vessel).

COMMUNITY HOUSE

Will—

Specific bequests. *See* Will (Gift—Specific bequests—Community house).

COMPANIES LIQUIDATION ACCOUNT

Claim to assets in. *See* Company (Winding-up—Unclaimed or undistributed assets—Claim to assets in Companies Liquidation Account).

COMPANY

Accounting period—

Income tax. *See* Income tax (Accounting period—Company).

Acknowledgment of debt—

Limitation of action. *See* Limitation of action (Acknowledgment—Debt—Company).

Action—

Trade union. *See* Trade union (Legal proceedings).

Advances made to company—

Issue of loan capital—

Duty. *See* Stamp duty (Issue of loan capital—Issue—Advances made to company).

Allotment of shares. *See* Shares—Allotment, *post*.

Alteration of articles of association. *See* Articles of association—Alteration, *post*.

Alteration of objects clause. *See* Objects clause—Alteration, *post*.

Amalgamation—

Disposal of assets—

Capital gains tax. *See* Capital gains tax (Disposal of assets—Company amalgamations).

Scheme of arrangement. *See* Scheme of arrangement, *post*.

Annual return—

Default—

Officer. *See* Officer—Default—Annual return, *post*.

COMPANY (cont)**Appearance—****Place for entering appearance—**

Writ issued in district registry against company—Company's head office and registered office in London, and factory in district of district registry. *See Practice* (Appearance—Place for entering appearance—Writ issued in district registry against company).

Apportionment of undistributed income for tax purposes. *See Income tax* (Undistributed income—Apportionment).

Arrangement. *See Scheme of arrangement, post.*

Articles of association—**Alteration—**

Article making special resolution to alter articles incapable of being passed if a particular shareholder objects—Validity—Companies Act 1948, s 10. *Bushell v Faith* [1969] 1 1002, CA.

Fraud on minority shareholders—Restriction on transfer of shares—Special resolution enabling sale to outsiders with sanction of an ordinary resolution—Impeachment—Discrimination between majority and minority shareholders—Intention of voters—Sale price of majority holding to be paid partly out of assets of company. *Greenhalgh v Arderne Cinemas Ltd* [1950] 2 1120, CA.

Oppression—Alteration of voting rights attached to management shares on increase of share capital—Continuity in control of company maintained—Alteration for benefit of company as a whole—Whether oppression. *Rights and Issues Investment Trust Ltd v Stylo Shoes Ltd* [1964] 3 628, ChD.

Restriction on transfer of shares—Whether applicable to all sales both to members and non-members. *Greenhalgh v Mallard* [1943] 2 234, CA.

Construction—

Power to expel member—Company limited by guarantee—Power of expulsion provided for in articles—Direct power. *Gaiman v National Association for Mental Health* [1970] 2 362, ChD.

Principle to be adopted. *Holmes v Keyes (Lord)* [1958] 2 129, CA.

Directors—

Provision for removal—Petition by removed director for winding-up. *See Compulsory winding-up—Just and equitable—Company in substance a partnership—Understanding that parties would participate in management of company—Provision in articles for removal of directors, Petitioner removed from board and excluded from any part in management of Company, post.*

Retirement by rotation—Article providing for annual retirement of one-third of number or if number not a multiple of three then the number nearest to but not exceeding one-third—Only two directors subject to article. *Re David Moseley & Sons Ltd* [1939] 2 791, ChD.

Retirement by rotation—Re-appointment—Retiring directors eligible for re-appointment—Retiring directors in certain circumstances 'deemed to have been re-elected'—Annual general meeting—Agenda including, as consecutive items, re-appointment of retiring directors and election of new directors in their place—Proposed resolution for re-appointment lost on show of hands—Retiring directors demanding poll—Vacancies not filled—Adjournment of meeting for decision on both items—Letter reminding shareholders of date of adjourned meeting, referring to poll only—Chairman closing adjourned meeting after adverse poll—Remaining members electing new directors—No re-election of retiring directors—Purported appointment of new directors of no effect. *Robert Batcheller & Sons Ltd v Batcheller* [1945] 1 522, ChD.

Retirement by rotation—Re-appointment—Retiring director to continue in office until vacancy filled, unless resolution to reduce number of directors in office passed after due notice—Retiring director eligible for re-appointment—Proposed resolution for re-appointment lost—Vacancy not filled—Right of retiring director to continue in office. *Grundt v Great Boulder Proprietary Gold Mines Ltd* [1948] 1 21, CA.

Effect—

Contract between company and member—Action by member in representative capacity against director and company—Article providing for arbitration—Whether submission in writing for purposes of stay of action—Arbitration Act 1889, ss 4, 27. *Beattie v E & F Beattie Ltd* [1938] 3 214, CA.

Contract between company and member—Directors—Article appointing director for a term of years—Change of article—Breach of contract. *Shirlaw v Southern Foundries (1926) Ltd, and Federated Foundries Ltd* [1940] 2 445, HL.

Contract between members and directors—Provision that directors 'will take...at a fair value' shares offered to them—Companies Act 1948, s 20(1). *Rayfield v Hands* [1958] 2 194, ChD.

Directors—Article providing director with special voting rights on resolution to remove him from office—Validity—Companies Act 1948, s 184(1). *Bushell v Faith* [1970] 1 53, HL.

Form—

Company limited by guarantee—Form in accordance with Tables B, C, D and E—Article not corresponding to any provision in relevant table—Whether article invalid. *Gaiman v National Association for Mental Health* [1970] 2 362, ChD.

Invalid—

Contrary to Companies Act—Trust. *See Trust and trustee* (Constructive trust—Shares in company—Article of association providing for automatic transmission of shares to director's widow on his death).

Members' rights—

Members—Article of private company providing that on the death of a member his shares to be offered to other members—Whether 'members' included sole surviving member—Interpretation Act 1889, s 1(1)—Companies Act 1948, Sch 1, Table A. *Jarvis Motors (Harrow) Ltd v Carabott* [1964] 3 89, ChD.

COMPANY (cont)**Articles of association (cont)—****Mistake—**

Rectification of mistake—Jurisdiction of court—Equitable jurisdiction of court to rectify documents—Whether applicable to articles of association—Companies (Consolidation) Act 1908, s 14. *Scott v Frank F Scott (London) Ltd* [1940] 3 508, CA.

Power—

Removal of ordinary directors—Survivorship. *See* Director—Life director—Power to remove other directors—Joint power conferred on two permanent life directors—Construction of articles of association, *post*.

Restriction on transfer of shares. *See* Transfer of shares—Restriction imposed by articles of association, *post*.

Power—

Removal of ordinary directors—Survivorship. *See* Directors—Life directors—Power to remove other directors—Joint power conferred on two permanent life directors—Construction of articles of association, *post*.

Assets—

Crown's right to assets of dissolved company as bona vacantia. *See* Winding-up—Dissolution—Bona vacantia, *post*.

Transfer from one associated company to another—

Stamp duty. *See* Stamp duty (Transfer of Property from one associated company to another).

Winding-up—

Unclaimed or undistributed assets. *See* Winding-up—Unclaimed or undistributed assets, *post*.

Assignment of lease by company. *See* Landlord and tenant (Assignment of lease—Assignment by company).

Associated company—**Transfer of property—**

Stamp duty. *See* Stamp duty (Transfer of property from one associated company to another).

Auditor—**Duty—**

Functions—Scope. *Fomento (Sterling Area) Ltd v Selsdon Fountain Pen Co Ltd* [1958] 1 11, HL.

Negligence—

Standard of care and skill required in audit—Stocktaking procedure—Alteration of invoices giving cause for suspicion—Complete examination required, rather than acceptance of managing director's assurance—Companies Act 1948, s 162(1). *Re Thomas Gerrard & Son Ltd* [1967] 2 525, ChD.

Whether 'officer of company' within criminal enactments. *See* Officer—Auditor—Whether 'officer of company' within criminal enactments, *post*.

Balance sheet—**Acknowledgment of debt—**

Limitation of action. *See* Limitation of action (Acknowledgment).

Failure to annex to annual return. *See* Officer—Default—Annual return—Documents to be annexed to annual return—Failure to annex documents to return, *post*.

Bank—**Separate accounts—**

Right to combine or set off. *See* Bank (Account—Separate accounts—Right to combine or set-off—Company).

Board of Trade investigation. *See* Investigation by Board of Trade, *post*.

Bona vacantia—

Dissolution of company, on. *See* Winding-up—Dissolution—Bona vacantia, *post*.

Bonus debentures—

Income tax. *See* Income tax (Profits—Shareholders—Bonus debentures).

Book debts—**Charge on—**

Registration. *See* Charge—Registration—Charge on book debts, *post*.

Borrowing—

Ultra vires. *See* Objects clause—Construction—Borrowing power declared as an object—Provision that objects were independent objects—Company's business changed and new business ultra vires—Money borrowed from bank to which copy of memorandum supplied—*Whet*

Business sold to company by vendor—

Purchase price to be paid 'out of first profits of purchasers in priority to all dividends'—Construction. *Stewart v Sashalite Ltd* [1936] 2 1481, KBD.

Capital—**Capital distribution—**

Income tax. *See* Income tax (Capital or income receipts—Capital distribution by company).

Proposal to increase capital—

Variation of members' rights. *See* Variation of members' rights—Proposal to increase capital, *post*.

Reduction. *See* Reduction of capital, *post*.

Stamp duty on issue of loan capital. *See* Stamp duty (Loan capital).

Change of name. *See* Name—Change of name, *post*.

Charge—**Created by company struck off register—**

Restoration of company's name to register—Validation of acts done on company's behalf before restoration. *See* Restoration to register—Validation of acts done on company's behalf before restoration—Registration of legal charge, *post*.

COMPANY (cont)

Charge (cont)—

Creation—

Before or after acquisition by company of property comprised in charge—Purchase of land by company, part of purchase price being left on mortgage by the vendor—Particulars not registered—Companies Act 1948, ss 95, 97. **Capital Finance Co Ltd v Stokes** [1968] 3 625, CA.

Enforceability—

Benefit of directors—Company acting through directors for benefit of directors. **E B M Co Ltd v Dominion Bank** [1937] 3 555, PC.

Floating charge—

Crystallisation—Appointment of receiver by debenture holder—Assets of company—Claim for money due under contract of sale—Set-off—Claim subject to right of set-off—Debt owed by company to purchasers under previous contract—Right of purchasers to set off debt against sum due to company under contract of sale—Contract of sale made prior to crystallisation of charge—Goods delivered after crystallisation—Purchasers' obligation to pay arising after crystallisation—Whether purchasers entitled to set-off as against debenture holder. **Rother Iron Works Ltd v Canterbury Precision Engineers Ltd** [1973] 1 394, CA.

Crystallisation—Appointment of receiver by debenture holders—Effect—Lien—Contractual lien—Pre-appointment contract—Creditor having general lien under contract with company—Contract for carriage of company's goods by creditor—Contract giving lien on goods for any moneys whatsoever due to creditor—Lien exercisable by creditor after obtaining possession—Contract made before appointment of receiver—Creditor obtaining possession of goods after appointment—Whether lien for all outstanding debts of company to creditor enforceable against receiver. **George Barker (Transport) Ltd v Eynon** [1974] 1 900, CA.

Crystallisation—Appointment of receiver by debenture holder—Goods supplied by company on credit before and after charge became fixed—Set-off—Purchasers of goods obtaining, after receiver appointed, assignment of debts due from company which arose after the debenture was issued but before receiver appointed—Whether the assigned debts could be set-off against the purchasers' indebtedness to plaintiff company for goods bought. **N W Robbie & Co Ltd v Witney Warehouse Co Ltd** [1963] 3 613, CA.

Debenture—Effect of winding up on. *See* Debenture—Floating charge—Created within six months of winding-up, *post*.

Effect in winding-up of company. *See* Winding-up—Floating charge—Effect, *post*.

Priority of payment in compulsory winding-up. *See* Compulsory winding-up—Costs—Power to order costs of winding-up to be paid out of assets—Priority—Assets insufficient to meet liabilities—Floating charge under a debenture on whole of assets, *post*.

Scotland—Validity. *See* Conflict of laws (Company—Floating charge—Company registered in England with property in Scotland—Floating charge on whole undertaking ranking as first charge—Floating charge unknown to Scots law).

Priority—

Debenture. *See* Debenture—Priority, *post*.

Registration—

Certificate of registration—Conclusiveness—Charge thereafter effective according to its tenor—Particulars given to registrar of companies contained specified limitations of aggregate amounts of advances—Registrar gave certificates of registration mentioning the specified amounts—Deeds of charge extended also to moneys owing to mortgagees for goods supplied—Voluntary winding-up of company—Whether charges were void against liquidator for want of registration, insofar as security was conferred thereby in excess of specified aggregate amounts of advances—Companies Act 1948, s 98(2)—Companies (Forms) Order 1949 (S I 1949 No 382), Sch, Form 47. **Re Mechanisations (Eaglescliffe) Ltd** [1964] 3 840, ChD.

Certificate of registration—Conclusiveness—Date wrongly entered on charge—Wrong date included on certificate—Effect of issue of certificate—Companies Act 1948, s 98(2). **Re C L Nye Ltd** [1970] 3 1061, CA.

Certificate of registration—Conclusiveness—Date wrongly entered on charge—Particulars submitted to registrar of companies within 21 days of erroneous date, but more than 21 days of actual date of execution—Companies Act 1948, s 98(2). **Re Eric Holmes (Property) Ltd** [1965] 2 333, ChD.

Charge created by company—Deposit of title deeds—Equitable charge—Deposit of deeds giving rise to presumption of charge—Whether charge created by company or arising by operation of law—Companies Act 1948, s 95(1). **Re Wallis & Simmonds (Builders) Ltd** [1974] 1 561, ChD.

Charge on book debts—Authority to debtor to pay creditor a named sum out of next payment due—Companies Act 1929, s 79(6). **Ashby, Warner & Co Ltd v Simmons** [1936] 2 697, CA.

Charge on book debts—Authority to third person to pay to company's account at bank all moneys due to company under a contract—Instructions 'to be regarded as irrevocable unless the bank should consent to their cancellation'—Companies Act 1929, s 79(2)(e). **Re Kent & Sussex Sawmills Ltd** [1946] 2 638, ChD.

Charge on book debts—Deposit of hire-purchase agreements by plaintiff company with finance company in accordance with terms of letter of hypothecation—Loan by finance company to plaintiff company—Creditors' voluntary liquidation of plaintiff company—No registration under s 95 of Companies Act 1948—Whether charge on 'book debts'—Whether 'created' at time of deposit—Companies Act 1948, s 95(1),(2)(e). **Independent Automatic Sales Ltd v Knowles & Foster** [1962] 3 27, ChD.

COMPANY (cont)

Charge (cont)—

Registration (cont)—

Charge on book debts—Letter of authority authorising moneys payable under exports guarantee policy to be paid to bank—Foreign buyers unable to meet bill of exchange discounted by bank—Amount of bill of exchange was price payable by foreign buyers on export sale within policy—Liquidation of vendor company—Whether letter of authority was a charge on vendor company's book debts so as to be void as against liquidator for want of registration—Companies Act 1948, s 95(1), (2)(e). **Paul & Frank Ltd v Discount Bank (Overseas) Ltd** [1966] 2 922, ChD.

Deposit of documents—Equitable charge—Deposit of title deeds to secure debt owed by third party—Whether deposit creating a registrable charge or merely a lien on title deeds—Companies Act 1948, s 95(1). **Re Wallis & Simmonds (Builders) Ltd** [1974] 1 561, ChD.

Deposit of documents—Whether common law lien on documents exists independently of equitable charge arising from deposit. *See* **Lien** (Deposit of documents of title).

Extension of time—Action pending in which validity of charge in issue—Equitable charge by written undertaking to deposit title deeds to freehold block of flats—Discretion of court—Written undertaking was evidence of equitable charge—Not necessary to prove validity of charge on application for extension of time—Companies Act 1948, s 101. **Re Heathstar Properties Ltd (No 2)** [1966] 1 1000, ChD.

Extension of time—Companies Act 1948, s 101. **Re Kris Cruisers Ltd** [1948] 2 1105, ChD.

Rectification of register. **Re Mechanisations (Eaglescliffe) Ltd** [1964] 3 840, ChD.

Rectification of register—Evidence—Best evidence available. **Re Heathstar Properties Ltd** [1966] 1 628, ChD.

Rectification of register—Extension of time—Interim relief sought pending hearing of summons for extension of time for registering charge to be heard with cross-examination of witnesses—Issues of fact—Court should have best evidence available—Summons stood over for hearing with cross-examination of witnesses—No jurisdiction to grant interim relief, pending hearing, under Companies Act 1948, s 101. **Re Heathstar Properties Ltd** [1966] 1 628, ChD.

Rectification of register—Omission or mis-statement of particular—Extent of rectification—Deletion of registration as a whole outside power—Companies Act 1948, s 101. **Re C L Nye Ltd** [1970] 3 1061, CA.

Unpaid vendor's lien—Property sold to company—Subsequent charge by company in favour of third party—Unpaid vendor's lien not registered—Whether lien effective against third party—Companies Act 1948, s 95. **London and Cheshire Insurance Co Ltd v Laplagrene Property Co Ltd** [1971] 1 766, ChD.

Validity—Mortgage—Security for bank overdraft—Particulars submitted to registrar of companies within 21 days of erroneous date, but more than 21 days after actual date—Charge void against liquidator—Companies Act 1948, s 95(1). **Re C L Nye Ltd** [1970] 3 1061, CA.

Charge on book debts—

Registration. *See* **Charge**—Registration—Charge on book debts, *ante*.

Charging order—

Effect—

Charging order absolute on shares standing in name of judgment debtor—Transfers executed before date of order—Articles of company in regard to transfers not complied with—Shares still registered in name of judgment debtor—Rights of purchasers as against judgment creditor. **Hawkes v McArthur** [1951] 1 22, ChD.

Charity—

Whether company a charity. *See* **Charity** (Company—Objects—Evidence—Evidence whether objects charitable).

Close company—

Taxation. *See* **Income tax** (Close company).

Companies Liquidation Account—

Claim to assets in. *See* **Winding-up**—Unclaimed or undistributed assets—Claim to assets in Companies Liquidation Account, *post*.

Company incorporated by special Act of Parliament—

Alteration of objects clause. *See* **Objects clause**—Alteration—Company incorporated by private Act of Parliament later registered as limited company, *post*.

Company limited by guarantee—

Expulsion of member—
Power to expel member. *See* **Articles of association**—Construction—Powers to expel member—Company limited by guarantee, *ante*.

Company secretary—

Authority. *See* **Secretary**—Authority, *post*.

Compromise with creditors or members—

Scheme of arrangement. *See* **Scheme of arrangement**—Compromise with creditors or members, *post*.

Compulsory acquisition of shares—

Scheme of arrangement—

Dissenting shareholders. *See* **Take-over bid**—Acquisition of shares of dissentients *post*.

Compulsory winding-up—

Advertisement of petition—

Amendment—Readvertisement—Petitioner at hearing seeking order for winding-up subject to supervision of court instead of compulsory winding-up—All creditors represented at hearing supporting application—Substantial body of creditors not before court—Whether readvertisement of petition necessary. **Re Manual Work Services (Construction) Ltd** [1976] 1 426, ChD.

COMPANY (cont)

Compulsory winding-up (cont)—

Advertisement of petition (cont)—

Error in advertisement—Waiver—Name of company—Error in name—Trifling error—Misspelling—Circumstances in which error will be waived on ground that it is very trifling. **Re Vidiofusion Ltd [1975] 1 76, ChD.**

Time—Seven clear days before hearing—Saturday and Sunday excluded—Companies (Winding-Up) Rules 1949 (S I 1949 No 330), r 28—RSC Ord 1, r 2(2), Ord 3, r 2(5). **Re Display Multiples Ltd [1967] 1 685, ChD.**

Affidavit verifying petition—

Deponent—Divisional manager—Attorney of company—Non-compliance with Companies (Winding-up) Rules 1949 (S I 1949 No 330), r 30. **Re Vic Groves & Co Ltd [1964] 2 838, ChD.**

Evidence—Affidavit prima facie evidence of statements in petition—Hearsay evidence—Exhibits to affidavit—Admissibility as evidence of matters stated therein—No general rule that hearsay evidence admissible at hearing of petitions for winding-up—Exhibits inadmissible as evidence of contents—Companies (Winding-Up) Rules 1949 (S I 1949 No 330), r 30, as amended by the Companies (Winding-Up) (Amendment) Rules 1967, (S I 1967 No 1341). **Re Koscot Interplanetary (U K) Ltd [1972] 3 829, ChD.**

Avoidance of disposition of property after commencement of winding-up—

Discretion of court—Advantage of creditors and company that company continue trading—Winding-up petition not known to directors until hearing listed—Application by company before hearing of petition—Payment of debts by company and dispositions of its property in ordinary course of business—Companies Act 1948, s 227. **Re Operator Control Cabs Ltd [1970] 3 657, ChD.**

Discretion of court—Authority to company to sell leasehold interest in premises—Winding-up order not yet made on pending petition—Whether jurisdiction to authorise disposition—Companies Act 1948, s 227. **Re A I Levy (Holdings) Ltd [1963] 2 556, ChD.**

Discretion of court—Bank overdraft to enable company to carry on its business—Advances made before and after service of petition—Companies Act 1948, s 227. **Re T W Construction Ltd [1954] 1 744, ChD.**

Discretion of court—Order to validate disposition—Petition presented, but not finally heard—Companies Act 1929, s 173. **Re Miles Aircraft Ltd, Application of Barclays Bank Ltd and Erlangers Ltd [1948] 1 225, ChD.**

Discretion of court—Order to validate disposition—Locus standi of applicant—Shareholder—Shareholder not a party to disposition—Whether shareholder entitled to apply to court for order—Companies Act 1948, s 227. **Re Argentum Reductions (UK) Ltd [1975] 1 608, ChD.**

Discretion of court—Principles for exercise—Act done reasonably and in good faith for benefit of company—Companies Act 1948, s 227. **Re Clifton Place Garage Ltd [1970] 1 353, CA.**

Discretion of court—Principles for exercise—Justice in particular circumstances—Special regard to bona fides of applicant—Debenture to secure advances made for payment of debts, to enable company to carry out its contracts—Company and debenture-holder not aware of presentation of petition when debenture issued—Advances made before and after service of petition—Companies Act 1948, s 227. **Re Steane's (Bournemouth) Ltd [1950] 1 21, ChD.**

Company already in voluntary liquidation—

Official Receiver's petition—Irregular conduct of liquidator—Winding-up could not be continued with due regard to interests of persons concerned with liquidation—Companies Act 1948, s 224(2). **Re Ryder Installations Ltd [1966] 1 453, ChD.**

Official Receiver's petition—Standard of proof of condition provided by s 224(2)—Misapplication of one sum by wrong payment out of company's assets—Dilatory conduct of liquidation—Liquidation nearly complete—Liquidator undertaking to pay into assets amount wrongly paid out and to complete liquidation with due despatch—Burden of proof that voluntary liquidation could not be continued with due regard to interests of creditors not discharged—Companies Act 1948, s 224(2). **Re J Russell Electronics Ltd [1968] 2 559, ChD.**

Right of judgment creditor to compulsory winding-up order—Ex debito justitiae—Companies Act 1929, s 255. **Re James Millward & Co Ltd [1940] 1 347, CA.**

Right of judgment creditor to compulsory winding-up order—Wishes of other creditors—Prejudice of applicant—Companies Act 1929, s 255. **Re Home Remedies Ltd [1942] 2 552, ChD.**

Company struck off register—

Procedure—Restoration of company to register—Effect of order to wind-up on title to company's property—Companies Act 1948, ss 321(1), 353(5)(6). **Re Cambridge Coffee Room Assn [1952] 1 112, ChD.**

Contributories—

Settlement of list of contributories—Dispensing with settlement of list of contributories—Discretion of court—Companies Act 1948, s 257(1), s 265. **Re Paragon Holdings Ltd [1961] 2 41, ChD.**

Settlement of list of contributories—List settled by liquidator—Death of liquidator—Jurisdiction of subsequent liquidator to include name excluded by first liquidator—Res judicata—Companies Act 1929, ss 203, 220—Companies (Winding-up) Rules 1929 (S R & O 1929 No 612), rr 78-83. **Re Westways Garage Ltd [1942] 2 147, ChD.**

Settlement of list of contributories—Whether 'contributories' include holders of fully paid shares—Dispensing with list of contributories—Companies Act 1948, s 213, s 257(1). **Re Phoenix Oil and Transport Co Ltd [1957] 3 218, ChD.**

Costs—

Advising liquidator whether misfeasance proceedings or action for recovery of money should be taken—No proceedings taken—Whether costs taxable as non-contentious business within Solicitors' Remuneration Order 1883, art 2, Sch 2, as amended—Solicitors Act 1957, s 86(1). **Re Simpkin Marshall Ltd [1958] 3 611, ChD.**

COMPANY (cont)**Compulsory winding-up (cont)—****Costs (cont)—**

Company without assets to pay costs of liquidation—Payment out of moneys under liquidator's control on suspense account. **Re Introductions Ltd (No 2)** [1969] 3 697, ChD.

Costs incurred by company's solicitor before winding-up—Action against company in Queen's Bench Division—Taxation to be by Supreme Court Taxing Office—Orders for taxation made in Companies Winding-up Department to state in which department taxation is to take place. **Re Mercury Model Aircraft Supplies Ltd** [1956] 2 885, ChD.

Costs incurred by company's solicitor before winding-up—Taxation by Companies Winding-up Department or by Supreme Court Taxing Office. **Re Defiant Cycle Co Ltd** [1955] 2 58, ChD.

Dismissed petition—Award of costs to petitioner—Circumstances in which petitioner may be awarded costs—New company incorporated under name of struck-off company—Petition presented against new company—Debts claimed by petitioner incurred before incorporation and allegedly incurred by struck-off company—Mistake in consequence of identity of names—Petition dismissed—Whether petitioning creditor entitled to costs. **Re M McCarthy & Co (Builders) Ltd (No 2)** [1976] 2 339, ChD.

Insurance company—Unsuccessful motion to discharge appointment of provisional liquidator—Power of company to instruct solicitors—Residuary power. **Re Union Accident Insurance Co Ltd** [1972] 1 1105, ChD.

Judgment creditor's petition—Execution issued—Payment of judgment debt to sheriff—Petition presented on same day—Petition creditor then unaware of payment—Liability for costs of petition—Companies Act 1948, s 224(1), s 326(2). **Re William Hockley Ltd** [1962] 2 111, ChD.

Judgment creditor's petition—Practice as to costs where petition dismissed owing to opposition of majority of creditors. **Re R W Sharman Ltd** [1957] 1 737, ChD, **Re A B C Coupler & Engineering Co Ltd** [1961] 1 354, ChD.

Legal aid certificate for action and 'to enforce any order made therein'—Winding-up petition after judgment obtained. **Re Parker Davies & Hughes Ltd** [1953] 2 1158, ChD.

Petitioner's costs—Affidavit in support of petition in addition to statutory affidavit—Documents exhibited to statutory affidavit—Acute conflict between parties—Petition for relief under Companies Act 1948, s 210(1), or for winding-up order—Advertisement. **Practise Direction** [1957] 2 800, ChD.

Petitioner's costs—Affidavit in support of petition in addition to statutory affidavit—Documents exhibited to statutory affidavit—Acute conflict between parties—Petition grounded on allegation that affairs of company required investigation. **Re S A Hawken Ltd** [1950] 2 408, ChD.

Petitioning creditor's costs—Company in voluntary liquidation—Work done prior to presentation of petition—Allegations in petition more than was essential for initial pleading—Conference with counsel on settling petition. **Re A & N Thermo Products Ltd** [1963] 3 721, ChD.

Power to order costs of winding-up to be paid out of assets—Priority—Unsecured creditors—Opposing contributory and creditor sole beneficial owner of company's shares—Opposition for purpose of delaying winding-up until profit could be realised on sale of company's assets—Winding-up order made—Jurisdiction of court to order company's costs to be paid by opposing contributory—Jurisdiction to direct that company's costs should not be costs of petition—Jurisdiction to order that company's costs should not be paid out of assets until unsecured creditors paid in full—Supreme Court of Judicature (Consolidation) Act 1925, s 50(1)—Companies (Winding-up) Rules 1949 (SI 1949 No 330), r 195(1). **Re Bathampton Properties Ltd** [1976] 3 200, ChD.

Power to order costs of winding-up to be paid out of assets—Priority—Assets insufficient to meet liabilities—Floating charge under a debenture on whole of assets—Property subject to charge part of the assets out of which costs payable—Accountants' fees for preparing statement of affairs, approved by official Receiver, payable out of assets in priority to preferential claims and to floating charge—Companies Act 1948, ss 267, 319—Companies (Winding-up) Rules 1949 (SI 1949 No 330), r 195. **Re Barleycorn Enterprises Ltd** [1970] 2 155, CA.

Security for costs. *See* Compulsory winding-up—Security for costs, *post*.

Substitution of petitioner—Original petitioner's debt and costs paid by company and another creditor substituted as petitioner—Winding-up order made—No provision made for costs of original petitioner—Costs of petition to include original petitioner's costs—Original petitioner's costs limited to fee on presentation of petition and costs of advertisement—Form of 'usual compulsory order' in such circumstances. **Re Castle, Coulson & MacDonald Ltd** [1973] 2 814, ChD.

Substitution of petitioner—Original petitioner's debt and most of its costs paid by company and another creditor substituted as petitioner—Winding-up order made—Whether costs of petition should include costs of original petitioner. **Re Bostels Ltd** [1967] 3 425, ChD.

Disclaimer of onerous property—

Company incorporated by special Act of Parliament—Freehold land constituting cemetery—Contracts with holders of grave certificates and for upkeep of graves—'Land...burdened with onerous covenants'—Companies Act 1948, s 323(1). **Re Nottingham General Cemetery Co** [1955] 2 504, ChD.

Lease—Claim for damages for breach of repairing covenants in lease—Liquidator's right to disclaim onerous property—Failure of liquidator to elect to disclaim lease—Whether lease to be construed as a 'contract'—Companies Act 1948, s 323(4). **Re A B C Coupler and Engineering Co Ltd (No 3)** [1970] 1 650, ChD.

Disposition of property after commencement of winding-up—

Avoidance of. *See* Compulsory winding-up—Avoidance of disposition after commencement of winding-up, *ante*.

COMPANY (cont)

Compulsory winding-up (cont)—

Disposition of property by company after commencement of winding-up—

Validation by court—Preferential payment—Work done by sub-contractor for company at request of director—Sub-contractors not paid—Winding-up petition presented—Sub-contractors partly paid by money orders bought with proceeds of cheque drawn on company's bank account by director—Presentation of petition unknown to sub-contractors—Whether payment void—Whether court should validate payment—Companies Act 1948, s 227. *Re J Leslie Engineers Co Ltd (in liquidation)* [1976] 2 85, ChD.

Work done by sub-contractor for company at request of director—Sub-contractors not paid—Winding-up petition presented—Sub-contractors given cheque drawn on director's personal account—Cheque only met after company's money paid into account by director—Whether payment to sub-contractors a 'disposition of property of the company'—Whether payment void—Companies Act 1948, s 227. *Re J Leslie Engineers Co Ltd (in liquidation)* [1976] 2 85, ChD.

Distribution of assets—

Debt in foreign currency—Ascertainment of liability—Date—Whether sterling liability of debt to be ascertained at date of presentation of winding-up petition or at date of winding-up order. *Re Dynamics Corp of America* [1976] 2 669, ChD.

Enforcement of orders throughout United Kingdom—

Orders made in the course of winding up a company—Order made after presentation of petition but before making of winding-up order—Order staying action against company in Scottish courts—Whether order made 'in the course of winding up'—Whether order enforceable in Scotland—Companies Act 1948, s 276(1). *Re Dynamics Corp of America* [1972] 3 1046, ChD.

Form of petition—

Allegations in petition either tricky or false—Whether grounds for striking out petition as abuse of process of court. *Re A Company* [1974] 1 256, ChD.

Company in voluntary liquidation. *Re A & N Thermo Products Ltd* [1963] 3 721, ChD.

Petition grounded on allegation that affairs of company required investigation—Additional affidavit—Companies Act 1948, ss 210(1), 224(1)—Companies (Winding-up) Rules 1949 (S I 1949 No 330), rr 3, 30, Appendix, Form 9. *Re S A Hawken Ltd* [1950] 2 408, ChD.

Striking out petition—Contributory's petition—Petition alleging deadlock between company's two directors and equal shareholders—No particulars given of allegations in petition—Petition supported by short affidavit in statutory form—Whether petition in conjunction with affidavit should be struck out as embarrassing. *Re W R Willcocks & Co Ltd* [1973] 2 93, ChD.

Title of proceedings—Applications brought to or issued out of office of the Registrar, Companies Court—Group A to be added after Chancery Division in title—RSC Ord 5, r 9—RSC Ord 53B—Name of judge to be omitted from general title of proceedings in winding-up—Companies (Winding-up) (Amendment) Rules 1957 (S I 1957 No 973), r 1(f). *Practice Note* [1958] 2 124, ChD.

Inability of company to pay debts—

Judgment creditor's petition—Disputed claim being litigated by company against the petitioning creditor in other proceedings—Right of petitioning creditor to a winding-up order not displaced on that ground. *Re Douglas (Griggs) Engineering Ltd* [1962] 1 498, ChD.

Neglect to pay sum due to creditor for three weeks after sum demanded—Time—Computation of period of three weeks—Fractions of day to be ignored—Lapse of 21 clear days required after date of demand and before date of petition—Companies Act 1948, s 223(a). *Re Lympne Investments Ltd* [1972] 2 385, ChD.

Insurance company—

Appointment of provisional liquidator. *See* Compulsory winding-up—Provisional liquidator—Appointment—Power of court to make appointment—Circumstances in which exercisable—Provisional liquidator for insurance company, *post*.

Costs. *See* Compulsory winding-up—Costs—Insurance company, *ante*.

Just and equitable—

Alternative remedy—Investigation of company's affairs by Department of Trade and Industry—Investigation in progress—Whether just and equitable that company be wound up before conclusion of investigation—Whether shareholder precluded from presenting petition to wind up company—Companies Act 1948, ss 164, 222(f). *Bryantson Finance Ltd v de Vries (No 2)* [1976] 1 25, CA.

Bankrupt contributory petitioning at the instance of his trustee in bankruptcy—Quasi-partnership on terms of memorandum and articles of association—Resignation of bankrupt from board and waiver by him of remuneration before his adjudication—Undertaking sold—Memorandum included sale of undertaking as object—Articles incorporated transmission provisions of Table A—Whether winding-up order should be made—Companies Act 1948, s 222(f). *Re K/9 Meat Supplies (Guildford) Ltd* [1966] 3 320, ChD.

Cessation of business—Power to 'amalgamate' with company carrying on same business—Share capital acquired by company carrying on same business—Sale of physical assets to third company—Failure of substratum—Winding-up order just and equitable—Compulsory acquisition of shares by Treasury—Companies Act 1929, s 168(3),(6). *Re Eastern Telegraph Co Ltd* [1947] 2 104, ChD.

COMPANY (cont)

Compulsory winding-up (cont)—

Just and equitable (cont)—

Company in substance a partnership—Management of company—Agreement that petitioners and respondents should have equality of control—Provision in articles entitling petitioners to appoint and remove one director—Provision that decisions at board meetings be unanimous—Petitioners agreeing to scheme whereby petitioners appointed one of respondents director—Petitioners subsequently removing respondent director and appointing new director—Respondents refusing to recognise removal and new appointment—Respondents alleging agreement whereby petitioners' right to nominate director abrogated and respondents having sole right to run company—No such agreement—Whether repudiation of petitioners' right to participate in management of company rendering it just and equitable that company be wound up—Companies Act 1948, s 222(f). **Re A & BC Chewing Gum Ltd** [1975] 1 1017, ChD.

Company in substance a partnership—Understanding that parties would participate in management of company—Provision in articles for removal of directors—Petitioner removed from board and excluded from any part in management of company—Breach of good faith parties owed to each other—Whether petitioner entitled to winding-up order—Companies Act 1948, s 222(f). **Ebrahimi v Westbourne Galleries Ltd** [1972] 2 492, HL.

Company's petition—Majority of shareholders desirous of being repaid their capital—Company carrying little or no profit—Suggested friction or deadlock in management—Companies Act 1929, s 168(6). **Re Anglo-Continental Produce Co Ltd** [1939] 1 99, ChD.

Deadlock—Constitution of company not a matter of which petitioner entitled to complain—Deadlock resolved within constitution by chairman's casting vote. **Re Expanded Plugs Ltd** [1966] 1 877, ChD.

Deadlock—Dispute as to beneficial ownership of one share registered in name of third person—Issue not appropriate to be decided on motion or otherwise in winding-up petition—Private company—Two major shareholders and sole directors held equal number of shares—Only other shareholder holding one share—This share claimed by petitioner to belong beneficially to two major shareholders equally. **Re Bambi Restaurants Ltd** [1965] 2 79, ChD.

Deadlock—Evidence—Statutory affidavit only evidence—Articles of association not in evidence—Possible courses open to shareholders and directors not shown—Private company having two shareholders—Dismissal of petition—Companies Act 1948, s 222(f). **Re Davis Investments (East Ham) Ltd** [1961] 3 926, CA.

Need to refer to articles—Principles of quasi-partnership—Whether applicable—Contractual rights between parties—Settled course of conduct between parties to be considered. **Re Fildes Bros Ltd** [1970] 1 923, ChD.

Opposition—Companies Act 1929, s 168(6)—New South Wales Companies Act 1899, s 84(e). **Davis & Co Ltd v Brunswick (Australia) Ltd** [1936] 1 288, PC.

Public interest—Petition by Secretary of State. *See* Compulsory winding-up—Petition by Secretary of State—Secretary of State taking view that it is expedient in public interest that company be wound up—Just and equitable ground, *post*.

Scope of phrase—Facts at date of hearing only to be considered—Petitioner confined to allegations in petition—Companies Act 1948, s 222(f). **Re Fildes Bros Ltd** [1970] 1 923, ChD.

Secretary of State's petition—Evidence—Inspectors' report—Report as prima facie evidence of matters alleged in petition—No other evidence in support—Report concluding that company a cloak for fraud—Opponents disputing report's findings but adducing no evidence to support opposition—Whether proper to make winding-up order on basis of inspectors' report alone. **Re Armvent Ltd** [1975] 3 441, ChD.

Subsidiary company—Directors of subsidiary company holding preference shares—Guarantee of interest on preference shares by parent company—Petition by directors to wind up subsidiary within period of guarantee—Relevance of guarantee in determining whether just and equitable to wind up subsidiary—New South Wales Companies Act 1899, s 84(e). **Davis & Co Ltd v Brunswick (Australia) Ltd, Brunswicke-Balke-Collender Co and Brunswick Radio Corp** [1936] 1 299, PC.

Substratum—Company formed partly to purchase a rubber estate, but with power to carry on a variety of activities—Company carrying on business of rubber estate only—Rubber estate sold after 29 years—No scheme before court to deal with proceeds of sale. **Re Taldua Rubber Co Ltd** [1946] 2 763, ChD.

Substratum—Company formed to take over a business—Business sold after 46 years—Construction of memorandum of association—Whether substratum gone—Companies Act 1929, s 168(6). **Re Kitson & Co Ltd** [1946] 1 435, CA.

Substratum—Company's property confiscated in Russia. **Re Baku Consolidated Oilfields Ltd** [1944] 1 24, ChD.

Lease—

Disclaimer of lease. *See* Compulsory winding-up—Disclaimer of onerous property—Lease, *ante*.

Liquidator—

Appointment—Qualifications and experience—Discretion of court—Practice. **Re Icknield Development Ltd** [1973] 2 168, ChD.

Duty—Sale of land—Power to concur in and execute conveyance of land on behalf of company—Consideration for promise of liquidator to join in conveyance—Equitable estoppel—Company having beneficial interest in land under contract of sale—Vendor having lien on land for unpaid purchase money—Vendor proposing to enter into contract for sale of land to third party—Liquidator agreeing to join in conveyance on behalf of company—Vendor refraining from applying to court to enforce lien—Vendor entering into agreement with third party to sell land—Whether liquidator bound to execute conveyance to third party. **Re Wyvern Developments Ltd** [1974] 2 535, ChD.

COMPANY (cont)

Compulsory winding-up (cont)—

Liquidator (cont)—

Powers—Distribution of surplus assets—Necessity for order of court before distribution—Companies Act 1948, s 245(2)(h), s 265—Companies (Winding-up) Rules 1949 (S I 1949 No 330), r 120. **Re Phoenix Oil and Transport Co Ltd (No 2)** [1958] 1 158, ChD.

Powers—Investigation of company's affairs by inspectors—Power of liquidator to obtain access to transcripts of evidence given before liquidation—Companies Act 1948, s 268. **Re Rolls Razor Ltd** [1968] 3 698, ChD.

Powers—Sale of certain assets by liquidator—Creditor seeking injunction to restrain completion of sale—Alleged undervalue—Fraud and want of good faith not alleged—Intervention by court only if liquidator were acting as no reasonable liquidator would act—Principle governing control of liquidator's powers—Companies Act 1948, s 245(3), s 246 (5). **Leon v York-O-Matic Ltd** [1966] 3 277, ChD.

Provisional liquidator. *See* Compulsory Winding-up—Provisional liquidator, *post*.

Remuneration—Remuneration voted to liquidator—Compulsory winding-up superseding voluntary winding-up—Review of remuneration voted to liquidator in voluntary winding-up—Companies Act 1929, ss 175, 232, 241—Companies (Winding-up) Rules 1929 (S R & O 1929 No 612), r 192(ii). **Re Mortimers (London) Ltd** [1937] 2 364, ChD.

Order—

County court—Right of appeal against order. *See* County court (Appeal—Right of appeal—Company—Compulsory winding-up order).

Petition—

Advertisement. *See* Compulsory winding-up—Advertisement of petition, *ante*.

Affidavit verifying petition. *See* Compulsory winding-up—Affidavit verifying petition, *ante*.

Amendment—Power of court. *See* Compulsory winding-up—Powers of court on hearing of petition—Amendment, *post*.

Form of petition. *See* Compulsory winding-up—Form of petition, *ante*.

Powers of court on hearing of petition. *See* Compulsory winding-up—Powers of court on hearing of petition, *post*.

Substituted petitioner—Costs. *See* Compulsory winding-up—Costs—Substitution of petitioner, *ante*.

Petition by Board of Trade—

Evidence—Cross-examination—Affidavit of official of Board of Trade—Application by bank, defendant in action brought by Board of Trade in the name of the company, for an order for cross-examination of official on affidavit—Action previously held to have been brought without authority—Application by defendant bank for stay of proceedings in the action stood over pending hearing of winding-up petition—Whether bank was a contingent creditor of company by reason of possible future order for costs—Whether bank, to which no present debt was owed by company, had locus standi to appear on winding-up petition. **Re S B A Properties Ltd** [1967] 2 615, ChD.

Evidence—Inspectors' report—Report admissible—Sufficiency as evidence—Misconduct or fraud—Order made on consideration of report alone when uncontradicted by evidence adduced by company—Companies Act 1948, s 169(3). **Re Travel & Holiday Clubs Ltd** [1967] 2 606, ChD, **Re S B A Properties Ltd** [1967] 2 615, ChD.

Evidence—Inspectors' report—Inspectors' report exhibited to affidavit—Allegations in petition not contested by company—Whether evidence sufficient—Companies Act 1948, s 169(3). **Re Allied Produce Co Ltd** [1967] 3 399, ChD.

Evidence—Misconduct or fraud—Statutory affidavit sworn by official of Board of Trade—Inspectors' reports exhibited to affidavit—Reports admissible but hearsay—Whether evidence sufficient—Companies (Winding-up) Rules 1949 (S I 1949 No 330), r 3, r 30, Appendix Form 9—Companies Act 1948 s 169(3). **Re A B C Coupler and Engineering Co Ltd (No 2)** [1962] 3 68, ChD.

Petition by contributory—

Dispute as to ownership of shares. *See* Shares—Ownership—Dispute—Whether appropriate to decide on winding-up petition, *post*.

Entitlement to present petition—Consent order allocating shares to contributory eight months prior to petition—Transfer only registered two months prior to petition—Whether petitioner had locus standi to present petition—Companies Act 1948, s 224(1). **Re Gattopardo Ltd** [1969] 2 344, CA.

Failure of company to supply accounts and information of its affairs—No allegation in petition that company would have surplus assets available for contributories in winding-up—Accounts and information produced by company as result of petition—Petition not demurrable—Costs. **Re Newman and Howard Ltd** [1961] 1 495, ChD.

Insolvency and inability to pay debts alleged—Petitioner a fully paid up shareholder—Whether petitioner had locus standi to petition for compulsory winding-up. **Re Othry Construction Ltd** [1966] 1 145, ChD.

Locus standi—Minority shareholder—Petitioner holding 62 shares out of company's issued capital of 7n million shares—Whether shareholder having sufficient interest in winding-up—Companies Act 1948, s 222(f). **Bryanston Finance Ltd v de Vries (No 2)** [1976] 1 25, CA.

Locus standi—Sufficient interest—Fully paid contributory—Need to show that advantage would accrue to him from winding-up by virtue of membership of company—No prospect surplus assets would be available for distribution among shareholders—Not sufficient for petitioner to show that he would derive some private advantage unconnected with membership of company. **Re Chesterfield Catering Co Ltd** [1976] 3 294, ChD.

No surplus for contributories shown by evidence—Partnership case—Petitioner nevertheless having no locus standi as contributory. **Re Expanded Plugs Ltd** [1966] 1 877, ChD.

Personal representative of shareholder—Whether personal representative a contributory—Companies Act 1948, s 224(1)(a)(ii). **Re Bayswater Trading Co Ltd** [1970] 1 608, ChD.

COMPANY (cont)**Compulsory winding-up (cont)—****Petition by creditor—**

Contingent or prospective creditor—Statutory requirement that petition not to be heard until security for costs given and *prima facie* case established—Whether necessary that statutory requirements be satisfied when petition presented—Companies Act 1948, s 224(1)(c). **Re A Company** [1974] 1 256, ChD.

Disputed debt—Dispute as to amount, but not as to existence, of indebtedness to petitioning creditor—Whether order should be made—Companies Act 1948, s 222(e),(f). **Re Tweeds Garages Ltd** [1962] 1 121, ChD.

Disputed debt—Existence of debt disputed—Petitioner not a 'creditor' where debt disputed on substantial grounds—Petitioner having no *locus standi*—Company not having 'neglected' to pay debt where debt disputed on substantial grounds—Companies Act 1948, ss 223(a), 224(1). **Re Lympe Investments Ltd** [1972] 2 385, ChD.

Disputed debt—Inability to pay debts—Statutory demand—Neglect by company to comply with demand by creditor for payment of debt—Debt not payable at date of demand—Dispute whether debt payable at date of demand—Whether company should be deemed unable to pay its debts—Companies Act 1948, ss 222(e), 223(a). **Re Bryant Investment Co Ltd** [1974] 2 683, ChD.

Notice of intention to appear at hearing—Leave to appear without notice—Discretion of court—Application by creditor—Court told that petitioning creditor's debt fully paid and funds tendered for costs—Another creditor applying at hearing for leave to be added to list supporting petition—Notice given—Petition otherwise liable to be dismissed—Whether addition permissible—Companies (Winding-up) Rules 1949 (SI 1949 No 330), r 34 (as substituted by the Companies (Winding-up)(Amendment) Rules 1972 (SI 1972 No 1404), r 2. **Re M McCarthy & Co (Builders) Ltd** [1976] 2 338, ChD.

Petition by local authority to which rates are due—No right to bring action for rates—Whether a creditor entitled to apply for winding-up order—Companies Act 1929, s 170. **Re North Bucks Furniture Depositories Ltd** [1939] 2 549, ChD.

Petition by judgment creditor—

Costs. *See* Compulsory winding-up—Costs—Judgment creditor's petition, *ante*.

Petition by Official Receiver—

Company already in voluntary liquidation. *See* Compulsory winding-up—Company already in voluntary liquidation—Official Receiver's petition, *ante*.

Liquidator nominee of controlling shareholder—Proposal for reconstruction of company—Petition by Official Receiver for compulsory winding-up—Admission of evidence of creditors. **Adebayo v Nigeria (Official Receiver)** [1954] 2 197, PC.

Petition by Secretary of State—

Just and equitable—Evidence—Affidavit verifying petition—Affidavit sworn on behalf of Secretary of State by Inspector of Companies—Form. **Re Golden Chemical Products Ltd** [1976] 2 543, ChD.

Secretary of State taking view that it is expedient in the public interest that company be wound up—Just and equitable ground—Company already subject to voluntary winding-up—Need to satisfy court that it is just and equitable that company be wound up compulsorily—Compulsory winding-up opposed by creditors—Whether additional burden on Secretary of State to satisfy court that voluntary winding-up cannot be continued with due regard to interests of creditors' and contributories—Companies Act 1948, s 224(2)—Companies Act 1967, s 35(1). **Re Lubin, Rosen and Associates Ltd** [1975] 1 577, ChD.

Secretary of State taking view that it is expedient in the public interest that the company be wound up—Secretary of State—petition presented mis-spelt—Errors by Inspector of Companies on behalf of Secretary of State—Whether decision to present petition should be made by Secretary of State personally—Whether inspector properly authorised to present petition—Companies Act 1967, s 35. **Re Golden Chemical Products Ltd** [1976] 2 543, ChD.

Powers of court on hearing of petition—

Amendment—Name of company misspelt—Errors repeated in advertisement and in order made. **Re J & P Sussman Ltd** [1958] 1 857, ChD.

Judgment creditor's petition—Genuine claim by company against petitioning creditor which could be pursued abroad, but not in England, for sum larger than judgment debt—Company having no asset other than claim against petitioning creditor—Exercise of judge's discretion to order or refuse winding-up order—Review by Court of Appeal—Companies Act 1948, s 225(1). **Re L H F Wools Ltd** [1969] 3 882, CA.

Non-attendance of petitioner before hearing to show compliance with rules—Petitioner not represented at hearing—Petition dismissed with costs against petitioner—Companies (Winding-up) Rules 1949 (SI 1949 No 330), r 33. **Re Royal Mutual Benefit Building Society** [1960] 3 460, ChD.

Provisional liquidator—

Appointment—Appointment by court after presentation of winding-up petition and before making of winding-up order—Jurisdiction of court—Creditor applying for appointment of provisional liquidator after presentation of petition—Court striking out creditor's petition as an abuse of process of the court—Whether court having jurisdiction to appoint provisional liquidator—Companies Act 1948, s 238. **Re A Company** [1974] 1 256, ChD.

Appointment—Power of court to make appointment—Circumstances in which exercisable—Provisional liquidator for insurance company—Necessity for appointment—Companies Act 1948, s 238. **Re Union Accident Insurance Co Ltd** [1972] 1 1105, ChD.

Appointment—Qualifications and experience—Powers—Limitations and restrictions—Insurance company—Protection of assets—Closure of branch office—Power of provisional liquidator to authorise closure—Duty of provisional liquidator. **Re Union Accident Insurance Co Ltd** [1972] 1 1105, ChD.

COMPANY (cont)

Compulsory winding-up (cont)—

Provisional liquidator (cont)—

Remuneration—Remuneration of Official Receiver as provisional liquidator—Special manager also appointed—Winding-up order discharged by Court of Appeal—Determination of reasonable amount of remuneration—Factors to be taken into or excluded from consideration—Companies (Board of Trade) Fees Order 1929 (S R & O 1929 No 831), Table B, para 2, para 3, and para 7. **Re Joseph Phillips Ltd** [1964] 1 441, ChD.

Public examination—

Order for attendance of directors—Official Receiver's further report stating opinion that fraud committed—Test whether order properly made. **Tejani v Official Receiver** [1963] 1 429, PC.

Realisation of assets—

Desirability of ascertaining views of contributories. **Re Agricultural Industries Ltd** [1952] 1 1188, CA.

Restraining presentation of petition—

Injunction. **Charles Forte Investments Ltd v Amanda** [1963] 2 940, CA.

Restraining prosecution of petition—

Petition by creditor—Disputed debt—Existence of debt disputed—Company unable to meet its debts as they fell due—Petitions presented by alleged creditors of two companies—Injunctions sought to restrain prosecution of petitions—Debts disputed on substantial grounds—Whether prosecution of petitions an abuse of process of the court—Whether injunctions should be granted. **Mann v Goldstein** [1968] 2 769, ChD.

Security for costs—

Appeal by company against winding-up order—Order made on contributory's application—Company solvent—Security for costs to be given by company from outside source and not out of assets. **Re E K Wilson & Sons Ltd** [1972] 2 160, CA.

Petition by contingent or prospective creditor. *See* Compulsory winding-up—Petition by creditor—Contingent or prospective creditor—Statutory requirement that petition not to be heard until security for costs given, and *prima facie* case established, *ante*.

Settlement of list of contributories. *See* Compulsory winding-up—Contributories—Settlement of list of contributories, *ante*.

Special manager—

Powers—Distribution of assets—Directors given liberty to continue business of company until date of winding-up order—Directors incurred unauthorised debt—Whether liquidator ratified debt by adopting transaction in which it was incurred—Debt payable in full before payment of other debts or dividend. **Re Mawcon Ltd** [1969] 1 188, ChD.

Stay of proceedings—

Other proceedings against company—Jurisdiction of court—Power to stay proceedings in courts of other jurisdictions of United Kingdom—Winding-up proceedings against company in English court—Actions against company by creditors in Scottish courts—Power of English court to order stay of Scottish proceedings—Companies Act 1948, s 226. **Re Dynamics Corp'n of America** [1972] 3 1046, ChD.

Transfer of proceedings from one court to another—

Petition presented by two creditors—One petition in the High Court and the other subsequently in the county court—Procedure—Costs. **Re Audio Systems Ltd** [1965] 2 919, ChD.

Petitions presented by two judgment creditors—One petition in county court and the other in the High Court—Procedure—Costs—Companies Act 1948, s 219(1)—Companies (Winding-up) Rules 1949 (S I 1949 No 330), r 46. **Re Filby Bros (Provender) Ltd** [1958] 2 458, ChD.

Unregistered company—

Foreign company—Jurisdiction—Company dissolved by Russian law—Business formerly carried on in England—No principal place of business—Periodic visits by directors—Assets in England—Jurisdiction to wind up—Companies Act 1929, ss 337, 338. **Re Tovarishstvo Manufactur Liudvig Rabenek** [1944] 2 556, ChD.

Foreign company—Jurisdiction—Essentials to establish jurisdiction—Assets within jurisdiction—Nature of assets—Persons concerned in proper distribution of assets over whom jurisdiction exercisable—Not necessary to show that company had place of business or had carried on business within jurisdiction—Not necessary to show that assets would be distributable to creditors by liquidator provided that in consequence of order they would benefit creditor or creditors in some other way. **Re Compania Merabello San Nicholas S A** [1972] 3 448, ChD.

Foreign company—Liquidation already commenced abroad—Compulsory order—Form of order—Whether order should limit liquidator's powers. **Re Hibernian Merchants Ltd** [1957] 3 97, ChD.

Foreign company—Russian company dissolved by Russian law—Assets, but no place of business, in England—Right of Crown to assets as *bona vacantia*—Petition by foreign creditors in respect of debts payable in foreign currency—Companies Act 1948, s 354, s 399(5)(a), s 400. **Re Azoff-Don Commercial Bank** [1954] 1 947, ChD.

Winding-up order—

Appeal—Appeal to Court of Appeal—To be entered in interlocutory appeal list. **Re Reliance Properties Ltd** [1951] 2 327, CA.

Consequences of winding-up order—Stay of proceedings against company—Action by company—Counter-claim by defendant for account of moneys due from company to defendant and declaration as to balance for which defendant entitled to prove in winding-up—Extent to which counterclaim maintainable without leave of Companies Court—Companies Act 1948, s 231. **Langley Constructions (Brixham) Ltd v Wells** [1969] 2 46, CA.

COMPANY (cont)

Compulsory winding-up (cont)—

Winding-up order (cont)—

Consequences of winding-up order—Stay of proceedings against company—Power of court to stay proceedings, on application of creditor, at any time after presentation of petition—Petitioning creditor applying for stay of all litigation against company—Court then striking out creditor's petition as an abuse of process of the court—Whether court having jurisdiction to grant stay—Companies Act 1948, s 226. **Re A Company** [1974] 1 256, ChD.

Consequences of winding-up order—Stay of proceedings against company—Interpleader summons, to which company respondent, is within stay—Leave of Companies Court required—Companies Act 1948, s 231. **Eastern Holdings Establishment of Vaduz v Singer & Friedlander Ltd (Able Securities Ltd, In Liquidation, First Claimant; Sempah (Holdings) Ltd, Second Claimant)** [1967] 2 1192, ChD.

Court's discretion to make—Writ already issued by creditor in King's Bench Division for the recovery of debt—Company granted unconditional leave to defend under R S C Ord 14—Companies Court not precluded from considering evidence whether dispute bona fide—Discretion of judge to make winding-up order—Companies Act 1929, ss 168, 169—R S C Ord 14. **Re Welsh Brick Industries Ltd** [1946] 2 197, CA.

Postponement or refusal of order—Company in default in filing annual return or other documents—Undertaking by company to make good default. **Practice Note** [1974] 3 933, ChD.

Rescission—Application for rescission—Practice—Application not to be made by company alone—Costs of unsuccessful application. **Practice Note** [1971] 2 700, ChD.

Rescission—Application for rescission—Discretion of court—Exercise of discretion—Time for application—Affidavits in support. **Practice Note** [1971] 1 62, ChD.

Stay pending appeal—Company carrying on profitable business—Stay hampering Official Receiver in discharge of duties—Business of company to be carried on despite refusal of stay. **Re A & BC Chewing Gum Ltd** [1975] 1 1017, ChD.

Conflict of laws—

Floating charge. *See* **Conflict of laws** (Company—Floating charge).

Contempt of court—

Breach of undertaking. *See* **Contempt of court** (Breach of undertaking—Company).

Shareholders. *See* **Contempt of court** (Company—Shareholders).

Contract—

Contract made on Sunday. *See* **Sunday observance** (Prohibition on transactions of business by tradesman on Sunday—Transaction of business—Contract between limited companies made on Sunday).

Secretary—

Authority. *See* **Secretary—Authority—Ostensible authority—Power to make contracts, post.**

Ultra vires—

Objects clause. *See* **Objects clause—Construction—Contract, post.**

Contributories—

Liability—

Winding-up of company. *See* **Winding-up—Contributories, post.**

Petition by contributory for compulsory winding-up of company. *See* **Compulsory winding-up—**

Petition by contributory, *ante.*

Wishes of contributories—

Winding-up. *See* **Winding-up—Meetings to ascertain wishes of creditors or contributories, post.**

Corporate personality—

Lifting corporate veil—

Holding and subsidiary companies—Ownership of property—Wholly owned subsidiary having same directors as parent—Subsidiary having legal title to premises—Parent company carrying on business on premises—Compulsory acquisition of land by local authority—Whether parent company to be treated as owner of land and therefore entitled to compensation for disturbance. **DHN Food Distributors Ltd v London Borough of Tower Hamlets** [1976] 3 462, CA.

Corporation tax. *See* **Income tax** (Corporation tax).

Costs—

Application to have dissolution declared void. *See* **Dissolution—Application to have dissolution declared void—Costs, post.**

Compulsory winding-up. *See* **Compulsory winding-up—Costs, ante.**

Security for costs—

Appeal against winding-up order. *See* **Compulsory winding-up—Security for costs—Appeal by company against winding-up order, ante.**

Generally. *See* **Costs** (Security for costs—Company).

Insolvent company—Arbitration proceedings. *See* **Arbitration** (Costs—Security for costs—Jurisdiction—Claimants an insolvent company).

Creditor—

Compromise with—

Scheme of arrangement. *See* **Scheme of arrangement—Compromise with creditors or members, post.**

Exclusion from benefit of distribution of assets on winding-up of company. *See* **Winding-up—Power to exclude creditors not proving in time—Exclusion of creditor from benefit of distribution of assets, post.**

Remedy—

Restoration of company to register, on. *See* **Restoration to register, post.**

Restriction of rights of creditor as to attachment in case of winding-up of company. *See* **Winding-up—Restriction of creditor's rights as to attachment, post.**

Restriction of rights of creditor as to execution in winding-up of company. *See* **Winding-up—Restriction of rights of creditors as to execution, post.**

COMPANY (cont)

Creditor (cont)—

Wishes of creditors—

Winding-up. *See* Winding-up—Meeting to ascertain wishes of creditors or contributories, *post*.

Criminal liability. *See* Criminal law (Company).

Criminal libel— *See* Libel and slander (Criminal libel).

Deadlock—

Winding-up. *See* Compulsory winding-up—Just and equitable—Deadlock, *ante*.

Debenture—

Floating charge—

Created within six months of winding-up—Not for benefit of company—Validity—Companies Act 1929, s 266. *Re Destone Fabrics Ltd* [1941] 1 545, ChD.

Priority—

Competing charges—Order of registration—Floating charge on property of company—Company acquiring right to purchase land subject to mortgage for part of purchase money—Debenture registered—Receiver appointed under debenture—Debenture creating first charge on company's property—Company subsequently completing purchase of land subject to mortgage for outstanding purchase price—Mortgage registered—Whether mortgage and debenture competing charges—Whether mortgage entitled to priority over debenture—Registration of Records Act (c 193)(Bahama Islands), s 10. *Security Trust Co v The Royal Bank of Canada* [1976] 1 381, PC.

Failure to register debenture—Effect—Company creating first and second debentures on same date—Second debenture expressly subject to and ranked after first—First debenture not debenture registered within prescribed period and becoming void—Second debenture registered within period—Order subsequently made extending period for registration of first debenture—Order expressed to be without prejudice to rights of any parties acquired prior to registration—Holders of second debenture appointing receiver prior to registration of first debenture—Whether holders of second debenture having acquired rights giving it priority over first debenture. *Watson v Duff Morgan & Vermont (Holdings) Ltd* [1974] 1 794, ChD.

Receiver—

Appointment—Validity—Premature appointment—Demand by debenture holder for payment—Appointment of receiver valid only if effected after demand made—Appointment complete on communication to and acceptance by receiver—Time for company to comply with demand for payment—Loan repayable on demand under debenture—Time to comply with demand before appointment of receiver effected—Company not having means to comply with demand. *Cripps (Pharmaceuticals) Ltd v Wickenden* [1973] 2 606, ChD.

Appointment—Validity—Appointment to be made 'by writing'—Appointment purporting to be made by deed—Seal of company affixed in presence of directors who attested it—Deed ineffective—Whether appointment effective as writing. *Windsor Refrigerator Co Ltd v Branch Nominees Ltd* [1961] 1 277, CA.

Appointment—Appointment as agent of company—Effect. *See* Receiver—Appointment by debenture-holder—Appointment as agent of company—Effect, *post*.

Liability—Preferential debt—Payment to debenture holder—Refunding—Indemnity—Legality of payment—Companies Act 1929, s 78. *Westminster City Council v Treby* [1936] 2 21, ChD.

Liability—Rates—Receiver appointed by court in debenture stockholders' action. *Re Mayfair & General Property Trust Ltd* [1945] 2 523, ChD.

Powers. *See* Receiver—Appointment by debenture-holder—Powers of receiver, *post*.

Ratification—Whether subsequent receiver, appointed by debenture-holders, can ratify contract not authorised by former receiver. *See* Agent (Ratification—Validity—Receiver appointed by debenture-holders of first company).

Redemption—

Tax advantage. *See* Income tax (Tax advantage—Transaction in securities—Tax advantage in consequence of transaction—Redemption of debentures).

Re-issue—

Re-issue after redemption—Whether alteration in date of redemption possible—Companies Act 1929, s 75. *Antofagasta (Chile) and Bolivia Ry Co Ltd v Schroder, Tiarks and Waterhouse* [1939] 2 461, ChD.

Debenture holder's action—

Estoppel—

Res judicata—Receiver appointed by court—Claim for furniture lent to company—Judgment against claimant—Claim by another claimant—Title of first claimant set up by receiver—Competence of defence. *Remnant v Savoy Estate Ltd* [1949] 2 286, CA.

Debt—

Acknowledgment. *See* Limitation of action (Acknowledgment—Debt—Company).

Debt due to company—

Receipt by director. *See* Director—Debt due to company—Receipt by director, *post*.

Inability of company to pay debts—

Winding-up. *See* Compulsory winding-up—Inability of company to pay debts, *ante*.

Payment of debts—

Duty of receiver. *See* Receiver—Duty—Payment of debts, *post*.

Proof—

Winding-up. *See* Winding-up—Proof and ranking of claims, *post*.

Wages—

Priority in winding-up. *See* Winding-up—Preferential payments—Wages, *post*.

COMPANY (cont)

Default—

Officer. *See* Officer—Default, *post*.

Director—

Authority—

Contract—Absence of authority to enter into contract—Ignorance of other party to agreement of absence of authority—Whether company estopped from setting up director's absence of authority. *See Estoppel* (Company—Authority of director—Unauthorised agreement made by director).

Implied authority—Chairman and chief executive of holding company signed letters giving collateral indemnity and guarantee to plaintiff with a view to plaintiff's lending money to company controlled by the holding company—Plaintiff was director of holding company and chairman of company to which money was to be lent—Chairman of board of holding company acted de facto as managing director—Articles of association of holding company required disclosure of director's interests in contracts to the board—Disclosure not made—Whether contracts of indemnity and guarantee were binding on holding company and enforceable by plaintiff—Whether rule in *Turquand's case* applicable—Companies Act 1948, s 199. *Hely-Hutchinson v Brayhead Ltd* [1967] 3 98, CA.

Ostensible authority—Director acting as managing director—Board's knowledge of conduct—Finding purchaser for company's estate—Employing architects and surveyors in relation to company's property without actual authority of board—Contract within ambit of managing director's authority—Liability of company. *Freeman and Lockyer (a firm) v Buckhurst Park Properties (Mangal) Ltd* [1964] 1 630, CA.

Ostensible authority—Estoppel—Provision in article permitting delegation of powers to one director—Unauthorised agreement made by director—Ignorance of other party to agreement of provision in article—Company not estopped from setting up director's absence of authority. *Rama Corpn Ltd v Proved Tin and General Investments Ltd* [1952] 1 554, KBD.

Ostensible authority—Two directors having ostensible authority in property transactions for development company whose board consisted of seven directors. *Lindgren v L & P Estates Co Ltd* [1968] 1 917, CA.

Breach of duty—

Relief by court. *See* Director—Duty—Breach of duty—Relief by court, *post*.

Compensation for loss of office—

Whether expense deductible for tax purposes. *See Income tax* (Deduction in computing profits—Expenses wholly and exclusively laid out for purposes of trade—Compensation for loss of office—Directors).

Confidential information—

Breach of confidence—Injunction. *See Equity* (Breach of confidence—Injunction—Information obtained by director of company).

Conspiracy. *See Criminal law* (Conspiracy—Company—Director).

Debt due to company—

Receipt by director—Chairman of directors and managing director taking cheque payable to himself personally—Whether debt to company discharged. *Clay Hill Brick & Tile Co Ltd v Rawlings* [1938] 4 100, KBD.

Default. *See* Officer—Default, *post*.

Duty—

Allotment of shares—Allotment of preference shares with special voting rights—Establishment of trust for employees—Loans to trustees to purchase preference shares—Moves by directors to withstand threatened take-over—Whether proper exercise of directors' fiduciary powers. *Hogg v Cramphorn Ltd* [1966] 3 420, ChD.

Allotment of shares—Allotment of ordinary shares by directors to counter take-over bid—Directors empowered by articles to issue unissued shares—Directors' action approved by company in general meeting—Whether assuming directors' action was not in best interests of company and in excess of their powers, the allotment could be ratified by the company in general meeting—Inherent residual power of company over unissued shares. *Bamford v Bamford* [1969] 1 969, CA.

Allotment of shares—Power of directors to issue and allot shares—Exercise of power for improper purpose—Company in need of additional capital—Take-over offer for shares of company—Majority shareholders stating that they would reject take-over—Directors favouring offer—Directors exercising power to issue and allot shares to offeror—Amount of issue related to capital requirements of company—Directors not motivated by self interest—Purpose of issue to reduce holdings of majority shareholders to minority holdings thus opening way to success of take-over—Whether issue of shares should be set aside as improper exercise of power. *Howard Smith Ltd v Ampol Petroleum Ltd* [1974] 1 1126, PC.

Breach of duty—Relief by court—Trustee—Credit balance at bank—Misapplication of moneys of company standing to its credit in account with its bank—Liability of director acting in accordance with the instructions of a third person not being a director—Knowledge of third person attributable to director—Whether director entitled to be relieved from liability—Companies Act 1948, s 448. *Selangor United Rubber Estates Ltd v Cradock (a bankrupt) (No 3)* [1968] 2 1073, ChD.

Duty to subsidiary company—Director of parent company—Whether duty to protect interests of subsidiary company having independent board. *Lindgren v L & P Estates Co Ltd* [1968] 1 917, CA.

COMPANY (cont)

Director (cont)—

Duty (cont)—

Fiduciary duty—Acknowledgment of debt—Limitation of action—Debt owed by company to director. *See* Limitation of action (Acknowledgment—Acknowledgment in writing—Signature).

Good faith—Duty to exercise power in good faith in interests of company as whole—Power of director to call meeting. *Pergamon Press Ltd v Maxwell* [1970] 2 809, ChD.

Purpose of director—Memorandum of association—Power given to guarantee by charge or otherwise—Company being one of group of companies—Charge created by company with director considering benefit of whole group rather than separately considering benefit of company—Whether ultra vires. *Charterbridge Corp'n Ltd v Lloyds Bank Ltd* [1969] 2 1185, ChD.

Secret profit—Sale of shares in subsidiary company—Fiduciary relationship—Right of company to profit on sale. *Regal (Hastings) Ltd v Gulliver* [1942] 1 378, HL.

Share issue—Duty in respect of court order—Order for specific performance of agreement to allot and issue shares—Undertaking by company to use best endeavours to obtain quotation for and permission to deal in shares and issue same to plaintiffs—Stock exchange requiring that issue be subject to consent of 'company in general meeting'—Extraordinary general meeting summoned—Circular accompanying notice of meeting stating that no recommendation was being made by directors—Circular in effect inviting rejection of resolution to issue shares—Whether directors bound to recommend members to vote in favour of resolution—Whether directors in capacity of shareholders bound to vote in favour of resolution. *Northern Counties Securities Ltd v Jackson & Steeple Ltd* [1974] 2 625, ChD.

Take-over bid—Duty of directors of transferor company to shareholders. *See* Take-over bid—Duty of directors of transferor company, *post*.

Exclusion from board—

Injunction—Locus standi. *See* Injunction (Locus standi—Exclusion of director from board of company).

Failure to appoint—

Effect on third parties—Allotment of shares by persons purporting to be directors—Distinction between defective appointment and no appointment—Rule in *Turquand's case*—Companies Act 1929, s 143, Sch I, Table A, art 88. *Morris v Kanssen* [1946] 1 586, HL.

Effect on third parties—Transfer of shares by persons purporting to be directors—Duty of person dealing with company to inquire—Extent of inquiry—Companies Act 1929, s 143, Sch I, Table A, art 88. *Kanssen v Rialto (West End) Ltd* [1944] 1 751, CA.

Fiduciary power. *See* Director—Power—Fiduciary power, *post*.

Fraudulent trading of company—

Responsibility of director. *See* Winding-up—Fraudulent trading—Creditors of insolvent company in compulsory liquidation applied for declaration that former director personally responsible for debt to creditors, *post*.

Governing director—

Contract of service—Articles of association—Termination of employment—Liquidation of company. *Re T N Farrer Ltd* [1937] 2 505, ChD.

Contract of service—Dual capacities as director and servant—Governing director killed while piloting company's aircraft under alleged contract of service—Workman's compensation claim—Whether sole governing director and principal shareholder could also be working as servant of company under contract of service negotiated by him with company. *Lee v Lee's Air Farming Ltd* [1960] 3 420, PC.

Life director—

Power to remove other directors—Joint power conferred on two permanent life directors—Construction of articles of association—Power not conferred by way of joint confidence but for securing the interests of the life directors—Whether power exercisable by survivor. *Bersel Manufacturing Co Ltd v Berry* [1968] 2 552, HL.

Loan to director—

Unlawful for company to make loan to person who is its director—Loan to company wholly owned and controlled by director—Whether loan to director—Companies Act 1948, s 190(1). *Wallersteiner v Moir* [1974] 3 217, CA.

Managing director—

Director acting as managing director—Ostensible authority. *See* Director—Authority—Ostensible authority—Director acting as managing director, *ante*.

Duties—Duties limited by board of directors. *Harold Holdsworth & Co (Wakefield) Ltd v Caddies* [1955] 1 725, HL.

Removal—Contract appointing managing director for term of years—Article 68 of Companies Act 1929, Sch 1, Table A, included in company's articles—Resolution of company removing managing director from directorship and terminating contract—Whether breach of contract—Damages. *Shindler v Northern Raincoat Co Ltd* [1960] 2 239, Assizes.

Removal—Contract appointing managing director for term of years—Change of articles—Directorship of managing director terminated before expiration of term—Breach of contract—Implied terms. *Shirlaw v Southern Foundries (1926) Ltd and Federated Foundries Ltd* [1940] 2 445, HL.

Removal—Notice required—Companies Act 1929, Sch 1, Table A, art 68. *Read v Astoria Garage (Streatham) Ltd* [1952] 2 292, CA.

Remuneration. *See* Director—Remuneration—Managing director appointed by articles of association, *post*.

Wrongful dismissal—Measure of damages—Relevance of certain factors in assessing damages—Income tax—Directors' fees—Prospective benefit under retirement pension scheme. *Beach v Reed Corrugated Cases Ltd* [1956] 2 652, QBD.

Misfeasance. *See* Winding-up—Misfeasance—Director, *post*.

COMPANY (cont)

Director (cont)—

offence by company—

Failure to pay national insurance contributions—Liability of director. *See* **National insurance** (Arrears of contributions—Recovery—Recovery following prosecution).

Offence by company—

Liability of director—Neglect to obtain gaming licence. *See* **Gaming** (Gaming licence—Offence by body corporate committed with consent etc of director etc—Offence attributable to neglect).

Order for examination on compulsory winding-up of company. *See* **Compulsory winding-up**—

Public examination—Order for attendance of directors, *ante*.

Power—

Control by members—Financial control given to directors by articles—Attempted control by members in general meeting—Resolution for payments of instalments of preference dividend before dividend declared—Interim dividend—Companies Act 1929, Sch I, Table A, arts 67, 90. **Scott v Scott** [1943] 1 582, ChD.

Exercise of independent judgment—Contract to grant long leases—Company becoming subsidiary of development company—Director of development company suggesting contract to directors of subsidiary company—Validity of contract. **Lindgren v L & P Estates Co Ltd** [1968] 1 917, CA.

Fiduciary power—Fiduciary power of discretionary nature—Unwillingness of court to direct exercise at instance of some only of members of company—Power of director to call meeting. **Pergamon Press Ltd v Maxwell** [1970] 2 809, ChD.

Power to refuse to register transfer of shares. *See* **Transfer of shares**—Restriction imposed by articles of association—Directors' power to refuse registration, *post*.

Provision of accommodation by company—

Income tax. *See* **Income tax** (Emoluments from office or employment—Benefits in kind—Expense incurred by body corporate—Accommodation—Provision of accommodation for directors and other employees).

Provision of accommodation by company—

Income tax. *See* **Income tax** (Emoluments from office or employment—Benefits in kind—Expense incurred by body corporate—Accommodation—Accommodation and benefits provided to directors and others).

Public examination—

Compulsory winding-up of company. *See* **Compulsory winding-up**—Public examination—Order for attendance of directors, *ante*.

Qualification shares—

Duty to hold—Directors not holding requisite number of shares—Directors continuing to act—Power of courts to grant relief—Summary Jurisdiction Act 1848, s 11—Companies Act 1929, ss 141(5), 372(1)(2). **Re Gilt Edge Safety Glass Ltd** [1940] 2 237, ChD.

Duty to hold—Failure to acquire qualification shares within two months after election—Election by poll—Result declared on following day—Date of election—'Holding' shares—Companies Act 1948, s 182(1), (3). **Holmes v Keyes (Lord)** [1958] 2 129, CA.

Reduction of salary—

Compensation—Income tax. *See* **Income tax** (Emoluments from office or employment—Compensation—Reduction of salary—Company director).

Relief from negligence, default, breach of duty, breach of trust. *See* **Director—Duty—Breach of duty—Relief by court, ante.**

Removal—

Managing director. *See* **Director—Managing director—Removal, ante.**

Power of life director to remove other directors. *See* **Director—Life director—Power to remove other directors, ante.**

Resolution to remove director—Action claiming equitable relief—What is a sufficient proprietary interest to support the claim. **Hayes v Bristol Plant Hire Ltd** [1957] 1 685, ChD.

Resolution to remove director—Interlocutory injunction to restrain company acting on resolution—Quasi-partnership—Irregularity in convening meeting—Irregularity capable of being cured by going through proper processes—Whether director entitled to interlocutory injunction. **Bentley-Stevens v Jones** [1974] 2 653, ChD.

Remuneration—

Commission—Sum available for distribution—Income tax—Method of calculating depreciation. **Edwards v Saunton Hotel Co Ltd** [1943] 1 176, KBD.

Estoppel—Resolution foregoing remuneration—Company acting on resolution—Estoppel of a director. **Re William Porter & Co Ltd** [1937] 2 361, ChD.

Managing director appointed by article of association—Managing director also a member of company—Article 108 of Table A applicable, whereby remuneration such as directors should determine—No determination of remuneration by directors—Proof lodged by managing director in liquidation of company claiming remuneration in contract or on quantum meruit—Whether managing director entitled to remuneration—Companies Act 1948, Sch 1, Table A, art 108. **Re Richmond Gate Property Co Ltd** [1964] 3 936, ChD.

Remuneration to be determined by resolution in general meeting—No resolution passed—Control of company in hands of directors—Claim by liquidator that directors repay remuneration—Claim for repayment of compensation for loss of office by director—Whether directors had acted reasonably—Whether director ought to be excused from liability—Companies Act 1948, s 448. **Re Duomatic Ltd** [1969] 1 161, ChD.

Retirement by rotation—

Provision in articles of association. *See* **Articles of association—Directors—Retirement by rotation, ante.**

Right to sue—

Contract—Company not registered—Contract signed in company's name with prospective director's signature—Contract a nullity—Action by prospective director—Competency. **Newborne v Sensolid (Great Britain) Ltd** [1953] 1 708, CA.

COMPANY (cont)

Director (cont)—

Secret profit—

Sale of shares in subsidiary company—Right of company to profit on sale. *See* Director—Duty—Secret profit—Sales of shares in subsidiary company—Fiduciary relationship—Right of company to profit on sale, *ante*.

Service agreement—

Widow's pension under agreement. *See* Objects clause—Construction—Pension—Service agreement with company's general manager and controlling shareholder, who was also director, providing for pension to be paid to his widow, *post*.

Undertaking by company—

Breach of undertaking—Whether director liable for contempt of court. *See* Contempt of court (Committal)—Breach of undertaking—Company—Director—Liability for company's breach).

Vacation of office—

Conviction of indictable offence—Offence triable summarily or on indictment—Summary conviction—Unauthorised dealing in gold—Breach of Defence Regulations. **Hastings and Folkestone Glassworks Ltd v Kelson** [1948] 2 1013, CA.

Service agreement for term of years—Termination on vacation of office—Re-election opposed by governing director at first ordinary general meeting—No re-election—Vacation of office—Wrongful dismissal—Companies Act 1929, Sch 1, Table A, art 73. **Walker v Kenns Ltd** [1937] 1 566, CA.

Dissolution—

Application to have dissolution declared void—

Application by person appointed liquidator on resolution that company be voluntarily wound up—Subsequent discovery that company had, prior to appointment of liquidator, been struck off register—Whether applicant entitled to proceed as 'liquidator' or as 'person... interested'—Companies Act 1948, s 352(1). **Re Wood and Martin (Bricklaying Contractors) Ltd** [1971] 1 732, ChD.

Application by person interested—Charity—Gift by testatrix's will to charitable company—Testatrix dying after date of dissolution—Declaration avoiding dissolution refused—Companies Act 1948, s 352(1). **Re Servers of the Blind League** [1960] 2 298, ChD.

Application by person other than member or creditor—Power to restore to register—Companies Act 1948, s 352(1). **Re M Belmont & Co Ltd** [1951] 2 898, ChD.

Application by solicitor for client having unsatisfied claim—Solicitor not a 'person interested' within meaning of Companies Act 1948, s 352(1). **Re Roehampton Swimming Pool Ltd** [1968] 3 661, ChD.

Application made within two years of dissolution—Companies Act 1929, s 294. **Re Scad Ltd** [1941] 2 466, ChD.

Company dissolved where the registrar had reasonable cause to believe that it was not carrying on business or in operation—Companies Act 1948, s 352(1). **Re Test Holdings (Clifton) Ltd** [1969] 3 517, ChD.

Comparison of Companies Act 1948, s 352(1) and s 353(6). *See* Restoration to register—Application—Comparison of Companies Act 1948, s 352(1) and s 353(b), *post*.

Costs—Registrar—Companies Act 1948, s 352(1). **Re Test Holdings (Clifton) Ltd** [1969] 3 517, ChD.

Order declaring dissolution void—Form of order—Effect on property vested before date of order—Companies Act 1929, ss 294(1), 296. **Re C W Dixon Ltd** [1947] 1 279, ChD.

Representation of Registrar of Companies—Companies Act 1948, s 352(1). **Re M Belmont & Co Ltd** [1951] 2 898, ChD. **Re Test Holdings (Clifton) Ltd** [1969] 3 517, ChD.

Bona vacantia. *See* Winding-up—Dissolution—Bona vacantia, *post*.

Compulsory winding-up. *See* Compulsory winding-up, *ante*.

Transfer of property, rights and liabilities to another company—

Contract of personal service—Companies Act 1929, s 154. **Nokes v Doncaster Amalgamated Collieries Ltd** [1940] 3 549, HL.

Voluntary winding-up. *See* Voluntary winding-up, *post*.

Distribution of assets in winding-up—

Compulsory winding-up. *See* Compulsory winding-up—Liquidator—Powers—Distribution of surplus assets, *ante*.

Voluntary winding-up. *See* Voluntary winding-up—Distribution of company's property, *post*.

Dividend—

Computation—

Payment of dividend tax free up to 6s. in the £. **Austin Motor Co Ltd v British Steamship Investment Trust Ltd** [1950] 1 632, CA. **Friends Provident and Century Life Office v Investment Trust Corp Ltd** [1951] 2 632, HL.

Deduction of tax. *See* Income tax (Annual payment—Payment out of profits already taxed—

Deduction of tax—Deduction by person through whom payment made—Dividends).

Income tax. *See* Income tax (Dividends).

Interim dividend—

Declaration—Declaration of interim dividend payable on stipulated date in future—Date when dividend 'became due'—Whether declaration creating debt between company and shareholder. **Potel v Inland Revenue Comrs** [1971] 2 504, ChD.

Money available for dividend—

Reserve fund used in the business—Reserve fund formed from profits and premiums on issue of shares—Whether available for dividend—Discretion of the court. **Drown v Gaumont-British Picture Corp Ltd** [1937] 2 609, ChD.

Preference shares—

Priority. *See* Preference shares—Dividends—Priority, *post*.

Underpayment—Cumulative preference shares—Distribution of aggregate sum in respect of underpayment—Period of deficiency—Shareholders entitled to share in distribution—Rate of income tax deductible. **Godfrey Phillips Ltd v Investment Trust Corp Ltd** [1953] 1 7, ChD.

COMPANY (cont)

Dividend (cont)—

Reduction by statute—

Relief—Cumulative preference shares—Dividend reduced by statute—Right of shareholders subsequently acquiring shares to apply for relief—Whether evidence of personal conditions of applicants necessary—National Expenditure Adjustment Act 1932 (New Zealand), s 41(1) (2)(4)(5). **Truth (N Z) Ltd v Howey** [1963] 3 365, PC.

Right to dividend—

Necessity for declaration of dividend—Voluntary winding-up. *See* Voluntary winding-up—Distribution of company's property—Profits—Rights of shareholders—Right to dividend in respect of period before winding-up—Necessity for declaration of dividend, *post*.

Documents—

Inspection—

Right of inspection—Shares held by trustees—Right of beneficiaries to inspect company's documents. **Re Butt (decd)** [1952] 1 167, CA.

Production of documents—

Production before foreign tribunal—Whether English company can be ordered to produce documents before foreign tribunal—Foreign Tribunals Evidence Act 1856, s 1. **Penn-Texas Corp v Murat Anstalt (No 2)** [1964] 2 594, CA.

Emergency legislation—

Effect on. *See* Emergency legislation (Company).

Employees—

Administration of fund for benefit of—

Rule against perpetuities. *See* Rule against perpetuities (Remoteness—Scheme for administration of fund for benefit of employees of company).

Benefits in kind—

Income tax. *See* Income tax (Emoluments from office or employment—Benefits in kind—Expense incurred by body corporate).

Enemy—

Trading with the enemy. *See* Trading with the enemy.

Examination of officer—

Compulsory winding-up. *See* Compulsory winding-up—Public examination, *ante*.

Investigation by Board of Trade. *See* Investigation by Board of Trade—Examination of officer, *post*.

Voluntary winding-up. *See* Voluntary winding-up—Examination of officer of company etc, *post*.

Excess profits tax. *See* Excess profits tax.Execution against. *See* Execution (Company).Execution of lease by limited company. *See* Landlord and tenant (Lease—Execution).

Expenses allowances—

Income tax. *See* Income tax (Emoluments from office or employment—Expenses allowances).

Expulsion from company—

Natural justice. *See* Natural justice (Company—Expulsion from company).

Expulsion of member—

Power under articles of association. *See* Articles of association—Construction—Powers to expel member, *ante*.

Failure to appoint director—

Effect on third parties. *See* Director—Failure to appoint—Effect on third parties, *ante*.

Financial assistance—

Prohibition of financial assistance for purchase of company's own shares. *See* Shares—Purchase of shares with financial assistance of company, *post*.

Floating charge. *See* Charge—Floating charge, *ante*.

Foreign company—

Amalgamation—

Recognition—Universal succession of new amalgamated company by law of domicile—Whether recognised by English courts—Creditor's action against successor to foreign guarantor company—Companies Act 1948, s 208. **National Bank of Greece and Athens S A v Metliss** [1957] 3 608, HL.

Application for order that winding-up invalid—

Previous application for leave to appeal out of time against rejection of proof—Consent to adjournment of application for leave pending decision on application for order that winding-up invalid. **Banque des Marchands de Moscou (Koupetschesky) v Kindersley** [1950] 2 549, CA.

Bank dissolved by foreign decree—

Branch office in England—Debt, balance on current account, in foreign currency—Proof by customer in English liquidation—Conversion into English currency—Date at which conversion to be effected. **Re Russian Commercial and Industrial Bank** [1955] 1 75, ChD.

Situs of debt—Claim by creditor against English assets—Debt recoverable in England. **Re Banque des Marchands de Moscou (Koupetschesky)** [1954] 2 746, ChD.

Bank nationalised by foreign decree—

Debt situated abroad—Claim by customer against English assets. **Re Banque de Moscou** [1952] 1 1269, ChD.

Fiduciary power of discretionary nature vested in directors—

Foreign court appropriate tribunal to control exercise of discretion. **Pergamon Press Ltd v Maxwell** [1970] 2 809, ChD.

Jurisdiction—

Company not carrying on business in England, but having substantial assets here—Companies Act 1929, s 338(1), (2). **Banque des Marchands de Moscou (Koupetschesky) (in liquidation) v Kindersley** [1950] 2 549, CA.

COMPANY (cont)

Foreign company (cont)—

Mortmain—

Acquisition of lease—Residue of lease for ninety-nine years—Mortmain and Charitable Uses Act 1888, ss 1(1), 10—Mortmain and Charitable Uses Act 1891, s 3. **Morelle Ltd v Waterworth Rodnal Ltd v Ludbrook** [1954] 2 673, CA.

Acquisition of lease—Residue of lease for ninety-nine years—Forfeiture to Crown. **Attorney-General v Parsons** [1956] 1 65, HL.

Acquisition of lease—Title registered—Forfeiture—Time when forfeiture occurs—Mortmain and Charitable Uses Act 1888, s 1(1). **Morelle Ltd v Wakeling** [1955] 1 708, CA.

Security—

Injunction—Interlocutory—Cross undertaking—Security for implementing. *See Injunction* (Interlocutory—Condition of relief—Security for fulfilment of cross-undertaking—Foreign company as plaintiffs).

Spanish bank with branch in London—

City of domicile captured by insurgents—Reputed change of bank's board—Dismissal of London managers—Decreets of de jure and de facto governments. **Banco de Bilbao v Rey, Same v Sancha** [1938] 2 253, CA.

Taxation. *See Income tax* (Foreign company).

Universal succession by foreign law of one foreign company to another. *See Conflict of laws* (Succession—Foreign company—Universal succession by foreign law of one foreign company to another).

Winding-up by court. *See Compulsory winding-up—Unregistered company—Foreign company, ante.*

Writ—

Service of writ on company—No place of business in Great Britain—Service at address alleged to be former place of business—Validity of service—Companies Act 1948, s 412. **Deverall v Grant Advertising Incorporated** [1954] 3 389, CA.

Service of writ on company—Share register in England—Place of business—Companies Act 1929, ss 344, 349, 352. **The Madrid** [1937] 1 216, Adm.

Service on company. *See Writ* (Service on company—Foreign company).

Foreign tax—

Liability of liquidator to pay tax due from company to foreign government on voluntary winding-up. *See Voluntary winding-up—Distribution of company's property—Foreign tax, post.*

Fraud—

Liquidation of company. *See Criminal law* (Fraud—Company going into liquidation).

Local government—

Audit—Surcharge. *See Local government* (Audit—Surcharge—Powers of district auditor—Fraud by company).

Power to order public examination of officers—

Compulsory winding-up. *See Compulsory winding-up—Public examination—Order for attendance of directors—Official Receiver's further report stating opinion that fraud committed, ante.*

Fraudulent conversion—

Public company. *See Criminal law* (Fraudulent conversion—Director of public company).

Fraudulent preference—

Winding-up. *See Winding-up—Fraudulent preference, post.*

Fraudulent trading—

Trading not antecedent to or in the course of winding-up—

Whether offence made out—Companies Act 1948, s 332(3). **Director of Public Prosecutions v Schildkamp** [1969] 3 1640, HL.

Winding-up. *See Winding-up—Fraudulent trading, post.*

Governing director. *See Director—Governing director, ante.*

Income tax—

Accounting period. *See Income tax* (Accounting period).

Corporation tax. *See Income tax* (Corporation tax).

Discontinuance of trade. *See Income tax* (Discontinuance of trade—Company).

Indictment. *See Indictment* (Company).

Industrial and provident societies—

Conversion into company. *See Industrial and provident societies* (Conversion of registered society into company).

Inspectors' report—

Evidence—

Compulsory winding-up—Petition by Board of Trade. *See Compulsory winding-up—Petition by Board of Trade—Evidence—Inspectors' report, ante.*

Insurance company—

Duty. *See Motor insurance* (Condition—Absolute conduct and control of proceedings—Duty of insurance company and its legal advisers).

Winding-up—

Appointment of provisional liquidator. *See Compulsory winding-up—Provisional liquidator—Appointment—Power of court to make appointment—Circumstances in which exercisable—Provisional liquidator for insurance company, ante.*

Insurance company carrying on different classes of insurance business—Priority of life assurance creditors over other creditors—Assurance Companies Act 1909, ss 2, 3, 4, 5. **Re London General Insurance Co Ltd** [1938] 3 748, ChD.

Margin of solvency—Margin of solvency not maintained—Discretion of court—Firm prospect that statutory margin of solvency will be attained in the near future—Whether winding-up order should be refused—Relevant factors in deciding on exercise of discretion—Insurance Companies Act 1958, s 13(1)—Companies Act 1967, s 79(1). **Re Craven Insurance Co Ltd** [1968] 1 1140, ChD.

COMPANY (cont)

Intention of company—

Evidence of intention—

Decision of directors without formal meeting—Whether sufficient evidence of intention in opposition to tenants' application for new tenancy—Landlord and Tenant Act 1954, s 30(1)(g). **H L Bolton (Engineering) Co Ltd v T J Graham & Sons Ltd** [1956] 3 624, CA.

Interim dividend—

Declaration. *See* Dividend—Interim dividend—Declaration, *ante*.

Interpleader—

Company in liquidation as claimant—

Leave. *See* Compulsory winding-up—Winding-up order—Consequences of winding-up order—Stay of proceedings against company—Interpleader summons, to which company respondent, is within stay—Leave of Companies' Court required, *ante*.

Issue of summons—

Claimant a company in compulsory liquidation. *See* Interpleader (Issue of interpleader summons—Claimant a company in compulsory liquidation).

Investigation by Board of Trade—

Action begun by Board of Trade in plaintiff company's name consequent on inspector's report—

Decision of Board of Trade to bring proceedings—Whether inferred from indorsement of solicitor of the Board of Trade on writ—Companies Act 1948, s 169(4). **Selangor United Rubber Estates Ltd v Cradock (A Bankrupt) (No 4)** [1969] 3 965, ChD.

Foundation of action—Action commenced under section of first Act—Section replaced by second Act—Action concluded—Whether, for purposes of costs, action founded on first or second Act—Companies Act 1948, s 169(4)—Companies Act 1967, s 37. **Selangor United Rubber Estates Ltd v Cradock (a Bankrupt) (No 4)** [1969] 3 965, ChD.

Security for costs sought by defendant banks—Whether Board of Trade had brought itself within the powers conferred by s 169(4)—'Misfeasance' in s 169(4) not necessarily connoting moral turpitude—Whether indemnity for costs provided by s 169(5) covered costs to be paid by plaintiff company to defendants—Companies Act 1948, s 169(4), (5), s 447. **Selangor United Rubber Estates Ltd v Cradock** [1967] 2 1255, ChD.

Affairs of company—

Receiver and manager's actions—Receiver and manager appointed by debenture-holder—Sale by receiver of subsidiary company's share-holding in its sub-subsidiary company at under-value—Whether acts of receiver and manager were 'affairs' of parent company within Companies Act 1948, s 165(a)(i), s 167(1). **R v Board of Trade, Ex parte St Martin Preserving Co Ltd** [1964] 2 561, QBD.

Application for investigation—

Procedure—Companies Act 1948, s 165—RSC Ord 53B, r 7(c). **Practice Direction** [1954] 1 604, ChD.

Evidence before inspectors—

Access to transcripts of evidence by liquidator. *See* Compulsory winding-up—Liquidator—Powers—Investigation of company's affairs by inspectors—Power of liquidator to obtain access to transcripts given before liquidation, *ante*.

Evidence given by officer of company's bankers—Admissibility in subsequent legal proceedings—Answers given to inspectors during informal questioning—Answers not on oath—Whether transcript of answers admissible in subsequent proceedings against bank—Companies Act 1948, s 167(1), (2) and (5)—Companies Act 1967, s 50. **Karak Rubber Co Ltd v Burden** [1971] 3 1118, ChD.

Self-incrimination—Admissibility against director in subsequent criminal proceedings—Companies Act 1948, s 167(2), (4)—Companies Act 1967, s 50. **R v Harris (Richard)** [1970] 3 746, CCC.

Whether admissible in subsequent civil proceedings although evidence taken before Companies Act 1967, s 50—Companies Act 1948, s 167(2). **Selangor United Rubber Estates Ltd v Cradock (No2)** [1968] 1 567, ChD.

Examination of officer of company—

Refusal of director to answer inspectors' questions without assurances as to procedure at investigation. *See* Investigation by Board of Trade—Proceedings before inspectors—Natural justice—Characteristics of proceedings—Inspectors required to act fairly—Exercise of discretion—Refusal by company directors to answer questions without assurances as to procedure at investigation, *post*.

Refusal of officer to answer questions in presence of shorthand writer—Whether presence of shorthand writer reasonably necessary—Companies Act 1929, s 135(1), (3), (4), (5), (6). **Re Gaumont-British Picture Corp'n Ltd** [1940] 2 415, ChD.

Expenses of investigation—

Costs and expenses incurred in connection with proceedings brought by Board of Trade—Whether limitation on expenses recoverable—Companies Act 1948, s 169(5), s 170(1) and (3). **Selangor United Rubber Estates Ltd v Cradock (a Bankrupt) (No 4)** [1969] 3 965, ChD.

Opposition to company's name consequent on inspector's report—

Damages for negligence for breach of duty sought—Payment of balance alleged to be due from bank on current account claimed—Application by defendant bank to stay and strike out proceedings—No allegation of fraud or other such misconduct on the part of the bank—Winding-up petition pending against plaintiff company—Action not authorised statute—Application adjourned until after hearing of winding-up petition—Companies Act 1948, s 169(4). **SBA Properties Ltd v Cradock** [1967] 2 610, ChD.

Proceedings before inspectors—

Natural justice—Characteristics of proceedings—Inspectors required to act fairly—Exercise of discretion—Refusal by company directors to answer questions without assurances as to procedure at investigation—Companies Act 1948, ss 165(b), 167(3). **Re Pergamon Press Ltd** [1970] 3 535, CA.

COMPANY (cont)

Investigation by Board of Trade (cont)—

Proceedings before inspectors (cont)—

Natural justice—Duty to hear parties—Party liable to criticism—Opportunity to answer tentative conclusions of inspectors critical of him before report signed—Opportunity to answer evidence from other witnesses which might be basis for criticism—Companies Act 1948, s 165(b) (as amended by the Companies Act 1967, s 38). **Maxwell v Department of Trade and Industry** [1974] 2 122, CA.

Winding-up petition. *See* Compulsory winding-up—Petition by Board of Trade, *ante*.

Investment company—

Taxation. *See* **Income tax** (Investment income).

Landlord—

Notice to quit given in name of director as landlord—

Validity. *See* **Landlord and tenant** (Validity of notice to quit—Company a landlord—Director who acted on behalf of company named as landlord in notice to quit).

Lease—

Execution. *See* **Landlord and tenant** (Lease—Execution).Life director. *See* Director—Life director, *ante*.

Liquidator—

Compulsory winding-up. *See* Compulsory winding-up—Liquidator, *ante*.

Constructive trustee. *See* **Trust and trustee** (Constructive trust—Shares in company—Transfer by company in liquidation of shares in another company).

Liquidator de son tort. *See* Dissolution—Application to have dissolution declared void—Application by person appointed liquidator on resolution that company be voluntarily wound up—Subsequent discovery that company had, prior to appointment of liquidator

Representation of company at meeting of another company—

Power to authorise representative. *See* Meeting—Representation—Corporation—Representation of corporation at meeting of another company—Representative—Authority—Resolution of directors or other governing body—Other governing body—Liquidator, *post*.

Trade—

Income tax. *See* **Income tax** (Trade—Liquidator).Voluntary winding-up. *See* Voluntary winding-up—Liquidator, *post*.

Loan capital—

Issue of loan capital—

Stamp duty. *See* **Stamp duty** (Issue of loan capital).

Loan to company—

Construction of contract. *See* **Contract** (Construction—Loan to company).

Manager—

Generally. *See* Receiver, *post*.Misfeasance. *See* winding-up—Misfeasance—Receiver and manager, *post*.Managing director. *See* Director—Managing director, *ante*.

Meeting—

Adjournment—

Poll—Poll to be taken immediately at meeting—Impossibility of continuing meeting to ascertain result of poll. **Jackson v Hamlyn** [1953] 1 887, ChD.

Completion—

Time of completion—Business of meeting and voting on poll completed on one day—Counting votes completed on following day—When meeting completed. **Holmes v Keyes (Lord)** [1958] 2 129, CA.

Convening of meeting—

Power of court to order meeting—Private company—Impracticability of conducting meeting in manner prescribed by company's articles—Application to court by member holding 90 per cent of company's shares—Opposition by directors—Companies Act 1948, s 135(1). **Re El Sombreiro Ltd** [1958] 3 1, ChD.

Exercise of director's power to call—

Duty of director to exercise power in good faith in interests of company as a whole. *See* Director—Duty—Good faith—Duty to exercise power in interests of company as a whole—Power of director to call meeting, *ante*.

Meeting to ascertain wishes of creditors or contributories—

Winding-up. *See* Winding-up—Meeting to ascertain wishes of creditors or contributories, *post*.

Notice of meeting—

Alteration of objects clause. *See* Objects clause—Alteration—Confirmation of special resolution to alter objects of company—Notice of meeting, *post*.

Article requiring personal service or service by ordinary post—Special resolution—Shareholders in enemy and enemy-occupied territory—Enemy shareholders not notified—Validity of resolution—Companies Act 1929, ss 115, 117—Trading with the Enemy Act 1939, ss 1(2), 2(1), 15—Defence (Trading with the Enemy) Regulations 1940 (SR & O 1940 No 1092). **Re Anglo-International Bank Ltd** [1943] 2 88, CA.

Notice to elect directors—Proposal to elect three directors as well as re-election of retiring director—Sufficiency of notice—Companies (Consolidation) Act 1908, Sch I, Table A, arts 49, 50. **Choppington Collieries Ltd v Johnson** [1944] 1 762, CA.

Power of court to order meeting. *See* Meeting—Convening of meeting—Power of court to order meeting, *ante*.

Proxy—

Practice—Annual meeting—Proxies sent by directors to larger shareholders to ensure quorum—Validity of practice—Directors also directors of other companies trading with company—Questions of internal policy—Companies Clauses (Consolidation) Act 1845, ss 64, 65, 76, 85, 86. **Wilson v London, Midland & Scottish Ry Co** [1940] 2 92, CA.

COMPANY (cont)Meeting (cont)—
Proxy (cont)—

Unstamped proxy forms—Forms not rejected by chairman at meeting—Votes cast by proxies holding unstamped forms—Objection taken subsequently to votes of proxies—Whether company entitled to reject unstamped forms after meeting and to exclude votes cast by proxies. **Marx v Estates and General Investments Ltd** [1975] 3 1064, ChD.

Voting—Extent of proxyholder's rights of voting—Proxy to act at the meeting and to vote for scheme of arrangement—Amendment to defer consideration of scheme. **Re Waxed Papers Ltd** [1937] 2 481, CA.

Voting—Proxy-holder directed by some shareholders to vote in favour of resolution, by others against resolution, and not given by others any direction as to voting—Proxy-holder voting in favour of resolution without specifying number of votes cast—Whether votes validly cast. **Oliver v Dalgleish** [1963] 3 330, ChD.

Quorum—

Only one shareholder present. **Re London Flats Ltd** [1969] 2 744, ChD.

Poll—No quorum without counting in proxies—Proxies against resolution—Whether chairman should demand poll. **The Second Consolidated Trust Ltd v Ceylon Amalgamated Tea & Rubber Estates Ltd** [1943] 2 567, ChD.

Time when quorum necessary—Quorum present when meeting proceeded to business but not when vote taken—Whether 'quorum'. **Re Hartley Baird Ltd** [1954] 3 695, ChD.

Representation—

Corporation—Representation of corporation at meeting of another company—Representative—Authority—Resolution of directors or other governing body—Other governing body—Liquidator—Parent company in course of creditor's voluntary winding-up—Meetings of subsidiary companies—Liquidator authorised to attend meetings as representative of parent company—Document authorising liquidator to attend as representative signed by liquidator he having caused parent company's seal to be affixed to it—No committee of inspection appointed—Liquidator having received no direction from creditors—Whether liquidator 'governing body' of parent company—Companies Act 1948, s 139(1)(a). **Hillman v Crystal Bowl Amusements Ltd** [1973] 1 379, CA.

Member—

Application for restoration of name of company to register. *See* Restoration to register—Application—Member's application, *post*.

Compromise with—

Scheme of arrangement. *See* Scheme of arrangement—Compromise with creditors or members, *post*.

Death of member—

Transmission of shares on death of member—Restriction on transfer of shares imposed by articles of association. *See* Transfer of shares—Restriction imposed by articles of association—Transmission of shares on death of member, *post*.

Expulsion—

Natural justice. *See* Natural justice (Company—Expulsion from company).

Power under articles of association. *See* Articles of association—Construction—Power to expel member, *ante*.

Petition to wind up company. *See* Compulsory winding-up—Petition by contributory, *ante*.

Rights under articles of association. *See* Articles of association—Members' rights, *ante*.

Variation of members' rights. *See* Variation of members' rights, *post*.

Memorandum of association—

Capital clause—

Alteration—Statement of amount of share capital—Description of shares—Decimalisation—Alteration in description from shillings to new pence—No change in fixed amount of share capital—Whether alteration of condition in memorandum—Companies Act 1948, s 4. **Re Harris & Sheldon Group Ltd** [1971] 2 87, ChD.

Objects clause. *See* Objects clause, *post*.

Power to borrow—

General power in memorandum of association—Power given to directors in articles of association—Delegation of borrowing power by company—Validity—Ostensible authority—Letter of hypothecation—Charge on produce in go-downs—Produce in go-downs fluctuating—Floating charge—Unregistered charges—Effect of seizure before liquidation. **Mercantile Bank of India Ltd v Chartered Bank of India, Australia and China, and Strauss & Co Ltd (in liquidation)** [1937] 1 231, KBD.

Ultra vires—

Contract—Defence—Construction of objects clause of memorandum of association—'In connexion with'—Commission claimed by company under alleged contract for introduction of financier—Property development company which had not itself obtained finance from such a source—No interest in scheme of development for which any money to be used—Chairman's knowledge taken to be acquired in capacity as chairman—Main object of company property development—Objects clause extending to doing things incidental or conducive to prior objects, including any business which could be carried on advantageously in connexion with or as ancillary to prior or main objects—Whether contract ultra vires—Whether ultra vires able to be raised by way of defence to liability on contract. **Bell Houses Ltd v City Wall Properties Ltd** [1966] 2 674, CA.

Supply of fuel for unauthorised purpose—Constructive notice of memorandum. **Re Jon Beauforte (London) Ltd** [1953] 1 634, ChD.

Minority—

Oppression. *See* Oppression, *post*.

Minority shareholder—

Representative action—

Action by one shareholder allegedly on behalf of all except defendants—Alleged negligent sale by directors—Directors controlling majority of voting power—Acts not fraudulent or ultra vires—Whether shareholder entitled to maintain proceedings. **Pavrides v Jensen** [1956] 2 518, ChD.

COMPANY (cont)

Minority shareholder (cont)—

Representative action (cont)—

Costs—Indemnity—Action brought in shareholder's name—Action brought in order to redress wrongs against company committed by majority shareholder—Action brought without company's authority—Action in substance a representative action—Circumstances in which minority shareholder entitled to indemnity against company in respect of costs—Sanction of court—Procedure to be followed in order to obtain indemnity. **Wallersteiner v Moir (No 2)** [1975] 1 849, CA.

Jurisdiction of court—Action by minority shareholder allegedly on behalf of all shareholders except first defendant (majority shareholder) claiming damages for alleged wrongs to company—No allegation of ultra vires or fraud—Whether court had jurisdiction to adjudicate on action. **Heyting v Dupont** [1964] 2 273, CA.

Legal aid—Persons entitled to legal aid—Action brought by minority shareholder in his own name—Action brought to redress wrongs against company shareholders—Action in substance a representative action—Persons entitled to legal aid not including body corporate—Whether minority shareholder entitled to legal aid—Legal Aid Act 1974, s 25. **Wallersteiner v Moir (No 2)** [1975] 1 849, CA.

Representative misfeasance action against sole director with controlling interest—No allegation in statement of claim that shareholder prevented from causing company to sue—Pleading defective. **Birch v Sullivan** [1958] 1 56, ChD.

Scheme to confer majority of votes at general meetings on directors and their supporters—Moves to withstand threatened take-over—Whether minority shareholder can validly bring representative action challenging vires of bona fide acts of directors ratifiable in general meeting. **Hogg v Cramphorn Ltd** [1969] 2 744, ChD.

Minute book—

Evidence—

Evidence of disposal of interest in land. **Re Strathblaine Estates Ltd** [1948] 1 162, ChD.

Minutes to be conclusive evidence of fact therein stated—Evidence tending to disprove such facts—Evidence inadmissible—Companies Act 1929, s 117(3). **Kerr v John Mottram Ltd** [1940] 2 629, ChD.

Misfeasance summons. *See* Winding-up—Misfeasance summons, *post*.

Modification of rights of preference shareholders—

Reduction of capital. *See* Reduction of capital—Preference shares—Modification of rights of preference shareholders, *post*.

Name—

Change of name—

Proceedings by or against company—Practice. **Practice Direction** [1965] 1 43, QBD.

Publication—

Office or place of business, at—Turf accountant—Whether publication amounting to illegal advertisement. *See* Gaming (Betting)—Licensed betting office—Advertisement—Indicating premises licensed betting office—Notice showing company's registered name).

Restoration to register. *See* Restoration to register, *post*.

Use of name—

Bill of exchange—Incorrect description of drawee company by drawer—Acceptance signed by director of drawee company on bill containing incorrect description—Whether director personally liable for amount of bill—Whether plaintiffs estopped from enforcing liability—Companies Act 1948, s 108(1)(c), (4). **Durham Fancy Goods Ltd v Michael Jackson (Fancy Goods) Ltd** [1968] 2 987, QBD.

Whether sole characteristic for purposes of identification. *See* Specific performance (Sale of land—Land belonging to company—Vendor company inaccurately described in conveyance).

Natural justice. *See* Natural justice (Company).

Notice—

Meeting. *See* Meeting—Notice of meeting, *ante*.

Removal of managing director. *See* Director—Managing director—Removal—Notice required, *ante*.

Special resolution. *See* Resolution—Special resolution—Notice, *post*.

Objects clause—

Alteration—

Alteration to carry on business which may conveniently or advantageously be carried on with business of company—Business closed for duration of war except for collecting of hire-purchase debts—Desire to use liquid resources to carry on trust investment business—Whether trust investment business 'Conveniently or advantageously combined with the business of the company'—Companies Act 1929, s 5(1)(d). **Re Drages Ltd** [1942] 1 194, ChD.

Benevolent association—Amalgamation with another association—Extension of objects—Confirmation of alteration. **Re Chartered Surveyors' Benevolent Fund (Incorporated)** [1936] 2 1631, ChD.

Company incorporated by private Act of Parliament later registered as limited company—Public utility—Undertaking largely fallen into disuse—Abandonment of railway—Market house little used—Whether special resolution abandoning its objects was ultra vires—Court had no power to authorise liquidator to effect ultra vires transaction—Liberty to promote private Bill—Companies Act 1948, s 394(2), (3)(c), s 307. **Re Salisbury Railway & Market House Co Ltd** [1967] 1 813, ChD.

Confirmation of special resolution to alter objects of company—Notice of meetings—Articles requiring service of notice on all members—Failure to serve notice on members resident abroad—Interpretation of articles providing for service of notice of meetings based on decision of long standing—Validity of special resolution—Companies Act 1929, ss 5, 115, 117. **Re Warden & Hotchkiss Ltd** [1945] 1 507, CA.

COMPANY (cont)

Objects clause (cont)—

Alteration (cont)—

Restriction or abandonment of any of objects—Cancellation of alteration—Alteration not one enabling company to restrict or abandon any of objects—Notice not given to debenture stockholders—Company precluded from contending that functions specified as objects were not objects but could be altered as articles—Memorandum provided for balance on liquidation passing to primary beneficiary to be selected then or, in default, to some charitable object—Resolution passed substituting a particular charitable company as recipient of balance—Companies Act 1948, s 5(1)(e), (5), s 23. **Re Hampstead Garden Suburb Trust Ltd [1962] 2 879, ChD.**

Construction—

Ascertainment of main object—Distinction between objects and powers—Numerous objects set out—Determination of main objects by reference to evidence of company's activities. **North of England Zoological Society v Chester Rural District Council [1959] 3 116, CA.**

Ascertainment of main object—Evidence of activities necessary only where object ambiguous. **Victory (Ex-Services) Assn Ltd v Paddington Borough Council [1960] 1 498, QBD.**

Borrowing power declared as an object—Provision that objects were independent objects—Company's business changed and new business ultra vires—Money borrowed from bank to which copy of memorandum was supplied—Whether borrowing power capable of being an independent object—Whether the borrowing from the bank was ultra vires. **Re Introductions Ltd [1969] 1 887, CA.**

Contract—Opinion of board that other business can be carried on advantageously 'in connexion with' main business—'Incidental and conducive to'—'Turn to account'—Land development company—Powers of board delegated to chairman—Chairman arranged to introduce financiers to defendants in return for procuration fee—Chairman's knowledge of source of finance an asset of the company—Whether contract for procuration fee was ultra vires—Ultra vires raised by way of defence to liability on contract after contract fully performed by one party. **Bell Houses Ltd v City Wall Properties Ltd [1966] 2 674, CA.**

Effect of 'in connexion with', 'incidental or conducive to', 'ancillary'—No words excluding main objects rule of construction. **Bell Houses Ltd v City Wall Properties Ltd [1966] 2 674, CA.**

Numerous objects set out in separate paragraphs—Concluding words of clause providing that objects specified in any one paragraph not to be limited by reference to terms of any other paragraph or by name of company—Main object of company export and import of goods—Whether scope of subsequent object clauses limited so as to be ancillary to main object—Whether proposed acquisition of building lease for a venture in land development ultra vires. **Anglo Overseas Agencies Ltd v Green [1960] 2 244, QBD.**

Objects to carry on business inter alia as 'concessionaires'—Meaning of 'concessionaire'—Company obtaining lease of petrol station from petrol company—Company agreeing to obtain all its supplies of motor fuel from lessors—Whether lease and trading relationship with lessors constituting a concession—Whether company carrying on business as 'concessionaires'. **Re New Finance & Mortgage Co Ltd (in liquidation) [1975] 1 684, ChD.**

Pension—Service agreement with company's general manager and controlling shareholder, who was also a director, providing for pension to be paid to his widow—No specific amount of remuneration for director provided by the agreement—Director had controlled company for many years but had not previously had service agreement—Articles of association altered recently to allow pensions to be awarded to directors' widows, among others—Director no longer in good health at date of service agreement—Director died in January, 1959—Company went into liquidation in December, 1963—Proof for capitalised value of pension rejected—Whether service agreement was reasonably incidental to the carrying on of the company's business and bona fide for the benefit of the company. **Re W & M Roith Ltd [1967] 1 427, ChD.**

Whether objects charitable—

Company incorporated to present classical artistic, cultural and educational dramatic works. *See* **Charity** (Artistic dramatic work—Company incorporated to present artistic, cultural and educational dramatic works).

Evidence. *See* **Charity** (Company—Objects—Evidence—evidence whether objects charitable).

Offences by officers of companies in liquidation—

Meaning of 'officer of company'—

Whether including auditor. *See* **Officer—Auditor—Whether 'officer of company' within criminal enactments, post.**

Officer—

Attendance and examination—

Restrictive Practices Court. *See* **Restrictive trade practices** (Court—Power to order examination on oath).

Auditor—

Whether 'officer' of company within criminal enactments—Whether 'public officer' of company within such enactments—Auditor charged with fraud, fraudulent statements and falsifying books as officer of a company—Larceny Act 1861, ss 83, 84—Companies Act 1948, ss 328(1)(j), 330, 331, 455(1). **R v Shacter [1960] 1 61, CCA.**

Default—

Annual return—Documents to be annexed to annual return—Failure to annex documents to return—Default fine—Defence—Documents not in existence—Certified copy of balance sheet to be laid before company in general meeting in relevant period—No meeting held—No balance sheet prepared—Whether defence to charge of failing to annex balance sheet to annual return—Companies Act 1948, s 127(1). **Stockdale v Coulson [1974] 3 154, QBD.**

COMPANY (cont)

Officer (cont)—

Examination of officer—

Board of Trade investigation of company's affairs. *See* Investigation by Board of Trade—Examination of officer, *ante*.

Compulsory winding-up. *See* Compulsory winding-up—Public examination, *ante*.

Examination of officer of company—

Voluntary winding-up. *See* Voluntary winding-up—Examination of officer of company etc, *post*.

Misfeasance. *See* Winding-up—Misfeasance, *post*.

Receiver and manager—

Appointment by debenture holders—Whether 'manager' of company within Companies Act 1948, s 333(1). **Re Johnson & Co (Builders) Ltd** [1955] 2 775, CA.

Official Receiver—

Liquidator—

Compulsory winding-up—Duty—Sale of land. *See* Compulsory winding-up—Liquidator—Duty—Sale of land, *ante*.

Petition for winding-up. *See* Compulsory winding-up—Petition by Official Receiver, *ante*.

Oppression—

Conduct amounting to oppression—

Conduct must at least have been unfair conduct towards those alleged to be oppressed—Inefficiency, carelessness and unwise conduct not enough—Companies Act 1948, s 210. **Re Five Minute Car Wash Service Ltd** [1966] 1 242, ChD.

Private company—Partnership in substance—Three directors and shareholders—Petitioner ousted from position as working director and excluded from business of another company acquired by his two co-directors—Relief claimed under s 210 alternatively winding-up order under s 222 of Companies Act 1948—Main grievances not related to petitioner's status as shareholder of company—Petitioners entitled to winding-up order on just and equitable ground but not entitled to relief under s 210—Court confined to allegations in petition—Companies Act 1948, ss 210, 222. **Re Lundie Brothers Ltd** [1965] 2 692, ChD.

Shareholders having dominant power in company—Exercise of power to procure that something done or not done in conduct of company's affairs that is unfair to minority shareholders—Element of constraint on minority shareholders—Director managing company's affairs injecting further capital into company in order to avoid possible liquidation—Issue of debentures and shares to director—Issue giving director majority shareholding in company—Company becoming prosperous as result of director's efforts—Director drawing excessive remuneration—No dividends paid to other shareholders—Whether conduct of affairs of company amounting to oppression—Companies Act 1948, s 210. **Re Jermyn Street Turkish Baths Ltd** [1971] 3 184, CA.

Shareholder having dominant power in company—Exercise of power to procure that something done or not done in company's affairs that is unfair to minority shareholder—Aunt a director of company holding 55 per cent of shares—Niece holding balance of shares—Directors proposing to increase share capital—New shares to be issued to other directors and to trustees for long service employees—Effect of proposal to reduce niece's shareholding below 25 per cent—Aunt voting in favour of resolutions—Whether aunt entitled to vote in any way—Whether resolutions should be set aside. **Clemens v Clemens Bros Ltd** [1976] 2 268, ChD.

Subsidiary company—Use of controlling powers by majority shareholder to destroy company's business—Oppression of minority shareholders—Order for purchase by majority shareholder of minority shareholders' shares—Companies Act 1948, s 210(1), (2). **Scottish Co-operative Wholesale Society Ltd v Meyer** [1958] 3 66, HL.

Voting control—Founder of business retaining voting control on transfer of business to limited company—Sons of founder life directors and executive managers of business—Autocratic exercise of power by founder rendering it just and equitable that company should be wound up, but winding-up being unfairly prejudicial to members—Companies Act 1948, s 210(1), (2). **Re H R Harmer Ltd** [1958] 3 689, CA.

Petition—

Form of petition—Petition for order regulating conduct of company's affairs—Need to state nature of relief sought—Companies Act 1948, s 210(1). **Re Antigen Laboratories Ltd** [1951] 1 110, ChD.

Jurisdiction of court—Court's consideration confined to allegations in petition. **Re Lundie Brothers Ltd** [1965] 2 692, ChD.

Practice—Advertisement of petition for relief under Companies Act 1948, s 210, or for winding-up—Companies (Winding-up) Rules 1949 (SI 1949 No 330), r 28. **Practice Direction** [1957] 2 800, ChD.

Practice—Title of proceedings—Name of judge to be omitted from general title of proceedings under Companies Act 1948, s 210—Companies (Winding-up) (Amendment) Rules 1957 (SI 1957 No 973), r 1(f). **Practice Note (Companies Court)** [1958] 2 124, ChD.

Purpose of petition—Contributory's petition for removal or suspension from office of his co-directors and for appointment of receiver and manager of company for one year, alternatively that petitioner and two of his co-directors be ordered to enter into and procure £36,000 in business taken over by company—Company assumed responsibility for repayment of £36,000—No firm agreement when or in what manner payable—Real object of petition to get satisfaction regarding repayment of loan—Abuse of process—Contributory had no tangible interest in liquidation of company—Companies Act 1948, s 210(2)(b). **Re Bellador Silk Ltd** [1965] 1 667, ChD.

Purpose of petition—Petition presented for collateral purpose—Abuse of process. **Re Bellador Silk Ltd** [1965] 1 667, ChD.

COMPANY (cont)

- Option to purchase shares—
 - Will—
 - Donee assigning benefit of option and dying without exercising it. *See* Will (Option—Option to purchase shares—Donee assigning benefit of option and dying without exercising it).
- Oversea company—
 - Winding-up. *See* Winding-up—Oversea company, *post*.
- Passing-off—
 - Injunction—
 - Form of order. *See* Injunction (Form of order—Passing-off—Action against limited company).
- Payment of money under mistake of fact—
 - Mistake, owing to ignorance, by assistant secretary and accountant—
 - True facts known to secretary, but other officers of company not informed. **Turvey v Dentons (1923) Ltd** [1952] 2 1025, QBD.
- Pension—
 - Sale of business by receiver as going concern—
 - Whether employees entitled to benefit under pension fund rules as on termination of membership. *See* Receiver—Sale of business—Effect on employees of company—Sale by receiver to wholly owned subsidiary—Employees' contract of service thereby terminated—Contributory pension fund for benefit of employees, *post*.
 - Widow's pension under director's service agreement. *See* Objects clause—Construction—Pension—Service agreement with company's general manager and controlling shareholder, who was also a director, providing for pension to be paid to his widow, *ante*.
- Practice—
 - Advertisement of petition for winding-up. *See* Compulsory winding-up—Advertisement of petition, *ante*.
 - Application to restore company's name to register—
 - Contents of application. *See* Restoration to register—Application—Contents, *post*.
 - Service of application. *See* Restoration to register—Application—Service of application, *post*.
 - Meeting—
 - Proxy. *See* Meeting—Proxy—Practice, *ante*.
 - Petition for relief under Companies Act 1948, s 210. *See* Oppression—Petition—Practice, *ante*.
- Proceedings by company—
 - Action in name of company started by solicitor without authority—Liquidation—Adoption of proceedings by liquidator—Ratification. **Danish Mercantile Co Ltd v Beaumont** [1951] 1 925, CA.
- Proceedings commenced on behalf of company—
 - Ratification—Articles of association—Management of company—Powers of management given to directors—Company not having appointed directors—Unauthorised acts of management carried out on behalf of company—Legal proceedings started by individuals in name of company—Whether acts of management done on behalf of company capable of ratification by company. **Alexander Ward and Co Ltd v Samyang Navigation Co Ltd** [1975] 2 424, HL.
- Service of document on company—
 - Service 'by post'—Validity of service by registered post—Companies Act 1948, s 437(1). **T O Supplies (London) Ltd v Jerry Creighton Ltd** [1951] 2 992, KBD.
- Want of authority—
 - Action brought in company's name without authority—Striking out of action adjourned pending hearing of winding-up petition—Possibility of ratification of action. **SBA Properties Ltd v Cradock** [1967] 2 610, ChD.
- Preference shares—
 - Dividends—
 - Priority—Cumulative preferential dividends in arrears—Priority of payment of arrears over repayment of capital to ordinary shareholders—Date at which arrears to be calculated. **Re E W Savory Ltd** [1951] 2 1036, ChD.
 - Priority—Cumulative preferential dividends in arrears—Surplus assets after payment of debts and repayment of preference capital—Rights of preference and ordinary shareholders—Construction of articles of association. **Re F de Jong & Co Ltd** [1946] 1 556, CA.
 - Right to participate in surplus assets. *See* Shares—Preference shares—Right to participate in surplus assets, *post*.
 - Voluntary winding-up—
 - Distribution of company's property. *See* Voluntary winding-up—Distribution of company's property—Rights of preference shareholders, *post*.
- Preferential debts—
 - Payment by receiver. *See* Receiver—Duty—Payment of debts—Payment out of assets—Preferential payments, *post*.
- Preferential payments—
 - Winding-up. *See* Winding-up—Preferential payments, *post*.
- Prevention of fraud—
 - Inducement to invest money in company—
 - Offence. *See* Criminal law (Inducement to invest money).
- Private company—
 - Exempt private company—
 - Loss of exemption—Body corporate holder of shares—Exception for banking or finance company providing capital—Capital reorganisation—Arrangement with finance company to purchase new issue of shares from members entitled thereto—Companies Act 1948, s 129(4), Sch 7, para 7(1), para 9. **Qualter, Hall & Co Ltd v Board of Trade** [1961] 3 389, CA.

COMPANY (cont)

Private company (cont)—

Exempt private company (cont)—

Loss of exemption—Person other than holder having interest in company's shares—Exception of shares held by trustees on the trusts of a family settlement disposing of the shares—Shares acquired by trustees by purchase after execution of settlement—Companies Act 1948, s 129, Sch 7, para 3(1)(b). **Re Prenn's Settlement** [1961] 1 833, CA.

Management—

Majority shareholders trustees. *See* **Trust and trustee** (Breach of trust—Investments—Majority shareholding in private company).

Meeting—

Power of court to order meeting. *See* **Meeting**—Convening of meeting—Power of court to order meeting—Private company, *ante*.

Transfer of shares—

Restriction imposed by articles of association. *See* **Transfer of shares**—Restriction imposed by articles of association—Private company, *post*.

Property—

Avoidance of disposition of property after commencement of winding-up. *See* **Compulsory winding-up**—Avoidance of disposition of property after commencement of winding-up, *ante*.

Distribution of property—

Voluntary winding-up. *See* **Voluntary winding-up**—Distribution of company's property, *post*.

Prosecution—

Road traffic offence—

Notice of intended prosecution. *See* **Road traffic** (Notice of intended prosecution—Limited company).

Prospectus—

False statement—

Criminal liability. *See* **Criminal law** (Company—False statement—ProspectUs).

Misrepresentation—

Fraud—Belief in truth of representation as understood by representor. **Akerhielm v De Mare** [1959] 3 485, PC.

Offer to public for subscription or purchase shares or debentures of company—

Offer by a new company to acquire all shares in two existing companies—New company to issue shares in exchange—Offer contained in circular—Whether circular a prospectus—'Subscription'—Companies Act 1948, s 38(3), s 455(1). **Governments Stock and Other Securities Investment Co Ltd v Christopher** [1956] 1 490, ChD.

Provisional liquidator. *See* **Compulsory winding-up**—Provisional liquidator, *ante*.

Public examination of promoters and officers—

Compulsory winding-up. *See* **Compulsory winding-up**—Public examination, *ante*.

Purchase of shares with financial assistance of company. *See* **Shares**—Purchase of shares with financial assistance of company, *post*.

Ratification—

Acts of directors—

General meeting. *See* **Director—Duty**—Allotment of shares—Allotment of ordinary shares by directors to counter take-over bid—Directors empowered by articles to issue unissued shares—Directors' action approved by company in general meeting, *ante*.

Proceedings commenced on behalf of company. *See* **Practice**—Proceedings commenced on behalf of company—Ratification, *ante*.

Realisation of assets—

Compulsory winding-up. *See* **Compulsory winding-up**—Realisation of assets, *ante*.

Receiver—

Appointment—

Appointment of corporate body—Payments to mortgagee by receiver—Acknowledgment of mortgagor's indebtedness—Whether appointment void—Companies Act 1929, s 306—Law of Property Act 1925, s 109(2), (8). **Portman Building Society v Gullway** [1955] 1 227, ChD.

Circumstances directly or indirectly attributable to war. *See* **Emergency legislation** (Company—Appointment of receiver—Circumstances directly or indirectly attributable to any war).

Courts' emergency powers—Jeopardy—Conditional appointment. **Re Newport Construction Co Ltd** [1948] 1 365, ChD.

Crystallisation of floating charge. *See* **Charge**—Floating charge—Crystallisation—Appointment of receiver by debenture holder, *ante*.

Resolution to wind up company—Continuation of employees employment. *See* **Employment** (Continuity—Transfer of trade, business or undertaking—Employment by transferor immediately before transfer—Transfer of business of company—Receiver of company appointed by debenture holders).

Appointment by court—

Action begun by company in liquidation against receiver and manager to challenge propriety of payments made before liquidation—Creditors' voluntary liquidation supervening after appointment of receiver and manager—Receiver and manager appointed in an action in which the company was originally plaintiff—Whether a new action could be brought against the receiver and manager by the company at the instance of the liquidator. **L P Arthur (Insurance) Ltd v Sisson** [1966] 2 1003, ChD.

Liability of receiver—Rent—Whether personally liable. **Consolidated Entertainments Ltd v Taylor** [1937] 4 432, KBD.

Appointment by debenture holder—

Agent of company by terms of debenture—Written undertaking to pay outstanding and future electricity charges—Implied warranty of authority—Personal liability—Law of Property Act 1925, ss 101, 109(2). **Central London Electricity Ltd v Berners** [1945] 1 160, KBD.

COMPANY (cont)

Receiver (cont)—

Appointment by debenture holder (cont)—

Appointment as agent of company—Effect—Termination of employee's contract of service—Circumstances in which appointment operating to terminate contract—Continuation of employee's employment inconsistent with role and functions of receiver and manager—Managing director of company—Managing director previously under stringent control of board—Receiver not appointed to work full-time in the conduct of the company's business—Whether appointment of receiver inconsistent with continued employment of managing director. **Griffiths v Secretary of State for Social Services** [1973] 3 1184, QBD.

Debenture. *See* Debenture—Receiver, *ante*.

Duty—

Payment of debts—Payments out of assets subject to floating charge—Duty to pay preferential creditor in priority to claims of debenture holder—Revocation of receiver's appointment by debenture holder—Receiver having made no payments to any creditors—Receiver knowing of claim by preferential creditor—Debenture holder agreeing to indemnify receiver against all liabilities in consideration of his delivering all articles and money held by him as receiver to company—Transfer of assets by company to debenture holder in satisfaction of his claim—Whether receiver in breach of statutory duty in failing to pay preferential creditor out of assets in his hands—Whether on removal receiver bound to account to company for assets in his hands—Companies Act 1948, s 94(1). **Inland Revenue Comrs v Goldblatt** [1972] 2 202, ChD.

Foreign receiver—

Title to assets in England. *See* Conflict of laws (Receiver—Foreign receiver—Title to assets in England).

Liability to tax. *See* Income tax (Receiver—Company—Liability to tax).

Misfeasance. *See* Winding-up—Misfeasance—Receiver and manager, *post*.

Remuneration—

Power of court to fix remuneration on application of liquidator—Receiver appointed at agreed remuneration by trustees of trust deeds securing debentures—Compulsory winding-up—Application by liquidator for remuneration of receiver to be fixed by the court—From what date court can fix remuneration—Jurisdiction of the court—Law of Property Act 1925, ss 101(1)(iii), (3), 109(6)—Companies Act 1929, s 309. **Re Greycaine Ltd** [1946] 2 30, CA.

Sale of business—

Effect on employees of company—Sale by receiver to wholly-owned subsidiary—Employees' contracts of service thereby terminated—Contributory pension fund for benefit of employees—Contributing member entitled to benefit on termination of membership—Employees taken on and paid by subsidiary—Whether employees transferred to subsidiary entitled to benefit from pension fund as on termination of their services by company. **Re Foster Clark Ltd's Indenture Trusts** [1966] 1 43, ChD.

Reconstruction—

Transfer of property and liabilities to another company—

Order—Form of order—Companies Act 1929, s 154—RSC Ord 53B, r 13—Appendices to RSC 1883, App L, No 37. **Re 'L' Hotel Co Ltd and Langham Hotel Co Ltd** [1946] 1 319, ChD.

Reduction of capital—

Confirmation by court—

Whether reduction ultra vires—Variation and extinguishment of rights of deferred shareholders—Separate class meeting—Form of directors' circular soliciting proxies—Whether reduction should be confirmed by court—Companies Act 1929, ss 55, 56, 57. **Carruth v Imperial Chemical Industries Ltd** [1937] 2 422, HL.

Creditors—

List of creditors—Application to dispense with settlement of list of creditors entitled to object—Company was tenant of leaseholds—Company had sufficient resources to cover liabilities apart from those under leases—Some leaseholds beneficial and the rest not onerous—Amount fixed by court to secure landlord's possible claims—Ten years' rent as amount normally required—Companies Act 1948, s 67(2)(c)(ii), (3). **Re Lucania Temperance Billiard Halls (London) Ltd** [1965] 3 879, ChD.

Minute of reduction—

Form of minute—Consolidation of capital reduced—Scheme of arrangement—Form of minute for registration. **Re Holland & Webb Ltd** [1936] 3 944, ChD.

Form of minute—Reduction of share premium account—Form of minute for registration—Companies Act 1948, ss 4, 56(1), (2), 69(5). **Re Paringa Mining and Exploration Co Ltd** [1957] 3 424, ChD.

Form of minute—Subsequent increase, subdivision and consolidation of capital—Form of minute for registration—Companies Act 1929, s 58. **Re Harrods (Buenos Aires) Ltd** [1936] 2 1651, ChD.

Paid-up share capital in excess of company's wants—

Transfer of certain assets to newly formed investment holding company—Part of share capital of old company to be paid off by reducing nominal amount of each share by 2s, and transferring to shareholder a 2s share of new company—Present value of assets to be transferred exceeding amount by which share capital reduced—Possibility of nationalisation of industry—Companies Act 1948, s 66(1)(c). **Ex parte Westburn Sugar Refineries Ltd** [1951] 1 881, HL.

Part of a class of shares—

Some ordinary shares to be repaid, but consent of all ordinary shareholders not obtained—Desirability of proceeding by scheme of arrangement—Reduction nevertheless confirmed—Petition unopposed. **Re Robert Stephen Holdings Ltd** [1968] 1 195, ChD.

Petition—

Content of petition—Allegation that company was still carrying on business—Whether such an allegation necessary. **Re Great Universal Stores Ltd** [1960] 1 252, ChD.

COMPANY (cont)

Reduction of capital (cont)—

Petition (cont)—

Evidence—Shares issued for a consideration other than cash. **Practice Direction** [1966] 2 146, ChD.

Preference shares—

Extinguishment of preference shares—Opposition by preferred shareholders—Abrogation of rights—Rights to share in undistributed profits. **Re Saltdean Estate Co Ltd** [1968] 3 829, ChD.Modification of rights of preference shareholders—Effectual sanction—Extraordinary resolution passed by requisite majority of preference shareholders—No bona fide belief of majority that resolution in interests of preference shareholders as a class—Fairness of reduction—Burden of proof—Opposition to reduction from minority of preference shareholders—Majority consisting of trustees having substantial holding of equity capital. **Re Holders Investment Trusts Ltd** [1971] 2 289, ChD.Paid-up share capital in excess of wants of company—Proposal to repay paid-up capital on preference shares and cancel them—Preference shareholders entitled to participate in surplus assets rateably with ordinary shareholders in event of winding-up—No prospect of winding-up—Preference shares worth less than par—Fair and equitable for court to confirm reduction of capital—Companies Act 1948, s 66. **Re William Jones & Sons Ltd** [1969] 1 913, ChD.Redeemable preference shares—Redemption. **Inland Revenue Comrs v Universal Grinding Wheel Co Ltd** [1955] 2 29, HL.

Preference stock—

Extinguishment of preference stock—Colliery company—Rights of shareholders under Coal Industry Nationalisation Act 1946, s 25(1). **Prudential Assurance Co Ltd v Chatterley-Whitfield Collieries Co Ltd** [1949] 1 1094, HL.Extinguishment of preference stock—Colliery undertaking—Assets transferred to National Coal Board—Voluntary liquidation intended later—Creation of special rights in favour of preference stockholders on previous reductions of capital—Coal Industry Nationalisation Act 1946, s 25(1). **Re Old Silkstone Collieries Ltd** [1954] 1 68, CA.Extinguishment of preference stock—Colliery undertaking—Assets transferred to National Coal Board—Voluntary liquidation intended later—Return to preference stockholders of their whole paid-up capital—Rights of stockholders—Articles—Construction—Companies Act 1929, s 55(1)(c)—Coal Industry Nationalisation Act 1946, s 25. **Scottish Insurance Corp Ltd v Wilsons and Clyde Coal Co Ltd** [1949] 1 1068, HL.

Tax advantage—

Transaction in securities. *See* **Income tax** (Tax advantage—Transaction in securities—Tax advantage in consequence of transaction—Company—Reduction of capital).

Unissued shares—

Cancellation of some unissued shares and sub-division of all unissued shares before cancellation of some—Cancellation of issued shares held by company's nominee—Confirmation by court—Companies Act 1948, s 61, s 66(1), s 67(1), (2), s 69(1), (2). **Re Castiglione, Erskine & Co Ltd** [1958] 2 455, ChD.

Register of charges—

Rectification. *See* **Charge**—Registration—Rectification of register, *ante*.

Registrar of Companies—

Representation—

Application to have dissolution declared void. *See* **Dissolution**—Application to have dissolution declared void—Representation of Registrar of Companies, *ante*.

Registration—

Restoration to register. *See* **Restoration to register**, *post*.

Representation—

Meeting of other company. *See* **Meeting**—Representation—Corporation—Representation of corporation at meeting of another company, *ante*.

Reputation—

Slander. *See* **Libel and slander** (Slander actionable per se—Company).

Residence—

Taxation. *See* **Income tax** (Residence—Company).

Resolution—

Special resolution—

Alteration of articles by—Validity. *See* **Articles of association**—Alteration—Article making special resolution to alter articles incapable of being passed if a particular shareholder objects—Validity, *ante*.Notice—Validity—Accidental omission to give notice to nine members—Article validating proceedings at meeting—Validity of notice for the convening of the meeting for the purposes of passing a special resolution—Companies Act 1948, s 141(2), (5), Sch 1, Table A, art 51. **Re West Canadian Collieries Ltd** [1962] 1 26, ChD.Notice—Validity—Less than 21 days' notice given—Consent of every shareholder to treatment of resolution as valid—Petition prosecuted on basis of validity—Companies Act 1948, s 141. **Re Pearce Duff & Co Ltd** [1960] 3 222, ChD.

Restoration to register—

Application—

Applicant a plaintiff in an action for damages against company—Petitioner's husband died as result of traffic accident—Whether plaintiff was a 'creditor' of the company, for the purpose of maintaining her petition—Companies Act 1948, s 353(6). **Re Harvest Lane Motor Bodies Ltd** [1968] 2 1012, ChD.Comparison of Companies Act 1948, s 352(1) and s 353(6). **Re Test Holdings (Clifton) Ltd** [1969] 3 517, ChD.

COMPANY (cont)

Restoration to register (cont)—

Application (cont)—

Contents—Indication of grounds on which company struck off and reason for grounds having arisen. **Practice Note** [1974] 3 933, ChD.Costs—Taxation—Costs of registrar—Liability of applicants—Basis of taxation—Common fund basis where company struck off in consequence of default in complying with statutory obligations. **Re Court Lodge Development Co Ltd** [1973] 3 425, ChD.Locus standi of applicant—Name of company struck off in 1955—Petitioners subsequently acquired assigned debts and shares in the company—Whether petitioners were entitled to petition—Whether court would exercise its discretion to restore name to register—Companies Act 1948, s 353(6). **Re New Timbiqui Gold Mines Ltd** [1961] 1 865, ChD.Member's application—Personal representative of shareholder—Companies Act 1948, s 353 (6). **Re Bayswater Trading Co Ltd** [1970] 1 608, ChD.Service of application—Name of company struck off register in 1963—Sum of money subsequently becoming payable to company—Creditors' petition for restoration of company's name to register. **Re Vickers & Bott Ltd** [1968] 2 264, ChD.

Period of limitation—

Effect—Application to restore by member of company seven years after dissolution—Protection of creditors whose debts were not statute-barred at date of dissolution—Period between dissolution and date of restoration not to be counted for purposes of Statutes of Limitation—Companies Act 1948, s 353(6). **Re Donald Kenyon Ltd** [1956] 3 596, ChD.

Power of court—

Application to restore to register and wind up—Whether order should contain direction that period between date of dissolution and date of restoration should not be counted for purposes of Statute of Limitations. **Re Huntingdon Poultry Ltd** [1969] 1 328, ChD.Incidental order—Whether power to make order that restoration to be without prejudice to any remedy a creditor who became such after dissolution might otherwise have—Companies Act 1948, s 353(6). **Re Lindsay Bowman Ltd** [1969] 3 601, ChD.Power to order restoration on application to declare dissolution of company void. *See* Dissolution—Application to have dissolution declared void—Application other than by member or creditor—Power to restore to register, *ante*.

Restoration subject to condition—

Imposition of condition by way of penalty—Jurisdiction—Companies Act 1948, s 353(b). **Re Moses & Cohen Ltd** [1957] 3 232, ChD.Imposition of condition by way of penalty—Jurisdiction—Companies Act 1948, s 353(b). **Re Moses and Cohen Ltd** [1957] 3 232, ChD.

Validation of acts done on company's behalf before restoration—

Application for new tenancy under Leasehold Property (Temporary Provisions) Act 1951—Whether restoration retroactive—Companies Act 1948, s 353(6). **Tymans Ltd v Craven** [1952] 1 613, CA.Registration of land charge—Whether registration retroactive—Companies Act 1948, s 353 (b). **Re Boxco Ltd** [1970] 2 183, ChD.

Sale of land—

Memorandum of contract. *See* Sale of land (Memorandum of contract—Company).Sale of shares. *See* Shares—Sale, *post*.

Scheme of arrangement—

Application—

Form of application—Allegation that company was still carrying on business—Whether such an allegation necessary. **Re Great Universal Stores Ltd** [1960] 1 252, ChD.Application for hearing of petition during long vacation. *See* Practice (Long vacation—Hearing during vacation)—Application for order to fix date for hearing—Urgent need—Merger of companies by scheme of arrangement).

Compromise with creditors or members—

Class of creditors or members—Class meeting—What constitutes a class—Community of interest—Ordinary shareholders—Shareholders having community of interest as vendors of shares under proposed scheme—One shareholder a wholly-owned subsidiary of purchasing company—Whether subsidiary a separate class of shareholder—Whether meeting of shareholders including subsidiary a properly constituted class meeting—Companies Act 1948, s 206. **Re Hellenic & General Trust Ltd** [1975] 3 382, ChD.Compromise or arrangement—Meaning—Element of accommodation on both sides—Company limited by guarantee having no share capital—Large membership—Members having very limited rights—Scheme whereby vast majority of members deprived of membership—Whether scheme qualifying as a 'compromise or arrangement'—Companies Act 1948, s 206(1), (2). **Re NFU Development Trust Ltd** [1973] 1 135, ChD.Compromise with creditors—Machinery—Companies Act 1948, ss 206 and 245. **Re Trix Ltd** [1970] 3 397, ChD.Meeting—Majority in number representing three-fourths in value of creditors or members present and voting—Company limited by guarantee having no share capital—Members liable to contribute 5p if assets deficient—Board having power to distribute assets among members in such proportions as they might determine—Right of membership non-transferable and ceasing on death—Calculation of majority of three-fourths in value of members—Companies Act 1948, s 206(2). **Re NFU Development Trust Ltd** [1973] 1 135, ChD.Sanction of the court—Discretion—Circumstances in which sanction will be refused—Objection to scheme—Objection by shareholder holding more than one-tenth of shares involved in proposed scheme—Scheme involving cancellation of shares—Shareholders to receive cash compensation—Scheme approved at meeting only with votes of wholly-owned subsidiary of company to whom new shares to be issued—Cash payment rendering objecting shareholder liable to substantial tax liability—Companies Act 1948, ss 206, 209. **Re Hellenic & General Trust Ltd** [1975] 3 382, ChD.

COMPANY (cont)

Scheme of arrangement (cont)—

Construction—

Rights of shareholders—Priority—Priority of preference shareholders in company as originally constituted—No express words taking away priority. **Re T H Downing & Co Ltd** [1940] 1 333, CA.Duty of directors of transferor company. *See* Take-over bid—Duty of directors of transferor company, *post*.

Information—

Exempt information in relation to accounts—Whether deliberate omission to disclose exempt information fatal to scheme—Scheme involving purchase of all issued shares by outsider—Whether approval of ninety per cent majority necessary—Companies Act 1948, s 206, s 207, s 209. **Re National Bank Ltd** [1966] 1 1006, ChD.

Jurisdiction—

Lancaster Chancery Court. *See* **Lancaster Chancery Court** (Jurisdiction—Company).

Meeting of creditors—

Proxies—Appointment of Official Receiver to act as proxy—Companies (Winding-up) Rules 1929 (SR & O 1929 No 612), r 150. **Re General Mortgage Society (Great Britain) Ltd** [1942] 1 414, ChD.

Release of joint debtor—

No reservation of creditors' rights against joint debtors—Companies Act 1929, s 153. **Re Garner Motors Ltd** [1937] 1 671, ChD.Stamp duty. *See* **Stamp duty** (Reconstruction or amalgamation of companies).

Transfer of property or liabilities—

Transfer of business of acting as personal representative—Probate action pending at date of transfer—Validity of provisions of scheme in relation to probate action—Whether transferor company should continue as plaintiff in probate action—Companies Act 1948, s 206, s 208. **Re Skinner (decd)** [1958] 3 273, Prob.

Transfer of shares to transferee company—

Acquisition of shares of dissentients. *See* Take-over bid—Acquisition of shares of dissentients, *post*.

Validity—

Transfer of undertaking to realisation company—No power to sell in memorandum—Ultra vires—Benefit to creditors without any benefit to shareholders—Jurisdiction of court under Companies Act 1929, ss 153, 154. **Re Oceanic Steam Navigation Co Ltd** [1938] 3 740, ChD.

Secretary—

Authority—

Ostensible authority—Power to make contracts—Contracts connected with company's administrative affairs—Secretary fraudulently ordering hire cars to meet company's customers—Liability of company. **Panorama Developments (Guildford) Ltd v Fidelis Furnishing Fabrics Ltd** [1971] 3 16, CA.Default. *See* Officer—Default, *ante*.

Director requested by secretary to advance money to company—

Secretary acting without authority of board—Loan not enforceable by company. **Re Cleadon Trust Ltd** [1938] 4 518, CA.Party to carrying on business of company in fraudulent manner. *See* Winding-up—Fraudulent trading—Parties to the carrying on of the company's business—Secretary and financial adviser to company, *post*.

Security for costs—

Appeal against winding-up order. *See* Compulsory winding-up—Security for costs—Appeal by company against winding-up order, *ante*.

Set-off—

Mutual dealings—

Winding-up of insolvent English company. *See* Winding-up—Application of bankruptcy rules—Set-off—Mutual dealings, *post*.

Share capital—

Reduction. *See* Reduction of capital, *ante*.

Share premium account—

Distribution to shareholders—

Whether capital or income in hands of payee—Companies Act 1948, s 56(1), (2), (3). **Re Duff's Settlements Trusts** [1951] 2 534, CA.

Shares issued for cash or otherwise—

Company formed to acquire shares of two associated companies and to effect amalgamation—One £1 share of new company issued for each £1 share in associated companies—Excess of true value of assets over issued shares a premium—Companies Act 1948, s 56(1). **Henry Head & Co Ltd v Ropner Holdings Ltd** [1951] 2 994, ChD.Share register. *See* Shares—Register, *post*.

Shareholder—

Contempt of court. *See* **Contempt of court** (Company—Shareholders).

Dissenting to scheme of arrangement—

Acquisition of dissenting shareholder's shares. *See* Take-over bid—Acquisition of shares of dissentients, *post*.

Minority shareholder—

Oppression. *See* Oppression, *ante*.Representative action. *See* Minority shareholder—Representative action, *ante*.

Personal representative of shareholder—

Application to court to wind up company—Whether personal representative a contributory. *See* Compulsory winding-up—Petition by contributory—Personal representative of shareholder, *ante*.Application to restore company's name to register. *See* Restoration to register—Application—Member's application—Personal representative of shareholder, *ante*.Petition to wind up company. *See* Compulsory winding-up—Petition by contributory, *ante*.

COMPANY (cont)

Shareholder (cont)—

Preference shareholder—

Modification of rights on reduction of capital. *See* Reduction of capital—Preference shares—
Modification of rights of preference shareholders, *ante*.

Variation of shareholder's rights. *See* Variation of members' rights, *post*.

Shares—

Acquisition of shares of dissentient—

Jurisdiction of Palatine Court. *See* Lancaster Chancery Court (Jurisdiction—Company—
Acquisition of shares of dissenting shareholder).

Acquisition of shares of dissentient—

New South Wales. *See* New South Wales (Company—Shares—Acquisition of shares of
dissenting shareholder).

Acquisition of shares of dissentient from scheme or contract approved by majority. *See* Take-over
bid—Acquisition of shares of dissentients, *ante*.

Acquisition of shares in existing company—

Stamp duty. *See* Stamp duty (Reconstruction in or amalgamation of companies—Acquisition
of shares in existing company).

Agreement for sale—

Specific performance. *See* Specific performance (Sale of shares in company).

Allotment—

Allotment to employees at par value—Liability to income tax. *See* Income tax (Emoluments
from office or employment—Advantage convertible into money—Allotments of shares to
employees).

Directors' powers. *See* Director—Duty—Allotment of shares, *post*.

Shares to be dealt in on stock exchange—Issue of new shares—Application moneys to be kept
in separate account and refunded on failure of specified conditions—Failure of conditions—
Whether moneys subscribed are repayable to applicants or comprised in debenture—
Companies Act 1948, s 51. *Re Nanwa Gold Mines Ltd* [1955] 3 219, ChD.

Alteration of description following decimalisation—

Whether alteration of condition in memorandum of association. *See* Memorandum of
association—Capital clause—Alteration—Statement of amount of share capital—
Description of shares—Decimalisation, *ante*.

Bequest to a company of shares in the company—

Validity. *Re Castiglione's Will Trusts* [1958] 1 480, ChD.

Financial assistance for purchase of its own shares. *See* Shares—Purchase of shares with
financial assistance of company, *post*.

Forfeiture—

Forfeiture contrary to scheme of arrangement—Observance of technicalities—Whether
ratification of invalid forfeiture possible. *Srimati Premila Devi v Peoples Bank of Northern
India Ltd (in liquidation)*, *Gobind Ram Kapur v Same*, *Dunni Chand v Same* [1938] 4 337,
PC.

Offer for subscription or sale—

Criminal proceedings. *See* Criminal law (Company—Offer of shares for subscription or
sale).

Ownership—

Dispute—Whether appropriate issue to decide on winding-up petition. *Re Bambi
Restaurants Ltd* [1965] 2 79, ChD.

Preference shares—

Dividends—Priority. *See* Preference shares—Dividends—Priority, *ante*.

Repayment of—Reduction of capital. *See* Reduction of capital—Preference shares—Paid-up
share capital in excess of wants of company—Proposal to repay paid-up capital on
preference shares and cancel them, *ante*.

Right to participate in surplus assets—Undistributed profits not required for payment of
dividend on preference shares—Capitalisation of reserve fund resulting from revaluation of
fixed assets. *Dimbula Valley (Ceylon) Tea Co Ltd v Laurie* [1961] 1 769, ChD.

Right to surplus assets conferred by memorandum of association and special resolution—
Variation by article. *Re Duncan, Gilmour & Co Ltd* [1952] 2 871, ChD.

Rights of shareholders—Reduction of capital. *See* Reduction of capital—Preference shares,
ante.

Purchase of shares with financial assistance of company—

Debenture to be issued by subsidiary company as security for purchase price of its shares
from parent company—Agreement with a view to effecting a purchase by defendant of the
business and assets of parent company—Major part of purchase price intended to be paid
over a period of years and to be secured by charge—Mode of effecting purchase infringed
s 54—Issue of debenture an integral term of agreement—Rights of parties to agreement in
view of effect of s 54—Companies Act 1948, s 54. *South Western Mineral Water Co Ltd
v Ashmore* [1967] 2 953, ChD.

Director—Liability for loss to company—Director responsible for procuring loan by
company—Loan used in connection with purchase of company's shares—Part only of loan
recovered by company—Liability of director to company for loss—Companies Act 1948, s
54(1). *Wallersteiner v Moir* [1974] 3 217, CA.

Loan to purchaser secured by floating charge on assets of company—Debenture charging
assets of company—Debenture guaranteed by purchaser—Default in repayment of
principal by company—Legality of debenture—Legality of guarantee—Companies Act
1948, s 54(1). *Heald v O'Connor* [1971] 2 1105, QBD.

Meaning of purchase—Whether purchase includes allotment—Companies Act 1929, s 45. *Re
VGM Holdings Ltd* [1942] 1 224, CA.

Shares bought from directors by new holding company—Loan by company to new holding
company to purchase shares—Whether loan illegal—Companies Act 1936 (New South
Wales), s 148(1)(a). *Steen v Law* [1963] 3 770, PC.

COMPANY (cont)

Shares (cont)—

Purchase of shares with financial assistance of company (cont)—

Take-over—Payment from company's funds unlawful and avoided—Whether claim against directors as constructive trustees affected by illegality—Companies Act 1948, s 54. **Selangor United Rubber Estates Ltd v Cradock (A Bankrupt) (No 3)** [1968] 2 1073, ChD.Validity of debenture issued in connection with purchase of shares—Companies Act 1929, s 45. **Victor Battery Co Ltd v Curry's Ltd** [1946] 1 519, ChD.

Register—

Rectification—Name entered without sufficient cause—Companies Act 1929, s 100. **Re Imperial Chemical Industries Ltd** [1936] 2 463, ChD.Removal of name from register—Allegation of improper removal of name—Action for damages for wrongful removal. **Lovibond v Grand Trunk Ry Co of Canada** [1936] 2 495, PC.

Right to apply for shares—

Employee—Preferential right—Benefit from exercise of right—Income tax. *See* **Income tax** (Emoluments from office or employment—Causal nexus between employment and benefit received—Preferential right to apply for shares).

Sale—

Contract—Condition precedent—Waiver. *See* **Contract** (Condition precedent—Waiver—Contract for sale of a holding of shares).Negotiations by managing director—Shareholders informed of offer—Instruction to managing director to complete transaction—Liability of shareholders for fraudulent misrepresentation by managing director. **Briess v Woolley** [1954] 1 909, HL.Sale to be subject to accountant being satisfied that company solvent—Construction of agreement—Meaning of 'solvent'. **Diamantidi v Grosvenor Securities Ltd and Guildhall Trust Ltd** [1937] 1 703, CA.

Share certificate—

Right of shareholder to certificates for altered subdivision of his shares. **Sharpe v Tophams Ltd** [1939] 1 123, CA.

Share-dealing—

Trade—Income tax—Loss relief. *See* **Income tax** (Loss relief—Trade—Share-dealing).

Shares allotted to a Minister of the Crown—

No interest on such shares payable during 'establishment period'—Winding-up of company—Provision for payment to Minister of a sum equivalent to amount of dividend received by other shareholders—Whether net amount received by shareholders or gross amount without deduction of income tax. **Re Home Grown Sugar Ltd** [1938] 1 85, ChD.

Situated abroad—

Jurisdiction—Matrimonial proceedings. *See* **Husband and wife (Property—Former possession or control of husband—Shares)**.

Transfer—

Generally. *See* **Transfer of shares, post**.Stamp duty. *See* **Stamp duty** (Conveyance on sale—Instrument whereby property or estate or interest in property or sale thereof transferred to or vested in purchaser—Transfer of shares).Vendor's lien—Specific performance—Preservation of lien. *See* **Lien** (Vendor's lien—Specific performance—Preservation of lien).

Valuation—

Capital gains tax. *See* **Capital gains tax** (Assets—Valuation—Market value—shares).Estate duty. *See* **Estate duty** (Valuation—Shares in company).

Voting rights—

Bankruptcy of shareholder—Effect. **Morgan v Gray** [1953] 1 213, ChD.Sale of shares—Position pending completion—Unpaid vendor under specifically enforceable contract for sale remaining on register—Vendor's voting rights—Whether entitled to vote otherwise than as required by purchaser. **Musselwhite v C H Musselwhite & Son Ltd** [1962] 1 201, ChD.Special resolution. *See* **Resolution**—Special resolution, *ante*.

Stamp duty—

Reconstruction or amalgamation of companies. *See* **Stamp duty** (Relief from duty—Reconstruction or amalgamation of companies).

Statutory company—

Winding-up—

Distribution of assets—Surplus assets—No provision in memorandum or articles—Original and additional share capital—Limited dividend—Distinction between classes of capital **Re Syston & Thurmaston Gas, Light & Coke Co Ltd** [1937] 2 322, ChD. 322, ChD.Priority among creditors—Debenture holders—Debentures created on undertaking and future calls on shareholders. **Re Glyn Valley Tramway Co Ltd** [1937] 3 15, ChD.

Subsidiary company—

Compulsory winding-up—

Just and equitable. *See* **Compulsory winding-up**—Just and equitable—Subsidiary company, *ante*.Duty of director of parent company to subsidiary company. *See* **Director—Duty**—Duty to subsidiary company—Director of parent company, *ante*.Whether area electricity boards subsidiary companies of Central Electricity Generating Board. *See* **Electricity** (Central Electricity Generating Board—Relationship with area electricity boards).

Subvention payments—

Deduction in computing profits for income tax. *See* **Income tax** (Deduction in computing profits—Subvention payments).

Succession to trade—

Subsidiary companies—

Income tax. *See* **Income tax** (Succession to trade—Subsidiary companies).

COMPANY (cont)

Sunday observance—

Transaction of business. *See* **Sunday observance** (Prohibition of transaction of business by tradesman on Sunday—Transaction of business—Contract between limited companies made on Sunday).

Take-over—

Undisclosed negotiations for—

Effect on valuation of shares for capital gains tax purposes. *See* **Capital gains tax** (Assets—Valuation—Market value—Shares—Shares quoted on London Stock Exchange—Quoted price as proper measure of market value—Special circumstances displacing quoted price as proper measure—Take-over).

Take-over bid—

Acquisition of shares of dissentients—

Application by shareholders to court—Discovery of documents relating to value of shares transferred—Companies Act 1948, s 209. *Re* **Press Caps Ltd** [1949] 1 1013, CA.

Majority shareholders in transferor company holding all shares in transferee company—Sanction of court in exceptional circumstances only—Companies Act 1948, s 209(1). *Re* **Bugle Press Ltd, Re Houses and Estates Ltd** [1960] 3 791, CA.

Notice to dissenting shareholders—Form of notice—Whether variation of prescribed form necessary where approval of three-quarters in number of shareholders required—Companies (Forms) Order 1949 (SI 1949 No 382), art 1, form 100. *Re* **Simo Securities Trust Ltd** [1971] 3 999, ChD.

Notice to dissenting shareholders—Offer of transferee company open for less than four months—Nine-tenths in value of shareholders approving scheme—Notice of compulsory acquisition served on dissentient shareholder—Whether transferee company entitled to acquire shares—Companies Act 1948, s 209(1). *Re* **Western Manufacturing (Reading) Ltd** [1955] 3 733, ChD.

Offer to acquire shares in exchange for shares in transferee company—Cash offer by third party as alternative—Terms for acquisition of shares of dissenting shareholders—Terms on which shares of approving shareholders to be transferred—Whether terms including cash offer—Companies Act 1948, s 209(1). *Re* **Carlton Holdings Ltd** [1971] 2 108, ChD.

Scheme or contract involving transfer of shares—Holders of shares whose transfer is involved—Offer to holders of issued shares and to holders of loan stock with right to convert stock to shares—Stockholders authorising allotment of conversion shares direct to transferee company—Whether scheme involving transfer of absolute right to an allotment of shares 'a scheme or contract involving a transfer of shares'—Whether stockholders 'holders ... of the shares whose transfer is involved'—Companies Act 1948, s 209(1). *Re* **Simo Securities Trust Ltd** [1971] 3 999, ChD.

Shares already held by transferee company exceeding 10 per cent—Approval by holders of three-quarters in number of remaining shares—Date on which number of shareholders to be counted for calculating majority—Companies Act 1948, s 209(1), proviso. *Re* **Simo Securities Trust Ltd** [1971] 3 999, ChD.

Unfairness—Burden of proof—Companies Act 1948, s 209(1). *Re* **Sussex Brick Co Ltd** [1960] 1 772, ChD.

Unfairness—Burden of proof—Factors—Fairness to body of shareholders as a whole—More generous to preference than to ordinary shareholders—Offer price exceeding market price—Acceptance by holders of ninety-nine per cent of shares—Companies Act 1948, s 209(1). *Re* **Grierson, Oldham & Adams Ltd** [1967] 1 192, ChD.

Unfairness—Majority of shareholders approving scheme—Compulsory acquisition of shares of dissentient shareholder—Application of dissentient shareholder for order of court—Information provided by transferor company considered insufficient by dissentient shareholder to accept or to reject offer—No ground for interference of court—Companies Act 1929, s 155. *Re* **Everite Locknuts (1938) Ltd (Application of Bernard Noel Prangley)** [1945] 1 401, ChD.

Unfairness—Stock Exchange values of shares. *Re* **Press Caps Ltd** [1949] 1 1013, CA.

Duty of directors of transferor company—

Duty to be honest and not to mislead shareholders as to acceptability of offer—Remedy for breach of duty—Offer by company for stock of transferor company—Terms negotiated by boards of transferee and transferor companies—Agreement by board of transferor company to recommend acceptance to stockholders—Board of transferor company subsequently obtaining independent advice on offer—Advice that offer should not be recommended to stockholders—Board of transferor company recommending acceptance—Recommendations making brief reference to adverse advice without full particulars—Plaintiffs dissenting stockholders of transferor company—Whether plaintiffs entitled to interlocutory injunctions restraining board of transferor company from recommending acceptance and transferee company from declaring acceptance unconditional. *Gething v Kilner* [1972] 1 1166, ChD.

Taxation—

Residence. *See* **Income tax** (Residence—Company).

Trading with the enemy. *See* **Trading with the enemy**.

Transfer of business to subsidiary—

Discontinuance of trade for tax purposes. *See* **Income tax** (Discontinuance of trade—Company—Transfer of business by company to subsidiary).

Transfer of property to—

Estate duty. *See* **Estate Duty** (Company—Transfer to company).

Transfer of shares—

Form—

Proper instrument—Instrument that would attract stamp duty, not necessarily complying with all formalities of articles of association—Companies Act 1948, s 75. *Re* **Paradise Motor Co Ltd** [1968] 2 625, CA.

Invalid issue of shares—

Transfer by shareholder to transferees—Subsequent claim against company for repayment of price of shares. *Linz v Electric Wire Co of Palestine Ltd* [1948] 1 604, PC.

COMPANY (cont)

Transfer of shares (cont)—

Refusal to register—

Duly stamped—Voluntary transfer—No adjudication stamp. **Conybear v British Briquettes Ltd** [1937] 4 191, ChD.

Restriction imposed by articles of association—

Article of association conferring absolute discretion on directors—Transfer to executor of deceased member—Refusal to register transfer—Sale of portion of holding to director required before registration of transfer of remainder—Bona fide exercise of discretion. **Re Smith & Fawcett Ltd** [1942] 1 542, CA.

Directors' power to refuse registration—Decease of shareholder—Refusal of directors to register transfer to executors—Grounds for winding-up. **Re Cuthbert Cooper & Sons Ltd** [1937] 2 466, ChD.

Directors' power to refuse registration—Systematic refusal—Splitting of holding increasing voting power. **Berry v Tottenham Hotspur Football and Athletic Co Ltd** [1936] 3 554, ChD.

Notice to be given to secretary of desire to 'transfer'—Agreement to sell shares to third person without completing transfers for the time being—Whether compliance with article requiring notice of the transfer to be given enforceable. **Lyle & Scott Ltd v Scott's Trustees, Same v British Investment Trust Ltd** [1959] 2 661, HL.

Private company—Refusal by directors of private company, which was a holding company, to register transfer of shares by member—Remedy—Winding-up petition threatened by the aggrieved member—Alternative remedy, eg, by action, available—Whether presentation of proposed petition should be restrained by injunction under the inherent jurisdiction to stay proceedings that were an abuse of the process of the court—Companies Act 1948, Sch 1, Table A, Pt 2, art 3. **Charles Forte Investments Ltd v Amanda** [1963] 2 940, CA.

Private company—Transfer of deceased's shares duly lodged—Number of directors reduced below minimum—No new director appointed—Refusal to register transfers—Whether delay of four months unreasonable—Whether loss of veto on registration. **Re Swaledale Cleaners Ltd** [1968] 3 619, CA.

Transmission of shares on death of member—Article of association providing for automatic transfer of shares to director's widow on his death—Trust—Contract—Companies Act 1929, s 63 (now Companies Act 1948, s 75). **Re Greene (decd)** [1949] 1 167, ChD.

Transmission of shares on death of member—Article of association providing for sale to directors at price certified by auditor as fair value—Auditor acting as expert—Valuation on break-up basis. **Dean v Prince** [1954] 1 749, CA.

Transmission of shares on death of member—Construction of articles. **Scott v Frank F Scott (London) Ltd** [1940] 3 508, CA.

Transmission of shares on death of member—Right of executors to be registered as members—Acquisition of shares by directors—Directors' right to refuse registration—Failure of directors to agree—Effect. **Moodie v W & J Shepherd (Bookbinders) Ltd** [1949] 2 1044, HL.

Tithe—

Blank transfers accompanied by share certificates—Whether title conferred. **Fitch Lovell Ltd v Inland Revenue Comrs** [1962] 3 685, ChD.

Valuation—

Compulsory acquisition of company—Transfer of shares to government nominees—Price to be paid for shares—Defence (General) Regulations 1939, reg 78(5). **Short v Treasury Comrs** [1948] 2 509, HL.

Transfer of stock—

Stamp duty. *See* **Stamp duty** (Conveyance on sale—Instrument whereby property or estate or interest in property on sale thereof transferred to or vested in purchaser—Transfer of stock).

Trust—

Control of shares by beneficiaries. *See* **Trust and trustee** (Shares in company—Control by beneficiaries).

Trustees shareholders and directors—

Rights of beneficiaries to inspect company's documents. *See* **Trust and trustee** (Shares in company—Trustees shareholders and directors—Rights of beneficiaries to inspect company's documents).

Ultra vires—

Abandonment of objects—

Public utility undertaking originally incorporated by special Act. *See* **Objects clause**—Alteration—Company incorporated by private Act of Parliament later registered as limited company—Public utility, *ante*.

Allotment of preference shares with special voting rights—

Establishment of trust for employees—Loans to trustees to purchase preference shares—Moves by director to withstand take-over threat. *See* **Director—Duty**—Allotment of shares—Allotment of preference shares with special voting rights—Establishment of trust for employees, *ante*.

Allotment of shares by directors to counter take-over bid. *See* **Director—Duty**—Allotment of shares—Allotment of ordinary shares by directors to counter take-over bid—Directors empowered by articles to issue unissued shares, *ante*.

Borrowing. *See* **Objects clause**—Construction—Borrowing power declared as an object—Provision that objects were independent objects—Company's business changed and new business ultra vires—Money borrowed from bank to which copy of memorandum was supplied—Wh

Contract—

Construction of objects clause of memorandum of association. *See* **Objects clause**—Construction—Contract, *ante*.

COMPANY (cont)

- Ultra vires (cont)—
 - Expulsion of member—
 - Construction of articles of association. *See* Articles of association—Construction—Powers to expel member, *ante*.
 - Memorandum of association. *See* Memorandum of association—Ultra vires, *ante*.
- Undertaking—
 - Breach—
 - Liability of director for contempt of court. *See* Contempt of court (Committal)—Breach of undertaking—Company—Director—Liability for company's breach).
- Undistributed income—
 - Taxation. *See* Income tax (Undistributed income).
- Unincorporated association. *See* Unincorporated association.
- Unregistered company—
 - Winding-up. *See* Compulsory winding-up—Unregistered company, *ante*.
- Variation of members' rights—
 - Alteration of rights of a class of shareholders—
 - Sub-division of shares—10s ordinary shares already issued, subdivided into 2s ordinary shares ranking *pari passu* for all purposes with other 2s ordinary shares already issued—Rights of original holders of 2s shares not 'varied'—Companies Act 1929, s 50, Sch I, Table A, arts 3, 37, 54. *Greenhalgh v Arderne Cinemas Ltd* [1946] 1 512, CA.
 - Application to court to cancel variation—
 - Authority of holders of requisite amount of stock not communicated to petitioner at date of presentation of petition—Effect—Companies Act 1929, s 61(1), (2). *Re Sound City (Films) Ltd* [1946] 2 521, ChD.
 - Objection by holder of 15 per cent of issued shares—Unfair prejudice of shareholders—Right to bring petition to annul variation—Dismissal of petition where petitioner not the holder of sufficient shares—Companies Act 1929, s 61. *Re Suburban and Provincial Stores Ltd* [1943] 1 342, CA.
 - Petitioner not appointed in writing by holders of requisite amount of stock at date of application—Authority given subsequently not retroactive—Motion by company to dismiss petition—Companies Act 1929, s 61. *Re Suburban & Provincial Stores Ltd* [1943] 1 342, CA.
 - Proposal to increase capital—
 - Increase of ordinary share capital—Whether rights of preference stockholders affected. *Re John Smith's Tadcaster Brewery Co Ltd* [1953] 1 518, CA.
 - Issue of preference and ordinary shares to ordinary shareholders—Whether rights of preference stockholders 'affected'. *White v Bristol Aeroplane Co Ltd* [1953] 1 40, CA.
- Voluntary winding-up—
 - Bank account—
 - Separate account in credit but company indebted to bank on other accounts—Right to combine or set-off. *See* Bank (Account)—Separate accounts—Right to combine or set-off—Company—Winding-up—Agreement between bank and company to keep separate frozen and active accounts).
 - Creditors' voluntary winding-up—
 - Liquidator. *See* Voluntary winding-up—Liquidator, *post*.
 - Set-off—Mutual dealings—Bank—Separate accounts. *See* Bank (Account)—Separate accounts—Right to combine or set-off—Company—Winding-up—Agreement between bank and company to keep separate frozen and active accounts).
 - Declaration of solvency—
 - Members' voluntary winding-up. *See* Voluntary winding-up—Members' voluntary winding-up—Declaration of solvency, *post*.
 - Distribution of company's property—
 - Application in satisfaction of liabilities—Contract having effect of varying statutory rules—Validity—Public policy—Contract entered into for good business reasons and not for purpose of circumventing insolvency legislation—International Air Transport Association clearing house—Rules of clearing house constituting contract between airline members that mutual debits and credits should be paid through clearing house and in no other way—Airline company going into voluntary liquidation—Whether rules binding on liquidator—Whether liquidator entitled to sue another airline for debt owed to company—Companies Act 1948, s 302. *British Eagle International Airlines Ltd v Compagnie Nationale Air France* [1975] 2 390, HL.
 - Assignment of lease for value—Permitted assignment—Future performance of covenants—Landlord's right to have sufficient assets of company set aside to meet future rent and provide for performance of other covenants. *Re House Property and Investment Co Ltd* [1953] 2 1525, ChD.
 - Clause in memorandum prohibiting transfer of income and property of company to members by way of profit—No provision in memorandum or articles in regard to disposal of surplus assets on winding-up—Right of Crown to surplus assets as *bona vacantia*—Companies Act 1929, s 247. *Re Merchant Navy Supply Assn Ltd* [1947] 1 894, ChD.
 - Company limited by guarantee—Whether capital or income—Companies Act 1948, s 302. *Stafford Coal & Iron Co Ltd v Brogan (Inspector of Taxes), Stafford Coal & Iron Co Ltd v Inland Revenue Comrs* [1963] 3 277, HL.
 - Dividend arrears—Cumulative preferential dividends—Profits available for dividend insufficient to cover arrears—Fund out of which arrears payable. *Re Wharfedale Brewery Co Ltd* [1952] 2 635, ChD.
 - Foreign tax—Claim by Indian government—Admissibility of proof—Companies Act 1948, s 302. *Government of India, Ministry of Finance (Revenue Division) v Taylor* [1955] 1 292, HL.

COMPANY (cont)

Voluntary winding-up (cont)—

Distribution of company's property (cont)—

Future liabilities—Contingent claims—Possible claims for workmen's compensation—Declared distribution of assumed surplus—Balance of declared distribution remaining in liquidator's hands—Duty of liquidator—Extent of duty to communicate personally with creditors whose claims have not been admitted—Companies Act 1929, ss 247, 261—Companies (Winding-up) Rules 1929 (SR & O 1929 No 612), r 104(1), (2). **Re Armstrong Whitworth Securities Co Ltd** [1947] 2 479, ChD.

Nature of liquidator's functions. **Inland Revenue Comrs v Pollock & Peel** (in liquidation) [1957] 2 483, CA.

Profits—Rights of shareholders—Right to dividend in respect of period before winding-up—Necessity for declaration of dividends—Construction of articles. **Re Catalinas Warehouses and Mole Co Ltd** [1947] 1 51, ChD.

Rights of preference shareholders—Right to dividend—Right to share in surplus assets *pari passu* with ordinary shareholders. **Re W Foster & Son Ltd** [1942] 1 314, ChD.

Rights of preference shareholders—Surplus assets—Effect of article defining rights—Onus of proof of right to participate. **Re Isle of Thanet Electric Supply Co Ltd** [1949] 2 1060, CA.

Examination of officer of company etc—

Application for order—Inspection of transcripts of evidence given before Board of Trade inspectors—Companies Act 1948, s 307. **Re Rolls Razor Ltd** [1968] 3 698, ChD.

Application for order—Written statement of fact supporting—Whether affidavit verifying statement required—Liquidator in voluntary winding-up not an officer of the court—Companies Act 1948, s 268, s 307. **Re Rolls Razor Ltd (No 2)** [1969] 3 1386, ChD.

Application to discharge order—Discretion of judge—Companies Act 1948, s 268. **Re Rolls Razor Ltd (No 2)** [1969] 3 1386, ChD.

Application to discharge order—Need to have order formally drawn up before application—Companies Act 1948, s 268. **Re Rolls Razor Ltd (No 2)** [1969] 3 1386, ChD.

Application to discharge order—Procedure—Companies Act 1948, s 268. **Re Rolls Razor Ltd (No 2)** [1969] 3 1386, ChD.

Application to discharge order—Right to make application—Companies Act 1948, s 268. **Re Rolls Razor Ltd (No 2)** [1969] 3 1386, ChD.

Circumstances in which order should be refused—Matters to be considered—Pending litigation—Proceedings by proposed examinee against company—Proceedings contemplated by company against proposed examinee—Proposed examination directed to issues raised in proceedings—Purpose of examination to enable company to obtain advantage in pending and contemplated litigation—No good reason shown for examination in advance of litigation—Companies Act 1948, s 268. **Re Bletchley Boat Co Ltd** [1974] 1 1225, ChD.

Form of order—Companies Act 1948, s 268. **Re Rolls Razor Ltd (No 2)** [1969] 3 1386, ChD.

Interrogatories—Submission of written interrogatories before oral examination—Companies Act 1948, s 268. **Re Rolls Razor Ltd (No 2)** [1969] 3 1386, ChD.

Order to produce books—Procedure to contest validity of order—Discretion of court to order production—Oppressive exercise of discretion—Companies Act 1929, s 214. **Re Maville Hose Ltd** [1938] 3 621, ChD.

Private examination of director—Evidence taken down in shorthand and transcript made—Director objecting to sign transcript—Whether court would order him to sign—Companies Act 1948, s 268(2). **Re Milton Hindle Ltd** [1963] 3 161, ChD.

Final meeting and dissolution—

Account of winding-up to be made up by liquidator so soon as the affairs of the company are fully wound-up—Sufficient if account made up fully so far as liquidator is aware—Final meeting convened—Subsequent receipt of surtax demand—Sum retained to meet surtax and note of explanation sent with account—Account and return registered—Consequent dissolution of company—More than two years after dissolution application made under s 352 for declaration that winding-up was void—Registration of account and return effective and dissolution valid—Companies Act 1948, s 290(1), (4). **Re Cornish Manures Ltd** [1967] 2 875, ChD.

Judgment against liquidator for wrongful dismissal of employee—

Garnishee order on liquidator's bank account—Effect of liquidation on employee's existing contract with company—Companies Act 1929, ss 172, 174, 246—255. **Gerard v Worth of Paris Ltd** [1936] 2 905, CA.

Liquidator—

Account of winding-up. *See* Voluntary winding-up—Final meeting and dissolution—Account of winding-up to be made by liquidator as soon as the affairs of the company are fully wound-up, *ante*.

Application to have dissolution declared void. *See* Dissolution—Application to have dissolution declared void—Application by person appointed liquidator on resolution that company be voluntarily wound up, *ante*.

Appointment—Appointment by resolution of shareholders on short notice—No meeting of creditors held—Whether liquidator's appointment was a nullity—Companies Act 1948, s 293(1), s 294. **Re Centrebind Ltd** [1966] 3 889, ChD.

Appointment—Liquidator nominated by resolution of members—Creditors' meeting—Majority in value but not in number nominated another liquidator—Second nomination ineffective—Companies Act 1948, s 294—Companies (Winding-up) Rules 1949 (SI 1949 No 330), r 134. **Re Caston Cushioning Ltd** [1955] 1 508, ChD.

Appointment vacant—Power to fill vacancy—Appointment by general meeting comprising one shareholder only—Companies Act 1948, s 286(1). **Re London Flats Ltd** [1969] 2 744, ChD.

Distribution of company's property—Nature of liquidator's functions. *See* Voluntary winding-up—Distribution of company's property—Nature of liquidator's functions, *ante*.

COMPANY (cont)**Voluntary winding-up (cont)—****Liquidator (cont)—**

Duty of liquidator—Duty not to take steps which appear to be designed to secure support for himself or be discouraging to creditors who take contrary view. **Re Lubin, Rosen and Associates Ltd** [1975] 1 577, ChD.

Power—Carrying on business of company—Priority of post-liquidation creditors over pre-liquidation creditors—Companies Act 1929, ss 191(1)(b), 248(1)(b). **Re Great Eastern Electric Co Ltd** [1941] 1 409, ChD.

Remuneration—Costs—Joint liquidator—Solicitor liquidator—Acting on behalf of liquidators in litigious proceedings—Profit costs—Companies (Winding-up) Rules 1929 (S R & O 1929 No 612), r 158. **Re R Gertzenstein Ltd** [1936] 3 341, ChD.

Members' voluntary winding-up—

Declaration of solvency—Statement of company's assets and liabilities—Omission from statement of alleged debt owing by company—Whether statement must include every asset and liability—Whether omission invalidating declaration of solvency—Companies Act 1948, s 283(2)(b). **De Courcy v Clements** [1971] 1 681, ChD.

Power to fill vacancy in office of liquidator. *See* Voluntary winding-up—Liquidator—Appointment vacant—Power to fill vacancy, *ante*.

Power to apply to court to have powers exercised—

Public examinations of officers—Power of court to order—Necessity for 'further report'—Companies Act 1948, ss 236(3), 270(1), 307(1)(2), 334(3). **Re Campbell Coverings Ltd**

Staying of distress—Distress levied before commencement of winding-up—Landlords also directors of company—Discretion of court to stay—Companies Act 1929, s 252. **Re G Winterbottom (Leeds) Ltd** [1937] 2 232, ChD.

Staying of distress. **Re Margot Bywaters Ltd** [1941] 3 471, ChD.

Power to apply to court to have question determined—

Application by liquidator for ultra vires transaction to be authorised—Whether court having power to give authority—Companies Act 1948, s 307. **Re Salisbury Railway & Market House Co Ltd** [1967] 1 813, ChD.

Application by Official Receiver to stay winding-up—Whether court has jurisdiction to order report by Official Receiver—Companies Act 1948, ss 256, 307. **Re Serene Shoes Ltd** [1958] 3 316, ChD.

Debenture holder—Creditor—Companies Act 1929, s 252. **Re Alfred Priestman & Co (1929) Ltd** [1936] 2 1340, ChD.

Right of creditor to compulsory winding-up order—Majority of creditors opposing petition—Circumstances in which order will be made—Companies Act 1948, s 270(1), s 307(1). **Re B Karsberg Ltd** [1955] 3 854, CA.

Power to stay winding-up—

Creditors' voluntary winding-up—Application for stay of winding-up—Court's discretion to grant stay—Factors to be considered—Companies Act 1948, ss 256, 301, 307. **Re Calgary and Edmonton Land Co Ltd** [1975] 1 1046, ChD.

Preferential creditor—

Vendor's lien—Creditor claiming vendor's lien by subrogation. *See* Sale of land (Vendor's lien—Subrogation—Creditor providing loan for purchase of property—Contrary intention excluding doctrine of subrogation—Unsecured loan—Creditor taking shares in company and providing loan to company for purchase of property—Loan used by company to buy property—Company in liquidation).

Resolution for voluntary winding-up—

Validity—All corporators present at meeting—Notice of meeting defective—Liquidation going forward—No effective objection to liquidation for 3 1/2 years—Whether acquiescence or laches. **Re Bailey, Hay & Co Ltd** [1971] 3 693, ChD.

Winding-up—**Advertisement—**

Petition. *See* Compulsory winding-up—Advertisement of petition, *ante*.

Alternative remedy—

Oppression. *See* Oppression, *ante*.

Application of bankruptcy rules—

Interest on debts—Company apparently insolvent subsequently found to be solvent—Surplus of assets—Rights of unsecured creditors—Law Reform (Miscellaneous Provisions) Act 1934, s 3(1)—Companies Act 1948, s 317—Bankruptcy Act 1914, s 33(8). **Re Fine Industrial Commodities Ltd** [1955] 3 707, ChD.

Interest on debts—Rate of interest—Deposits accepted by company from many members of the public—Fixed term and ordinary deposits—Rate of interest payable by company on deposits exceeded five per cent per annum—Some deposits repayable before liquidation, others not—Whether interest payable and whether rate of interest limited to five per cent per annum—Whether court would direct claims for interest to be admitted without proof—Depositors who had not proved to be treated as having demanded repayment at date of summons—Bankruptcy Act 1914, s 66—Companies Act 1948, s 317—Companies (Winding-up) Rules 1949 (SI 1949 No 330), r 91, r 100, r 101. **Re Theo Garvin Ltd** [1967] 3 497, ChD.

Set-off—Mutual dealings—Notice of creditors' meeting given under s 293 of Companies Act 1948—Subsequent assignment of debt to respondent—Respondent indebted to company—Assignor and assignee both aware of notice of creditors' meeting having been given—Resolution passed shortly afterwards for voluntary winding-up of company—Whether respondent entitled to set-off amount of debt assigned to it against debts from it to company—Bankruptcy Act 1914, s 31—Companies Act 1948, s 317. **Re Eros Films Ltd** [1963] 1 383, ChD.

COMPANY (cont)

Winding-up (cont)—

Application of bankruptcy rules (cont)—

Set-off—Mutual dealings—Salesmen selling company's domestic appliances by calling on householders—Salesmen independent contractors—Proceeds of sales paid over to company—Commission paid by company to salesmen less percentage retained for salesmen in retention fund—Set-off of claim for commission and for retention fund against proceeds of sales and goods for sale in hands of salesmen—Whether salesmen had lien on such money or goods—Companies Act 1948, s 317—Bankruptcy Act 1914, s 31. **Rolls Razor Ltd v Cox** [1967] 1 397, CA.

Surplus assets after payment of debts—Interest—Application of surplus in payment of interest on debts proved—Company placed in liquidation on basis that it was insolvent—Liquidators subsequently disposing of company's undertaking so as to realise a surplus—Creditors paid in full—Whether bankruptcy rules applicable where company placed in liquidation on basis that it was insolvent—Whether surplus to be applied in payment of debts proved—Bankruptcy Act 1914, s 33(8)—Companies Act 1948, s 317. **Re Rolls Royce Ltd** [1974] 3 646, ChD.

Application to court to determine any question—

Disputed claim as to unclaimed or undistributed assets—Determination of claim by court. *See* Winding-up—Unclaimed or undistributed assets—Claim to assets in Companies Liquidation Account—Disputed claim—Determination of dispute by court, *post*.

Appraisalment and sale of ship owned by company. *See* Admiralty (Appraisalment and sale—Winding-up order made in Companies Court in relation to company owning ships).

Banker's lien on bank account. *See* Bank (Lien—Cheque—Banker's lien on cheque presented for collection—Customer having two accounts—Agreement that account in debit be frozen for four months in absence of materially changed circumstances—Voluntary liquidation).

Board of Trade's petition. *See* Compulsory winding-up—Petition by Board of Trade, *ante*.

Company in substance a partnership. *See* Compulsory winding-up—Just and equitable—Company in substance a partnership, *ante*.

Compulsory winding-up. *See* Compulsory winding-up, *ante*.

Contributories—

'A' contributories—Calls on shares—Payment in money's worth—Deferred payment certificates—Companies Act 1929, s 157(1)(d). **Re White Star Line Ltd** [1938] 1 607, CA.

'B' contributories—Calls on shares—Call made on 'A' contributory—Notification of 'B' contributories—Whether call made on 'B' contributories—Debts subsequently bought up for 'B' contributories—Reduction of liability—Companies Act 1948, s 212(1)(c), s 214—Companies (Winding-up) Rules 1949 (SI 1949 No 330), r 88. **Re Apex Film Distributors Ltd** [1960] 1 152, CA.

Contributories in case of bankruptcy of member—Petition by trustee in bankruptcy of shareholder—Competence—Companies Act 1948, s 215, s 216(1), s 224(1). **Re H L Bolton Engineering Co Ltd** [1956] 1 799, ChD.

Dividend due to past member—Companies Act 1948, s 212(1)(g). **Re Consolidated Gold Fields of New Zealand Ltd** [1953] 1 791, ChD.

Contributory's petition. *See* Compulsory winding-up—Petition by contributory, *ante*.

Costs—

Compulsory winding-up. *See* Compulsory winding-up—Costs, *ante*.

Profit costs of solicitor to liquidator—Appointment of solicitor by committee of inspection—Clerk employed by solicitor a member of committee—Companies (Winding-up) Rules 1949 (SI 1949 No 330), r 163. **Re F T Hawkins & Co Ltd** [1952] 2 467, ChD.

Security for costs—Appeal against winding-up order. *See* Compulsory winding-up—Security for costs—Appeal by company against winding-up order, *ante*.

Taxation—Jurisdiction of chief clerk to registrar—Procedure to challenge jurisdiction—Companies (Winding-up) Rules 1949 (SI 1949 No 330), r 4(3). **Re Wool Textile Employers' Mutual Insurance Co Ltd** [1955] 2 827, ChD.

Taxation—Jurisdiction of persons authorised by registrar. **Note** [1955] 3 89.

Creditor's petition. *See* Compulsory winding-up—Petition by creditor, *ante*.

Deadlock. *See* Compulsory winding-up—Just and equitable—Deadlock, *ante*.

Debt—

Interest. *See* Winding-up—Proof and ranking of claims—Interest on debt, *post*.

Proof. *See* Winding-up—Proof and ranking of claims, *post*.

Disclaimer of onerous property—

Compulsory winding-up. *See* Compulsory winding-up—Disclaimer of onerous property, *ante*.

Dissolution—

Bona vacantia—Foreign bank—Bank dissolved abroad—Winding-up in England—Surplus assets—Who is entitled—Companies Act 1929, s 338(1)(d). **Re Banque des Marchands de Moscou (Koupetschesky)** [1957] 3 182, ChD.

Bona vacantia—Foreign bank—Bank dissolved by foreign decree—Assets but no place of business in England—Right of Crown to assets as bona vacantia—Petition by foreign creditors for winding-up. **Re Azoff-Don Commercial Bank** [1954] 1 947, ChD.

Bona vacantia—Foreign bank—Bank dissolved by foreign decree—Dissolution under laws of country of incorporation—Crown's claim to assets in England as bona vacantia. **Re Banque Industrielle de Moscou** [1952] 2 532, ChD.

Effect on antecedent and other transactions—

Floating charge—Debenture. *See* Debenture—Floating charge—Created within six months of winding-up, *ante*.

Examination of officer of company—

Compulsory winding-up. *See* Compulsory winding-up—Public examination, *ante*.

Voluntary winding-up. *See* Voluntary winding-up—Examination of officer of company, etc., *ante*.

Execution against company. *See* Execution (Winding-up of company).

COMPANY (cont)

Winding-up (cont)—

Floating charge—

Effect—Charge to secure indebtedness on current accounts at bank—Charge created within 12 months of winding-up—Preferential indebtedness on separate wages account and salaries account—Company indebted to bank at creation of charge—Company remaining indebted in similar amount throughout relevant period—No cash paid to company at time of and in consideration for charge—Whether cash paid subsequently to meet cheques drawn by company was paid in consideration of the floating charge—Application of rule in *Clayton's Case*—Companies Act 1948, s 322(1). **Re Yeovil Glove Co Ltd** [1964] 2 849, CA.

Foreign company—

Unregistered company. *See* Compulsory winding-up—Unregistered company—Foreign company, *ante*.

Fraud by officer of company. *See* Criminal law (Fraud—Company going into liquidation—Fraud by officer of company).

Fraudulent preference—

Advances on promise to execute charge when required—Undertaking by solicitors of company to hold deeds of properties to lender's order—Formal charges and mortgage in respect of three properties executed within six months before creditors' voluntary winding-up—Whether charges and mortgage constituted fraudulent preference—Companies Act 1948, s 320(1). **Re Eric Holmes (Property) Ltd** [1965] 2 333, ChD.

Alleged fraudulent preference—Application of creditor to join sureties as third parties—Third party procedure not available in winding-up—Companies Act 1929, ss 164, 265, 305. **Re A Singer & Co (Hat Manufacturers) Ltd** [1943] 1 225, CA.

Dominant intention—Pressure not established—Consideration not established—Legal charge executed within a month before compulsory winding-up—Legal charge in favour of bank whom person controlling company believed already to have a first charge by deposit of title deeds—Whether execution of legal charge amounted to a fraudulent preference and was invalid under the Companies Act 1948, s 320. **Re FLE Holdings Ltd** [1967] 3 553, ChD.

Evidence of intention to prefer—Bank overdraft guaranteed by director—Overdraft paid off within 12 days of creditors' meeting—No direct evidence of intent to prefer—Whether court precluded from drawing inference of intent to prefer—Bankruptcy Act 1914, s 44—Companies Act 1929, s 265. **Re M Kushler Ltd** [1943] 2 22, CA.

Memoranda of deposit of title deeds to secure indebtedness to bank—Undertaking therein to execute legal mortgage as required by bank—Shortly before company went into creditors' voluntary winding-up bank required company to execute legal charges—Proviso in each of legal charges that bank could determine what part of total liability to bank should be deemed secured by legal charge and what part not so secured—Whether a fraudulent preference—Companies Act 1948, s 320. **Re William Hall (Contractors) Ltd** [1967] 2 1150, ChD.

Recovery of money paid—Set-off—Companies Act 1929, s 265. **Re B P Fowler Ltd** [1937] 3 781, ChD.

Fraudulent trading—

Creditors of insolvent company in compulsory liquidation applied for declaration that former director personally responsible for debt to creditors—Before proceedings heard payment made by third party on behalf of director—Creditors not accountable to liquidator for money so received—Companies Act 1948, s 332. **Re Cyona Distributors Ltd** [1967] 1 281, CA.

Parties to the carrying on of the company's business—Secretary and financial adviser to company—Knowledge that company insolvent and trading at a loss—Company continuing to obtain goods on credit and incur other debts—Duty to advise directors that company should cease to trade—Whether failure to give advice sufficient to constitute secretary as a party to the carrying on of the company's business—Companies Act 1948, s 332(1). **Re Maidstone Buildings Provisions Ltd** [1971] 3 363, ChD.

Trading not antecedent to or in the course of winding-up—Whether offence made out—Companies Act 1948, s 332(3). **R v Roloffson** [1969] 2 833, CA, **R v Schildkamp** [1969] 2 835, CA.

Inability of company to pay debts. *See* Compulsory winding-up—Inability of company to pay debts, *ante*.

Industrial and provident societies. *See* Industrial and provident societies (Winding-up).

Insurance company—

Generally. *See* Insurance company—Winding-up, *ante*.

Protection of policyholders. *See* Insurance (Protection of policyholders—Liquidation of company).

Judgment creditor's petition—

Inability of company to pay debts. *See* Compulsory winding-up—Inability of company to pay debts—Judgment creditor's petition, *ante*.

Just and equitable. *See* Compulsory winding-up—Just and equitable, *ante*.

Legal aid—

Scope of certificate. *See* Legal aid (Certificate—Scope of certificate—Winding up petition).

Liquidator—

Account of winding-up—Sufficiency. *See* Voluntary winding-up—Final meeting and dissolution—Account of winding-up to be made by liquidator so soon as the affairs of the company are fully wound-up—Sufficient if account made up fully so far as liquidator is aware, *post*.

Appointment—Compulsory winding-up. *See* Compulsory winding-up—Liquidator—Appointment, *ante*.

Appointment—Voluntary winding-up. *See* Voluntary winding-up—Liquidator—Appointment, *ante*.

COMPANY (cont)

Winding-up (cont)—

Liquidator (cont)—

Claim against directors in respect of their remuneration. *See* Director—Remuneration—Remuneration to be determined by resolution in general meeting—No resolution passed—Control of company in hands of directors—Claim by liquidator that directors repay remuneration, *post*.

Powers—Compulsory winding-up. *See* Compulsory winding-up—Liquidator—Powers, *ante*.

Powers—Voluntary winding-up. *See* Voluntary winding-up—Liquidator—Power, *ante*.

Remuneration—Compulsory winding-up. *See* Compulsory winding-up—Liquidator—Remuneration, *ante*.

Remuneration—Voluntary winding-up. *See* Voluntary winding-up—Liquidator—Remuneration, *ante*.

Meeting to ascertain wishes of creditors or contributories—

Creditor's application—Judgment creditors petition—Majority of creditors opposing—Petitioner's consent to dismissal of petition—Costs—Unreasonable to present petition. *Re A E Hayter & Sons (Portchester) Ltd* [1961] 2 676, ChD.

Meetings to ascertain wishes of creditors or contributories—

Creditor's application—Judgment creditors petition—Majority in value of creditors opposing—Voluntary liquidation—Costs—Evidence filed on behalf of petitioning creditor confined to formal affidavit verifying petition—Opposition by company and other creditors—Petition dismissed—Costs to be paid by petitioning creditor. *Re Riviera Pearls Ltd* [1962] 2 194, ChD.

Creditor's application—Judgment creditors petition—Majority of creditors opposing—Discretion of court—Voluntary liquidation preferred by majority of creditors—Compulsory winding-up if ordered would render one payment of rent probably avoidable under s 227—Companies Act 1948, s 222(c), s 346(1). *Re J D Swain Ltd* [1965] 2 761, CA.

Creditor's application—Majority of creditors opposing—Petition dismissed—Costs—Whether petition should be dismissed with costs or without order as to costs. *Re R W Sharman Ltd* [1957] 1 737, ChD.

Creditor's application—Majority of creditors opposing—Discretion of court—Reasonableness of wishes of opposing creditors—Absence of special circumstances for making order—Costs—Companies Act 1948, s 346(1). *Re ABC Coupler & Engineering Co Ltd* [1961] 1 354, ChD.

Creditor's application—Majority of creditors opposing—Discretion of court—Companies Act 1948, s 346(1). *Re P & J Macrae Ltd* [1961] 1 302, CA.

Creditor's application—Majority of creditors opposing—Whether special circumstances must be shown for winding-up order—Discretion of court—Companies Act 1948, s 346(1). *Re Vuma Ltd* [1960] 3 629, CA.

Creditor's application—Majority of creditors opposing—Debt undisputed—Reasonableness of petitioner in presenting and prosecuting petition—No order as to costs made against petitioner. *Re Sklan Ltd* [1961] 2 680, ChD.

Liquidator—No liquidator appointed at first meeting of creditors in place of Official Receiver—Majority of creditors desiring liquidator to be appointed subsequently in place of Official Receiver—Order made on motion to convene meeting to determine whether liquidator should be appointed—Preliminary meeting of creditors unnecessary—Companies Act 1948, s 346. *Re Manmac Farmers Ltd* [1968] 1 1150, ChD.

Misfeasance—

Allegation that dividends paid out of capital—Particulars of allegation—RSC Ord 19, rr 4, 6. *Re Dependable Upholstery Ltd* [1936] 3 741, ChD.

Director—Misfeasance action by company in liquidation against director—Whether liquidator necessary as co-plaintiff. *Curtis's Furnishing Stores Ltd v Freedman* [1966] 2 955, ChD.

Director—Remuneration paid to director—Invalid resolution—Relief from liability—Fairly to be excused—Invalid appointment of director—Companies Act 1929, s 372. *Re J Franklin & Son Ltd* [1937] 4 43, ChD.

Director—Release of indebtedness of director to company made a term of his selling his controlling shares to individuals—Company subsequently releasing by conduct his indebtedness without consideration for the release—Subsequent liquidation of company—Whether director guilty of misfeasance by entering into the agreement—Companies Act 1948, s 54(1). *Curtis's Furnishing Stores Ltd v Freedman* [1966] 2 955, ChD.

Indemnity claim against one respondent by other respondents—Power of courts to apportion sums ordered to be paid between respondents—Power to allow two respondents to serve notice claiming indemnity on another respondent—Companies Act 1948, s 333—Companies (Winding-up) Rules 1949 (SI 1949 No 330), r 68. *Re Morecambe Bowling Ltd* [1969] 1 753, ChD.

Receiver and manager—Liability for misfeasance—Receiver and manager appointed by debenture-holder—Liquidator—Whether receiver a manager of company—Whether alleged default within section—Interest of plaintiff in subject-matter of misfeasance summons—Companies Act 1948, s 333(1), s 455(1). *Re B Johnson & Co (Builders) Ltd* [1955] 2 775, CA.

Misfeasance summons—

Service—Service while company dissolved—Effect of order avoiding dissolution—Companies Act 1948, s 352(1). *Re Lewis and Smart Ltd* [1954] 2 19, ChD.

Offences by officers of companies in liquidation—

Meaning of 'officer of company'—Whether including auditor. *See* Officer—Auditor—Whether 'officer of company' within criminal enactments, *ante*.

Official Receiver's petition. *See* Compulsory winding-up—Petition by Official Receiver, *ante*.

Order—

Rescission of order—Application for rescission. *See* Compulsory winding-up—Winding-up order—Rescission—Application for rescission, *ante*.

COMPANY (cont)

Winding-up (cont)—

Overseas company—

Dissolution of overseas company—Foreign bank—Bank dissolved by foreign decree—Compulsory winding-up of London branch as unregistered company—Action by liquidator on behalf of company—Whether company recreated by winding-up order—Companies Act 1929, ss 190, 191(1), 337, 338(1)(d), 342. **Russian and English Bank (in liquidation) v Baring Bros & Co Ltd** [1936] 1 505, HL.

Power to exclude creditors not proving in time—

Exclusion of creditor from benefit of distribution of assets—Unjust enrichment—Liability of contributories to creditor—Sums overpaid to contributories at expense of creditor—Sums overpaid by mistake of fact—Creditor having failed to prove debt after notice by liquidator—Creditor having claim against company for breach of contract—Creditor ignorant of breach at date of notice and of distribution—Distribution of company's surplus assets to contributories—Company wound up—Whether creditor entitled in equity to claim against contributories for sums overpaid—Companies Act 1948, s 264—Companies (Winding-up) Rules 1949 (SI 1949 No 330), r 106(1). **Butler v Broadhead** [1974] 2 401, ChD.

Preferential creditor—

Appropriation by secured creditor of proceeds of security to non-preferential claim. *See* **Mortgage** (Sale—Appropriation of proceeds of sale).

Preferential payments—

Taxes—Distress levied but not completed before commencement of winding-up—Voluntary winding-up—Collector of taxes distraining on goods of company for unpaid taxes—Company going into creditors' voluntary winding-up before completion of distress by sale of goods—Whether collector entitled to retain benefit of distress—Whether collector to rank *pari passu* with other preferential creditors—Companies Act 1948, s 319(5). **Re Herbert Berry Associates Ltd** [1976] 3 207, ChD.

Wages—Advances for payment of wages—Bank—Advances by bank on current account on being satisfied that an amount equal to advance would shortly be paid in—Companies Act 1948, s 319(4). **Re Primrose (Builders) Ltd** [1950] 2 334, ChD.

Wages—Advances for payment of wages—Bank—Company's current bank account overdrawn—Separate wages account opened, also overdrawn—Cheques drawn on current account credited to wages account—Voluntary winding-up of company—Whether bank ranked as preferential creditor in respect of amount transferred from current to wages account—Reduction in respect of credits to current account under rule in Clayton's case—Companies Act 1948, s 319(4). **Re James R Rutherford & Sons Ltd** [1964] 3 137, ChD.

Wages—Advances for payment of wages—Bank—Company having three accounts with bank, one frozen account, one current account and a wages account—Frozen account in debit—Current account always in credit—Indebtedness on wages account kept in balance with current account so that indebtedness on frozen account could be reduced from time to time—Whether bank entitled to rank preferentially in respect of debit on wages account—Mutual dealings, credit and set-off—Companies Act 1948, s 319(4), s 317—Bankruptcy Act 1914, s 31. **Re E J Morel (1934) Ltd** [1961] 1 796, ChD.

Wages—Advances for payment of wages—Bank—No wages account—Arrangement by lending bank with another bank for company to cash cheques (principally wages cheques) locally—Money withdrawn for wages debited to general account of company with lending bank—Whether lending bank entitled to priority for money advanced by bank and applied in paying wages—Companies Act 1948, s 319(4). **Re Rampgill Mill Ltd** [1967] 1 56, ChD.

Wages—'Labour only' sub-contractors—Company had from time to time employed gangs of men under a gang-leader on a 'labour only' basis to carry out part of its work as building contractors—Payments made to gang-leader only—No deductions made for PAYE nor insurance contributions—Control by company over gang very limited—Whether money advanced to company to meet payments to gang leaders entitled to priority in winding-up—Companies Act 1948, s 319(4). **Re C W & A L Hughes Ltd** [1966] 2 702, ChD.

Winding-up order after appointment of receiver—Preferential debts—Debts incurred after appointment of receiver and before date of winding-up—Whether entitled to priority—Companies Act 1929, ss 78, 264. **Re Griffin Hotel Co Ltd** [1940] 4 324, ChD.

Production of books—

Examination of officer of company—Voluntary winding-up. *See* Voluntary winding-up—Examination of officer of company etc—Order to produce books, *ante*.

Proof and ranking of claims—

Application of bankruptcy rules. *See* Winding-up—Application of bankruptcy rules, *ante*. Balance on current account for goods supplied—Limitation of action—Nature of indebtedness—Payments on account—Compulsory winding-up order dated Mar 23, 1959—Balance owing at Mar 23, 1953—Payments on account generally made between then and appointment of receiver on Aug 11, 1953—Proof for sum owing by company at date of appointment of receiver—Whether balance owing at Mar 23, 1953, less subsequent payments on account was statute-barred—Whether rule in Clayton's case applicable—Limitation Act 1939, s 23(4). **Re Footman Bowser & Co Ltd** [1961] 2 161, ChD.

Claim for breach of covenant—Covenant to yield up demised premises with full vacant possession—Informal surrender of lease by liquidator—Company liable for antecedent breaches—Breach of covenant at time of surrender—Whether provable in liquidation. **Re ABC Coupler and Engineering Co Ltd (No 3)** [1970] 1 650, ChD.

Damages for wrongful dismissal—Whether claimant can elect to proceed by action. **Cook v 'X' Chair Patents Co Ltd** [1959] 3 906, ChD.

Form of proof—Arrears under lease of railway rolling stock as security for service of trust certificates—Trustee proving in liquidation of railway company—Proof should be in respect of railway company's liability under lease, not in respect of sums appropriate to certificate holders. **Re United Railways of the Havana and Regla Warehouses Ltd** [1960] 2 332, HL.

COMPANY (cont)

Winding-up (cont)—

Proof and ranking of claims (cont)—

Interest on debt—When interest ceases to run—Rate of interest. **Greer v Kettle, Re Parent Trust & Finance Co Ltd** [1937] 4 396, HL.

Payment *ex gratia* by liquidator—Authorisation by court. **Re Banque des Marchands de Moscou (Koupetschesky)** [1953] 1 278, ChD.

Pensioner entitled by contract to pension—Assessment for claim—allowance for income tax. **Re Houghton Main Colliery Co Ltd** [1956] 3 300, ChD.

Preferential payments. *See* Winding-up—Preferential payments, *ante*.

Proof by creditor—Liquidator's award—Dissatisfaction of creditor—Action for damages—**Stay, Craven v Blackpool Greyhound Stadium Racecourse Ltd** [1936] 3 513, CA.

Rejection—Appeal. **Re Aynek Syndicate Ltd** [1936] 1 406, ChD.

Rejection—Appeal—Function of court. **Re Kentwood Constructions Ltd** [1960] 2 655, ChD.

Rejection—Appeal—Function of court—Claim contingent on prospects of success in foreign proceedings. **Re Trepcia Mines Ltd** [1960] 3 304, CA.

Rent—Rent accruing after commencement of winding-up—Whether rent accruing after commencement of winding-up payable in full—Whether liquidator retained possession of lease for benefit of liquidation. **Re ABC Coupler and Engineering Co Ltd (No 3)** [1970] 1 650, ChD.

Rent—Rent falling due before winding-up order—Whether payable in full as part of expenses of winding-up. **Re ABC Coupler and Engineering Co Ltd (No 3)** [1970] 1 650, ChD.

Rent—Retention of possession after winding-up—Rights of landlord—Subrogation of rights—Rent accruing after commencement of winding-up—Retention of possession for purpose of disposing of lease advantageously—Company assignee of lease—Assignor liable to landlord for payment of rent—Company ultimately liable for rent—Assignor paying rent to landlord—Assignor claiming rent from company—Whether assignor entitled to claim rent in full as expense of winding-up. **Re Downer Enterprises Ltd** [1974] 2 1074, ChD.

Proof of debts—

Interest on debt—Debt on sum certain whereon interest not reserved—Right to prove for interest—Debt payable by virtue of a written instrument at a certain time—Instrument—Meaning—Document creating or affecting rights or liabilities—Creditor owed sums by company—Sums representing price of goods delivered and sold—Invoices submitted to company—Invoices containing certain terms as to damage, loss and time of payment—Whether invoices written instruments—Whether sums owing to creditor debts 'payable by virtue of' the invoices—Companies (Winding-up) Rules 1949 (SI 1949 No 330), r 100. **Re Rolls-Royce Ltd** [1974] 3 646, ChD.

Money owed in reichsmarks under contracts made in Germany—Performance of contracts impossible and illegal owing to outbreak of war—Obligation to refund limited to refunding in Germany—Debts payable at future date—Rate of exchange at which creditors' claims to be allowed—Claims by Custodian of Enemy Property—Companies Act 1929, s 261—Trading with the Enemy (Custodian) Order 1939 (SR & O 1939 No 1198), art 1(i), (ii), (e), (iv)(d) (as amended by Trading with the Enemy (Custodian) (Amendment) Order 1940 (SR & O 1940 No 94)). **Re Parana Plantations Ltd** [1948] 1 742, ChD.

Part of loan remitted—Entry in balance sheet—Agreement with directors that full loan provable in winding-up—Whether release. **Re General Preserving Co Ltd** [1937] 1 693, ChD.

Set-off—Damages for breach of contract—Breach of price-maintenance agreement—Breach by receiver before appointment of liquidator. **Telsen Electric Co Ltd v J J Eastick & Sons** [1936] 3 266, KBD.

Statute-barred debts—Admissibility—Companies Act 1948, s 257(1), s 302. **Re Art Reproduction Co Ltd** [1951] 2 984, ChD.

Restoration of name to register. *See* Restoration to register, *ante*.

Restriction of creditor's rights—

Execution not completed before winding-up. *See* Execution (Winding-up of company—Restriction of creditor's rights—Execution not completed before winding up).

Restriction of creditor's rights as to attachment—

Effect—Garnishee order absolute obtained by judgment creditors against company—Order made after judgment creditors were given notice of meeting of creditors to consider winding-up—Debt attached paid to judgment creditors—Winding-up resolution passed and liquidator appointed after debt so received—Whether judgment creditors entitled to retain moneys recovered under the garnishee order as against the liquidator—Effect of s 325(1) of, and grounds for relief under proviso (c) to s 325(1) of, Companies Act 1948. **Re Rainbow Tours Ltd** [1963] 2 820, ChD.

Restriction of rights of creditor as to execution—

Execution not completed until after order for winding-up—English winding-up ancillary to foreign winding-up—Rights of creditor—Discretion of court—Companies Act 1948, s 325(1)(c). **Re Suidair International Airways Ltd** [1950] 2 920, ChD.

Goods seized by sheriff, but execution not completed, before commencement of winding-up—Notice of meeting of creditors served on sheriff within fourteen days of sale of goods—Notice of meeting at which resolution for voluntary winding-up was to be proposed—Resolution passed for compulsory winding-up—Subsequent order for compulsory winding-up—Duties of sheriff—Companies Act 1948, ss 325(1), 326(2). **Bluston & Bramley Ltd v Leigh (Euler, Third Party)** [1950] 2 29, KBD.

Levying of execution delayed until after order for winding-up—Rights of creditor—Discretion of court—Companies Act 1948, s 325(1)(c). **Re Grosvenor Metal Co Ltd** [1949] 2 948, ChD.

Stay of proceedings—Admiralty action for necessities—Arrest of ship after plaintiffs had notice of meeting to pass resolution to wind-up—Whether arrest was 'execution' within Companies Act 1948, s 325. **The Zafiro** [1959] 2 537, Adm.

COMPANY (cont)

Winding-up (cont)—

Secretary of State's petition. *See* Compulsory winding-up—Petition by Secretary of State, *ante*.

Set-off—

Mutual dealings. *See* Winding-up—Application of bankruptcy rules—Set-off—Mutual dealings, *ante*.

Statutory company. *See* Statutory company—Winding-up, *ante*.

Substratum of company gone. *See* Compulsory winding-up—Just and equitable—Substratum, *ante*.

Tax advantage—

Transaction in securities. *See* Income tax (Tax advantage—Transaction in securities—Tax advantage in consequence of transaction—Combined effect of transaction and liquidation of company).

Unclaimed or undistributed assets—

Claim to assets in companies' liquidation account—Disputed claim—Determination of dispute by court—Companies Act 1948, s 343(3), (4). *Birchen Lane Nominees Ltd v Nicholson* [1969] 3 1353, ChD.

Undistributed income—

Taxation. *See* Income tax (Undistributed income—Liquidation of company).

Unregistered company. *See* Compulsory winding-up—Unregistered company, *ante*.

Voluntary winding-up. *See* Voluntary winding-up, *ante*.

Wages. *See* Winding-up—Preferential payments—Wages, *ante*.

Writ—

Service on company. *See* Writ (Service on company).

COMPENSATION

Agricultural holding. *See* Agricultural holding (Compensation).

Ancient monument—

Preservation order. *See* Ancient monuments (Preservation order—Compensation).

Appeal—

Court of Appeal—

Jurisdiction—Costs. *See* Costs (Order for costs—Jurisdiction—Court of Appeal—Compensation appeal).

British Transport Commission—

Payment of compensation by—

Nationalisation of road transport. *See* British Transport Commission (Transferred undertaking—Compensation to employee).

Business premises—

New tenancy—

Compensation on refusal. *See* Landlord and tenant (Business premises—Notice by landlord to terminate tenancy—Compensation).

Refusal of new tenancy. *See* Landlord and tenant (Business premises—Compensation for refusal of new tenancy).

Tenant's claim for new lease in lieu of compensation. *See* Landlord and tenant (Business premises—Tenant's claim for new lease in lieu of compensation).

Coal mining industry—

Acquisition of property in unworked coal and mines of coal by Coal Commission. *See* Coal mining (Acquirement by Coal Commission—Compensation).

Nationalisation. *See* Coal mining (Nationalisation of industry—Compensation).

Compulsory purchase—

Generally. *See* Compulsory purchase (Compensation).

Housing Acts, under. *See* Housing (Compulsory purchase—Compensation).

Compulsory resumption of land—

New South Wales. *See* New South Wales (Compulsory resumption of land—Assessment of compensation).

Crime—

Compensation order. *See* Sentence (Compensation).

Criminal injuries—

Deductions in assessing award—

National insurance payment—Police fund payments—Scheme for Compensation for Victims of Crimes of Violence, para 13. *R v Criminal Injuries Compensation Board, Ex parte Lain* [1967] 2 770, QBD.

Entitlement to compensation—

Bystander knocked down and injured during chase of thief—Bystander not arresting or assisting in arrest—Whether bystander entitled to compensation for injuries—Compensation for Victims of Crimes of Violence Scheme 1964, para 5 (a). *R v Criminal Injuries Compensation Board, Ex parte Schofield* [1971] 2 1011, QBD.

Final decision on quantum of award—Entitlement to award before payment—Death of victim following final decision but before payment—Whether deceased entitled to compensation at time of death—Whether executors entitled to receive payment of sum determined by board. *R v Criminal Injuries Compensation Board, Ex parte Tong* [1975] 3 678, QBD.

Personal injury directly attributable to prevention or attempted prevention of offence—'Attempted prevention'—No offence in fact about to be committed—Belief of victim that offence about to be committed—Police officer in car answering emergency call—Suspects reported to be breaking into army depot—Officer killed in accident on way to depot—No one in fact breaking in—Whether in answering call officer engaged in attempted prevention of offence—Compensation for Victims of Crimes of Violence Scheme 1964 (1969 revision), para 5. *R v Criminal Injuries Compensation Board, Ex parte Ince* [1973] 3 808, CA.

COMPENSATION (cont)

Criminal injuries (cont)—

Entitlement to compensation (cont)—

Personal injury directly attributable to prevention or attempted prevention of offence—
 Directly attributable—Substantial rather than sole cause—Effects of intervening cause—
 Police officer in car answering emergency call to scene of suspected crime—Officer killed
 in accident on way—Accident caused by officer's careless driving—Officer attempting to
 prevent offence in answering call—Whether death 'directly attributable' to attempted
 prevention of offence—Compensation for Victims of Crimes of Violence Scheme 1964
 (1969 revision), para 5. **R v Criminal Injuries Compensation Board, Ex parte Ince** [1973]
 3 808, CA.

Personal injury directly attributable to arrest or attempted arrest of suspected offender—
 Offender detained at police station on suspicion—Offender having history of mental
 disturbance—Application for admission to mental hospital completed—Attempted escape
 by offender whilst waiting in custody to be taken to hospital—Police officer injured while
 pursuing offender—Officer having authority to detain offender under provisions of Mental
 Health Act 1959—Whether authority to detain as suspected offender superseded—
 Whether officer injured while attempting 'arrest of suspected offender'—Compensation for
 Victims of Crimes of Violence Scheme 1964 (1969 revision), para 5. **R v Criminal Injuries
 Compensation Board, Ex parte Lawton** [1972] 3 582, QBD.

Victim and offender living together as members of the same family—No right to
 compensation—Husband and wife living in same house—Sleeping in different rooms—
 Wife not cooking or cleaning for husband—Wife attacked by husband—Whether living
 together—Whether wife entitled to compensation for injuries—Compensation for Victims
 of Crimes of Violence Scheme 1964 (1969 revision), para 5(a). **R v Criminal Injuries
 Compensation Board, ex parte Staten** [1972] 1 1034, QBD.

Reduction of award or rejection of claim—

Conduct of victim—Failure of victim to take care for his own safety—Whether carelessness
 amounting to conduct justifying reduction or rejection—Compensation for Victims of
 Crimes of Violence Scheme 1964 (1969 revision), para 17. **R v Criminal Injuries
 Compensation Board, Ex parte Ince** [1973] 3 808, CA.

Damage to requisitioned property—

Capital or income—

Administration of estate. *See* **Administration of estates** (Capital or income—Compensation
 for damage to requisitioned property).

Diminution of emoluments of employee—

Nationalisation of road transport undertaking. *See* **British Transport Commission** (Transferred
 undertaking—Compensation to employee—Diminution of emoluments).

Discontinuance order. *See* **Town and country planning** (Discontinuance order—Compensation).

Displacement from land—

Home loss payment—

Displacement from dwelling—Land acquired by local authority and held by authority for
 purpose for which it was acquired—Displacement of person from dwelling on land in
 consequence of carrying out of redevelopment on the land—Dwelling owned by local
 authority becoming unfit for habitation—Authority rehousing occupier with a view to
 demolishing dwelling and redeveloping land—Whether occupier displaced because
 dwelling unfit for habitation or 'in consequence of...the carrying out of redevelopment'—
 Whether occupier entitled to a home loss payment—Land Compensation Act 1973, s 29(1)
 (c). **R v Corby District Council, Ex parte McLean** [1975] 2 568, QBD.

Election of remedy—

Receipt of workmen's compensation. *See* **Workmen's compensation** (Election of remedy—
 Receipt of compensation).

Estoppel by record—

Recorded agreement for workmen's compensation. *See* **Workmen's compensation** (Election of
 remedy—Receipt of compensation—Recorded agreement for compensation—Benefit of
 infant—Estoppel by record).

Extinguishment of tithe and tithe rentcharge. *See* **Tithe and tithe rentcharge** (Extinguishment—
 Compensation).Foreign compensation. *See* **Foreign compensation**.

Gas industry—

Nationalisation. *See* **Gas** (Nationalisation—Compensation).

Goodwill—

Business premises. *See* **Landlord and tenant** (Compensation for goodwill in respect of business
 premises).

Holders of securities—

Nationalisation of gas. *See* **Gas** (Nationalisation—Compensation—Compensation to holders of
 securities).

Housing—

Clearance area—

Compensation for land purchased compulsorily. *See* **Housing** (Compulsory purchase—
 Compensation).

Improvements—

Business premises. *See* **Landlord and tenant** (Improvements—Business premises—
 Compensation).

Income tax—

Appropriate year. *See* **Income tax** (Assessment—Appropriate year—Compensation).

Emoluments from office or employment. *See* **Income tax** (Emoluments from office or
 employment—Compensation).

Injurious affection—

Ancient monument—

Preservation order. *See* **Ancient monument** (Preservation order—Compensation—Injurious
 affection).

COMPENSATION (cont)

Injurious affection (cont)—

Land—

Compulsory purchase. *See* **Compulsory purchase** (Compensation—Injurious affection).

Land or interest therein injuriously affected by the execution of works—Scope of compensation—Business carried on on land—Damage to business—Loss of profits—Execution of works by local authority in exercise of statutory powers—Works carried out in street adjoining plaintiffs' business premises—Whether plaintiffs entitled to compensation for loss of profits of business in consequence of works—Lands Clauses Consolidation Act 1845, s 68, as amended by the Compulsory Purchase Act 1965, s 39(4), Sch 8, Pt 3. **Argyle Motors (Birkenhead) Ltd v Birkenhead Corp** [1973] 1 866, CA, [1974] 1 201, HL.

Permission for additional development—

Permission within five years of acquisition—Additional compensation—Land possessing certificate for residential development—Development at fifty-five habitable rooms per acre—Acquiring authority obtaining permission for one hundred rooms per acre—Increase constituting additional development—Land Compensation Act 1961, s 23(1), (2), s 29(1). **London Borough of Enfield v Lavender Garden Properties Ltd** [1968] 2 401, CA.

Town and country planning. *See* **Town and country planning** (Compensation—Development restricted by statute—Ribbon development—Injurious affection of land).

Iron and steel industry—

Denationalisation. *See* **Iron and steel** (Compensation—Denationalisation).

Loss of employment—

Local government officer. *See* **Local government** (Officer—Compensation for loss of employment).

National Health Service officer. *See* **National Health Service** (Officer—Compensation for loss of employment).

Transfer of electricity undertaking. *See* **Electricity** (Transfer of undertaking—Compensation for loss of employment).

Loss of office—

Income tax—

Deductible expense. *See* **Income tax** (Deduction in computing profits—Expenses wholly and exclusively laid out for purposes of trade—Compensation for loss of office).

Road transport undertaking—

Nationalisation. *See* **British Transport Commission** (Transferred undertaking—Compensation to employee—Discharged employee).

Loss of private rights—

Confiscatory statutory provision—

Loss of private rights without compensation—Private rights of property not take away without compensation unless intention clearly expressed—Alternative procedure available by which the objective could be achieved but with liability to pay compensation—Caravan Sites and Control of Development Act 1960, s 17(2). **Minister of Housing and Local Government v Hartnell** [1965] 1 490, HL.

Medical practitioner—

Loss of right to sell practice—

Assessment of compensation—Powers of arbitrator—National Health Service Act 1946, s 36(1)—National Health (Medical Practices Compensation) Regulations 1948 (S I 1948 No 1506), reg 7(2)(a). **Carter v Minister of Health** [1950] 1 904, KBD.

Minerals—

Compensation to be paid in respect of right. *See* **Mine** (Minerals—Right to work—Compensation to be paid in respect of right).

Motor Insurers' Bureau. *See* **Motor insurance** (Rights of third parties against insurers—Motor Insurers' Bureau).

Nationalisation—

Coal mining industry. *See* **Coal mining** (Nationalisation of industry—Compensation).

Gas. *See* **Gas** (Nationalisation—Compensation).

Income tax—

Annual payment. *See* **Income tax** (Annual payment—Compensation for nationalisation).

Notice—

Town and country planning. *See* **Town and country planning** (Compensation—Notice).

Order—

Criminal proceedings. *See* **Sentence** (Compensation).

Planning control. *See* **Town and country planning** (Compensation).Refusal of planning permission. *See* **Town and country planning** (Permission for development—

Refusal—Compensation).

Requisition. *See* **Requisition** (Compensation).

Retirement—

London government employee. *See* **London** (Local government—Employee—Retirement compensation).

Revocation of planning permission. *See* **Town and country planning** (Permission for development—

Revocation—Compensation).

Riot—

Damage. *See* **Riot** (Damage—Compensation).

Royal prerogative—

Acts done in exercise of. *See* **Crown** (Prerogative—Emergency prerogative—Compensation for loss or damage by exercise of prerogative).

Solicitor—

Goodwill attaching to office premises. *See* **Solicitor** (Goodwill attaching to office premises—Compensation).

Street widening. *See* **Highway** (Street-widening—Compensation).

COMPENSATION (cont)

Town and country planning—

Refusal of permission for development—

Northern Ireland. *See* **Northern Ireland** (Town and country planning—Compensation—

Refusal of permission to develop).

Right to compensation. *See* **Town and country planning** (Development—Permission for development—Refusal of permission for reasons relating to radio telescope at Jodrell Bank).

Transfer of officers of public authority. *See* **Public authority** (Transfer of officers—Compensation).

Transport Act 1947, under—

Payment of compensation by British Transport Commission to employees of transferred undertaking. *See* **British Transport Commission** (Transferred undertaking—Compensation to employee).

Trust—

Compensation under statute received by trustees. *See* **Trust and trustee** (Compensation—

Compensation under statute received by trustees).

Unfair dismissal. *See* **Unfair dismissal** (Compensation).

War injury. *See* **War injury** (Compensation).

Work done on property of another. *See* **Restitution** (Unjust enrichment—Compensation—Work done on property of another).

Workmen. *See* **Workmen's compensation**.

COMPETITION

Prize competition—

Conduct through newspaper or in connection with trade or business. *See* **Gaming** (Prize competition).

Lottery—

Scheme involving distribution of prizes by chance. *See* **Gaming** (Lottery—Scheme involving distribution of prizes by chance).

COMPILATION

Copyright. *See* **Copyright** (Literary work—Compilation).

COMPLAINT

Dangerous dog—

Proceedings under the Dogs Acts. *See* **Animal** (Dog—Dangerous dog).

Dismissal by justices—

Whether dismissal of complaint in respect of refusal to issue fire certificate an order. *See* **Fire** (Certificate—Refusal to issue—Appeal from refusal to justices—Dismissal of complaint by justices—Appeal to quarter sessions—Jurisdiction to hear appeal—O

Hearing—

Duty to hear parties etc. *See* **Natural justice** (Educational establishment—Complaint against teacher—Duty to hear parties etc.).

Magistrates—

Generally. *See* **Magistrates** (Complaint).

Unfair industrial practice. *See* **Industrial relations** (Unfair industrial practice—Complaint).

Unlawful discrimination—

Investigation by Race Relations Board. *See* **Race relations** (Investigation of complaint).

COMPLETION

Sale of land. *See* **Sale of land** (Completion).

COMPROMISE

Action—

Admiralty action—

Person under disability. *See* **Admiralty** (Practice—Directions—Application of Admiralty Registrar's practice direction).

Costs of negotiation—

Whether costs of action. *See* **Costs** (County court scale—High Court action—Recovery of less than £300—Costs of the action—Whether costs of counterclaim and of negotiation of compromise costs of action).

Generally. *See* **Practice** (Compromise of action).

Agreement to compromise—

Insurance claim. *See* **Mistake** (Agreement to compromise).

Appeal—

Approval—

House of Lords. *See* **House of Lords** (Compromise—Approval).

Practice—

Court of Appeal. *See* **Court of Appeal** (Appeal—Compromise—Practice).

Company—

Creditors or members—

Scheme of arrangement. *See* **Company** (Scheme of arrangement—Compromise with creditors or members).

Costs of giving effect to compromise—

Legal aid. *See* **Legal aid** (Costs—Compromise—Costs of giving effect to compromise).

Counsel—

Authority—

Limitation. *See* **Counsel** (Authority—Limitation).

Family provision—

Jurisdiction to sanction compromise of application. *See* **Family provision** (Compromise—Jurisdiction).

COMPROMISE (cont)

Infant—

Damages—

Entitlement of infant plaintiff on majority to moneys recovered. *See* **Damages** (Infant—Claim by infant plaintiff—Entitlement of infant on majority to moneys recovered—Compromise of action).

Offer made before hearing—

Divorce—

Ancillary proceedings for financial provision—Costs. *See* **Divorce** (Costs—Ancillary proceedings—Financial provision—Compromise offer).

Privy Council—

Compromise of appeal. *See* **Privy Council** (Compromise of appeal).

Probate action. *See* **Probate** (Action—Compromise).Trustee. *See* **Trust and trustee** (Powers of trustee).**COMPULSORY PILOTAGE**

See **Harbour** (Pilotage district—Compulsory pilotage).

COMPULSORY PURCHASE

Agricultural holding—

Compensation—

Assessment. *See* **Compensation—Assessment—Agricultural holding, post.**

Agricultural land—

Compensation—

Compensation for disturbance—Right to compensation. *See* **Compensation—Right to compensation—Compensation for disturbance—Agricultural land, post.**

Authorisation—

Procedure—

Common—Certificate of Secretary of State—Validity—Application by person aggrieved—Application to quash certificate—Failure by Secretary of State to give proper notice of intention to grant certificate—Applicants 'substantially prejudiced' by failure—Applicants deprived of opportunity to make representations and to object to grant of certificate—Acquisition of Land (Authorisation Procedure) Act 1946, Sch 1, para 15(1). **Wilson v Secretary of State for the Environment** [1974] 1 428, QBD.

Common—Certificate of Secretary of State—Notice—Public notice of intention to give certificate—Requirements of notice—Notice such as fairly and reasonably to enable local inhabitants to identify land—Importance of heading—Notice published in local newspapers—Notice headed 'Hallcroft Village Green'—Land known to local inhabitants as 'The Croft'—Whether sufficient public notice—Acquisition of land (Authorisation Procedure) Act 1946, Sch 1, para 11(2). **Wilson v Secretary of State for the Environment** [1974] 1 428, QBD.

Urgent cases. *See* **Speedy acquisition of land in urgent cases—Authorisation—Procedure, post.**

Canada. *See* **Canada** (Compulsory purchase).

Central Land Board—

Power of board to acquire land for disposal for permitted development—

Development for which permission has been granted—Owner unwilling to sell at existing use value—Planning permission granted by local authority after compulsory purchase order and before confirmation order—Withdrawal of offer to sell before compulsory purchase order—Validity of compulsory purchase order and confirmation order—Town and Country Planning Act 1947, s 43(1), (2). **Travis v Minister of Local Government and Planning** [1951] 2 673, KBD.

Development for which permission has been granted—Valid permission not obtained before purchase and confirmation orders—Owner unwilling to sell at existing use value—Acceptance of offer from prospective purchaser at owner's price—Function of board to prevent sales for more than existing use value—Town and Country Planning Act 1947, s 43(1), (2). **Hanily v Minister of Local Government and Planning** [1952] 1 1293, QBD.

Extent of board's powers—Planning permission granted by local authority to prospective lessee—Owner unwilling to sell at existing use value—Town and Country Planning Act 1947, s 43(1). **Earl Fitzwilliam's Wentworth Estates Co v Minister of Housing and Local Government** [1952] 1 509, HL.

Coast protection. *See* **Coast Protection** (Works scheme—Compulsory acquisition of land).

Compensation—

Assessment—

Acquiring authority only possible purchaser—Potentiality—Water supply—Indian Land Acquisition Act 1894, ss 23, 24. **Sri Raja Vyricherla Narayana Gajapetiraju Bahadur Garu v Revenue Divisional Officer, Vizagapatam** [1939] 2 317, PC.

Agricultural holding—Landlord's interest—Restriction on operation of notice to quit—Restriction not applicable where land 'required for a use, other than for agriculture, for which permission has been granted—Power reserved in lease to give 12 months' notice—Water board obtaining planning permission for use of land as reservoir—Water board obtaining powers of compulsory acquisition—Notice to treat given to landlord—Whether land required for a use other than for agriculture—Whether compensation assessable on basis that vacant possession could be obtained by giving 12 months' notice—Agricultural Holdings Act 1948, ss 23(1), 24(1), (2)(b). **Rugby Joint Water Board v Footitt** [1972] 1 1057, HL.

Agricultural holding—Yearly tenancy—Acquisition of Land (Assessment of Compensation) Act 1919, s 2, r (2), r (6). **Watson v Secretary of State for Air** [1954] 3 582, CA.

Agricultural land—Acquisition after passing of Town and Country Planning Act 1947, but before appointed day—No other permitted user practicable—Permanent restriction of development—Town and Country Planning Act 1947, ss 51(1), (2), 55(1), (2), (3). **Sampson's Executors v Nottingham County Council** [1949] 1 1051, KBD.

COMPULSORY PURCHASE (cont)

Compensation (cont)—

Assessment (cont)—

Basis of assessment—Reinstatement basis—Land devoted to purpose of such a nature that no general demand or market for land for that purpose—Reinstatement in some other place bona fide intended—Reinstatement—Meaning—Church premises vested in trustees for purpose of worship by Protestant dissenters—Small congregation—Dispersal of congregation following notice to treat—New church for Protestant dissenters set up elsewhere—One member of former church joining congregation of new church—Trustees proposing to erect new church building on site acquired for new church—Plans dependent on receipt of adequate compensation—Whether 'reinstatement in some other place...bona fide intended'—Land Compensation Act 1961, s 5, r (5). **Zoar Independent Church Trustees v Rochester Corpn** [1974] 3 5, CA.

Basis of assessment—Reinstatement basis—Land devoted to purpose of such a nature that there is no general demand for land for that purpose—Reinstatement in some other place bona fide intended—Meaning of reinstatement—Acquisition of Land (Assessment of Compensation) Act 1919, s 2, r (5)—Town and Country Planning Act 1944, s 57(1). **Aston Charities Trust Ltd v Stepney Borough Council** [1952] 2 228, CA.

Basis of assessment—Reinstatement basis—Land devoted to purpose of such a nature that no general demand or market for land for that purpose—Land which would continue to be devoted to that purpose but for compulsory acquisition—Devoted—Meaning—Whether necessary to prove that land committed to use for purpose in question for an indefinite period—Land Compensation Act 1961, s 5, r (5). **Zoar Independent Church Trustees v Rochester Corpn** [1974] 3 5, CA.

Compensation for disturbance—Compensation for any other matter not directly based on value of land—Purchase notice—Commission for negotiating amount of compensation—Compensation for disturbance prohibited by statute—Whether commission by fees according to surveyors' scale was compensation for disturbance or for 'any other matter' within Land Compensation Act 1961, s 5, r (6)—Town and Country Planning Act 1962, s 143(1)(b). **Minister of Transport v Lee** [1965] 2 986, CA.

Compensation for disturbance—Costs included—Surveyor's fees, solicitors' costs, travelling expenses, etc, reasonably incurred by owner-occupier in finding and purchasing another house for occupation—Acquisition of Land (Assessment of Compensation) Act 1919, s 2(1), (5), (6). **Harvey v Crawley Development Corpn** [1957] 1 504, CA.

Compensation for disturbance—Deduction in respect of income tax—Premises used as factory—Temporary interruption of manufacturing operations—Loss of business profits—Whether sum deductible for income tax payable if profits had been earned. **West Suffolk County Council v W Rought Ltd** [1956] 3 216, HL.

Compensation for disturbance—Extinguishment of business or cost of removal—Claimant acquiring alternative premises—Prevention of transfer of business by ill-health—Premises let instead—Housing Act 1957, s 59(1)—Acquisition of Land (Assessment of Compensation) Act 1919, s 2(2)—Land Compensation Act 1961, s 5. **Bailey v Derby Corpn** [1965] 1 443, CA.

Date by reference to which compensation is to be assessed—Cost of equivalent reinstatement—Whether compensation assessed according to cost at date of notice to treat or date when work could reasonably begin—Acquisition of Land (Assessment of Compensation) Act 1919, s 2, r(5). **Birmingham City Corpn v West Midland Baptist (Trust) Association (Incorporated)** [1969] 3 172, HL.

Date by reference to which compensation is to be assessed—Date of notice to treat—Land Compensation Act 1961, s 17(4). **Jelson Ltd v Minister of Housing and Local Government** [1969] 3 147, CA.

Date by reference to which compensation is to be assessed—Value of land acquired—Whether assessed as at date of notice to treat—Acquisition of Land (Assessment of Compensation) Act 1919, s 2, r (2). **Birmingham City Corpn v West Midland Baptist (Trust) Association (Incorporated)** [1969] 3 172, HL.

Depreciation in value of shares—Owner of land acquired also a shareholder and director of tenant company—Possible depreciation of shares through notice to quit—Whether owner entitled to claim sum representing depreciation—Acquisition of Land (Assessment of Compensation) Act 1919, s 2. **Roberts v Coventry Corpn** [1947] 1 308, KBD.

Development scheme—Compulsory purchase in pursuance of scheme—Increase in value of land due to existence of scheme—Scheme in early stages—Scheme not precise, definite or made known to all—Progressively inflationary effect as scheme becomes more definite and widely known—Increase to be disregarded in assessing compensation whatever stage scheme has reached. **Wilson v Liverpool City Council** [1971] 1 628, CA.

Development scheme—Compulsory purchase in pursuance of scheme—Method of assessment of compensation—Planning permission for development not in force at date of service of notice to treat—Statutory assumption to be made in such circumstances—Assumption that planning permission would be granted such as would permit development in accordance with proposals of acquiring authority—Apparent conflict between statutory assumption and principle that compensation cannot include increase in value entirely due to scheme underlying acquisition—Land Compensation Act 1961, s 15(1). **Myers v Milton Keynes Development Corporation** [1974] 2 1096, CA.

Dispute as to assessment—Arbitration—Award—Power of arbitrator to award interest from date of award—Acquisition of Land (Assessment of Compensation) Act 1919, s 6—Arbitration Act 1934, s 11. **All Souls College, Oxford v Middlesex County Council** [1938] 2 586, KBD.

Dispute as to assessment—Basis of assessment—Jurisdiction of High Court—Dispute as to compensation within exclusive jurisdiction of Lands Tribunal—Whether High Court would determine hypothetical question as to basis of assessment. **Re Croydon Development Plans 1954 and 1959** [1967] 2 589, ChD.

COMPULSORY PURCHASE (cont)

Compensation (cont)—

Assessment (cont)—

Interest in war-damaged hereditament—Flats subject to Rent Acts demolished by enemy action—Cost of works payment—Whether compensation to be assessed on the basis that rents controlled—Town and Country Planning Act 1947, s 53(1)(a). **East End Dwellings Co Ltd v Finsbury Borough Council** [1951] 2 587, HL.

Interest in war-damaged hereditament—War damage involving total loss—Determination of War Damage Commission to make cost of works payment under War Damage Act 1943, s 20(3)(b)—Proposal for rebuilding premises with certain alterations approved by War Damage Commission—Estimated cost of reinstatement in accordance with approved plans less than that of rebuilding property in its original form—Market value of proposed building greater than that of original building—Whether compensation assessed on basis of value with approved rebuilding—Town and Country Planning Act 1947, s 53(1)(a). **Paddington Borough Council v War Damage Commission, Associated London Properties Ltd v Paddington Borough Council** [1956] 3 753, CA.

Land acquired by local authority—Land acquired for open space—Acquired land partly developed for building purposes—Damage to adjoining land by severance—Betterment of land by provision of open space—Acquisition of Land (Assessment of Compensation) Act 1919, s 2. **George Wimpey & Co Ltd v Middlesex County Council** [1938] 3 781, KBD.

Land acquired by public authority—Power to purchase given to railway company, subject to modification under Lands Clauses Act—Transfer to public authority—Notice to treat by public authority after transfer—Compensation assessed under Acquisition of Land (Assessment of Compensation) Act 1919, s 7(1). **Drapers' Co v London Passenger Transport Board** [1937] 2 12, ChD.

Land subject to controls—Assessment where land subject to—Admissibility of evidence of sale, after removal of controls—Land in New South Wales—Commonwealth Lands Acquisition Act 1906-1936 (No 13 of 1906—No 60 of 1936), s 28(1)(a). **The Minister v Thistlethwayte** [1954] 2 843, PC.

Licensed premises—Licence in suspense—Whether freeholders' compensation should include difference between value of the current licence and value of the suspended licence—Defence Act 1842, s 19—Finance Act 1946, s 12. **Tull's Personal Representatives v Secretary of State for Air** [1957] 1 480, CA.

Matters to be disregarded—Increase in value due to existence of development scheme. *See* Compensation—Assessment—Development scheme—Compulsory purchase in pursuance of scheme—Increase in value of land due to existence of scheme, *ante*.

Potentiality—Sub-division proposed into lots according to scheme requiring ministerial approval—Sub-division not yet apparent on ground—Ministerial approval not yet obtained—Basis of valuation. **Maori Trustee v Ministry of Works** [1958] 3 336, PC.

Public utility undertaking—Canada—Value of franchise excluded. **International Ry Co v Niagara Parks Commission** [1937] 3 181, PC.

Reinstatement basis. *See* Compensation—Assessment—Basis of assessment—Reinstatement basis, *ante*.

'Special suitability or adaptability of the land'—Acquiring authority in possession as tenant under long lease—Method of assessment—Acquisition of Land (Assessment of Compensation) Act 1919, s 2, r (2), r (3). **Lambe v Secretary of State for War** [1955] 2 386, CA.

Time for assessment—Agreement on price of land—Agreement 'subject to contract'—Service of notice to treat—Assessment of compensation by district valuer—Compensation offer accepted 'subject to contract'—Owner remaining in occupation of house—Owner requiring re-assessment of compensation—Whether parties having effected binding contract for purchase—Whether compensation to be assessed at agreed figure or at value of house when acquiring authority entering into possession—Land Compensation Act 1961, s 5. **Munton v Greater London Council** [1976] 2 815, CA.

Time for assessment—Short tenancy, less than a year—Service of notice to treat—Whether tenant entitled to immediate assessment or only when possession taken—Lands Clauses Consolidation Act 1845, s 18, s 121. **London Borough of Newham v Benjamin** [1968] 1 1195, CA.

Claim—

Costs—Costs incurred in formulating claim—Legal and accountancy fees—Whether costs or compensation—Lands Tribunal Act 1949, s 3(5), Sch 1, Pt 2, para 5(1),(2),(3)—Lands Tribunal Rules 1956 (SI 1956 No 1734), r 49(1),(2). **London County Council v Tobin** [1959] 1 649, CA.

Costs—Cost of obtaining certificate of appropriate alternative development—Agricultural land without benefit of planning permission—Certificate of appropriate alternative development obtained by acquiring authority—Certificate granted for development appropriate to green belt—Claimants' successful appeal to Minister—Certificate for residential development obtained—Claimants bearing their costs of the appeal—Claim for compensation for costs of appeal in addition to value of land with potential for residential development—Land Compensation Act 1961, s 5. **Hull & Humber Investment Co Ltd v Hull Corp** [1965] 1 429, CA.

Compensation for railway—

Canada. *See* Canada (Compulsory purchase—Compensation for railway).

Date by reference to which compensation is to be assessed. *See* Compensation—Assessment—Date by reference to which compensation is to be assessed, *ante*.

Date by reference to which right to compensation is to be determined. *See* Compensation—Right to compensation—Date by reference to which right to compensation is to be determined, *post*.

Disturbance—

Assessment of compensation. *See* Compensation—Assessment—Compensation for disturbance, *ante*.

COMPULSORY PURCHASE (cont)

Compensation (cont)—

Disturbance (cont)—

Interest in premises—Company—Premises owned by wholly owned subsidiary—Interest of parent company in premises—Equitable interest under constructive trust as contractual licensee—Parent company carrying on business on premises as licensee—Directors of parent and subsidiary companies identical—Premises compulsorily acquired—Right of parent company to claim compensation for disturbance—Whether parent company having equitable interest in premises—Whether parent company entitled to compensation as bare licensee only—Land Compensation Act 1961, s 5, r(6)—Compulsory Purchase Act 1965, s 20(1). **DHN Food Distributors Ltd v London Borough of Tower Hamlets** [1976] 3 462, CA.

Interest in premises—Equitable interest under resulting trust—Provision of funds for purchase—Premises purchased by subsidiary company with bank loan—Subsidiary wholly owned by bank—Company buying subsidiary and repaying bank loan—Parent company carrying on business on premises—Premises compulsorily acquired—Whether premises held by subsidiary on trust for parent—Whether parent company entitled to compensation for disturbance—Land Compensation Act 1961, s 5, r(6). **DHN Food Distributors Ltd v London Borough of Tower Hamlets** [1976] 3 462, CA.

Right to compensation. *See* Compensation—Right to compensation—Compensation for disturbance, *post*.

Single sum including amount of value of land and compensation for disturbance—Whether sum awarded should include compensation for disturbance—Whether compensation for disturbance should be assessed when value of house agreed—Land Compensation Act 1961, s 5, r(6). **Munton v Greater London Council** [1976] 2 815, CA.

Disturbance for—

Right to compensation. *See* Compensation—Right to compensation—Compensation for disturbance, *post*.

Housing—

Clearance area. *See* **Housing** (Compulsory purchase—Compensation).

Industrial development—

Whether grant of industrial development certificate assumed. *See* Compensation—Town development—Assumption of planning permission—Ignoring effect of town development, *post*.

Injurious affection—

Construction of trunk road—Effect on house—Restriction of compensation—Loss only from works on land acquired from householder—Lands Clauses Consolidation Act 1845, s 63. **Minister of Transport v Edwards** [1964] 1 483, CA.

Land—Land or interest therein injuriously affected by the execution of works—Right to compensation—Construction of by-pass—Stopping-up order for existing street made by Minister of Transport, in exercise of statutory powers under which there was no liability for compensation—Street in which claimant owned garage and filling station became cul-de-sac—Whether claimant entitled to compensation for injurious affection—Lands Clauses Consolidation Act 1845, s 68—Town and Country Planning Act 1947 s 49(1). **Jolliffe v Exeter Corp** [1967] 1 258, QBD, [1967] 2 1099, CA.

Land—Land or interest therein injuriously affected by the execution of works—Interest—Injurious affection of easements—Reservation of water coupled with grant of easements and restrictions for the purpose of obtaining the same—Land acquired for waterworks—Injury resulting from execution of the works—Right to compensation—Lands Clauses Consolidation Act 1845, s 68—Public Works Facilities Act 1930. **Re Simeon** [1937] 3 149, ChD.

Land—Land or interest therein injuriously affected by the execution of works—Aerodrome—Injurious affection of adjoining land by use of acquired land—Whether compensation payable therefor—Defence Act 1842, ss 19, 23, 24. **Master and Fellows of University College, Oxford v Secretary of State for Air** [1938] 1 69, KBD.

Payment out of compensation paid into court—

Discretionary power—Circumstances in which exercisable—Whether acquiring authority entitled to payment of cost of rendering dangerous structure safe out of money in court. **Re County of London (Devons Road, Poplar) Housing Confirmation Order 1945** [1956] 1 818, ChD.

Persons entitled to compensation—

Person having an 'interest in land'—Option to purchase—Whether 'interest in land'—Lands Clauses Consolidation Act 1845, ss 18, 49, 63, 68. **Oppenheimer v Minister of Transport** [1941] 3 485, KBD.

Person having interest in property on which business conducted—Parent company—Acquisition of premises on which business of subsidiary company carried on—Right of parent company to claim compensation for disturbance and removal—Lands Clauses Consolidation Act 1845, s 121. **Smith, Stone and Knight Ltd v Birmingham Corp** [1939] 4 116, KBD.

Person holding interest in house occupied for business purposes—Agreement for lease of house subject to compulsory purchase order—Estate contract not registered in respect of plaintiff's interest—Notice to treat not served on plaintiff—Whether plaintiff entitled to an interest within Housing Act 1957, Sch 2, Pt 2, para 6(2)—Whether plaintiff's *prima facie* right to compensation negated by avoidance of unregistered estate contract, as against purchasers, by virtue of Land Charges Act 1925, s 13(2). **Blamires v Bradford Corp** [1964] 2 603, ChD.

COMPULSORY PURCHASE (cont)

Compensation (cont)—

Purchase notice—

Assumptions on valuation—Assumption that planning permission would be granted—Land comprised in development plan—Land in 'area allocated primarily for a use specified in' development plan—Residential use—Refusal of permission for building houses—Planning policy not to grant permission for development on land in question—Evidence that permission would never be granted—Permission not 'reasonably to be expected'—Grant of permission not to be assumed—Land Compensation Act 1961, s 16(2). **Provincial Properties (London) Ltd v Caterham and Warlingham Urban District Council** [1972] 1 60, CA.

Assumptions on valuation—Planning permission reasonably to be expected—Assumption that no part of reference land to be acquired—Proposed by-pass to relieve congestion inapplicable—Assumption of alternative route—Resulting relief of congestion—Justification for immediate full development of land—Assumption of permission therefor—Whether assumption of alternative route justified without evidence—Land Compensation Act 1961, s 16(2)(7). **Margate Corpn v Devotwill Investments Ltd** [1970] 3 864, HL.

Right to compensation—

Compensation for disturbance—Agricultural land—Land acquired for housing—Compensation for disturbance of business—Notice to treat—Variance in description of property—Separate notices to treat as to land and minerals—Award of one sum—Lands Clauses Consolidation Act 1845, s 6, s 9, s 16, s 68—Acquisition of Land (Assessment of Compensation) Act 1919, S 2(1),(2),(6). **Horn v Sunderland Corpn** [1941] 1 480, CA.

Date by reference to which right to compensation is to be determined—Notice to treat served in 1949—Nothing further done—Claimants' leasehold term of business premises expired in 1954 but their lease continued under statute—Claimants claimed compensation in 1957 for compulsory purchase—Acquiring authority obtained freehold in 1957—Notice to quit given to terminate lease in 1958—Whether claimants entitled to compensation pursuant to the notice to treat—No proprietary interest acquired pursuant to notice to treat. **Holloway v Dover Corpn** [1960] 2 193, CA.

Tenancy—

Short tenancy—Time for assessment. *See* Compensation—Assessment—Time for assessment—Short tenancy less than a year, *ante*.

Time for assessment. *See* Compensation—Assessment—Time for assessment, *ante*.

Town development—

Assumption of planning permission—Ignoring effect of town development—Value on basis of natural development—Application to plot being valued—'Hope' or accommodation value—Industrial development—Grant of industrial development certificates not assumed—Land Compensation Act 1961, s 6(1), s 15, s 16, s 39(2). Sch 1, Pt 1—Town and Country Planning Act 1962, s 38. **Viscount Camrose v Basingstoke Corpn** [1966] 3 161, CA.

Unconditional offer by acquiring authority—

Lands Tribunal's discretion as to costs. *See* Lands tribunal (Costs—Discretion—Claim for compensation—Unconditional offer by acquiring authority).

Compulsory purchase order—

Abandonment—

Delay—Order made in 1937—Notice to treat served in 1939—Compulsory purchase sought to be completed in 1954—Original plans for development changed. **Grice v Dudley Corpn** [1957] 2 673, ChD.

Application to quash order—

Amendment of application—Jurisdiction—Application to quash order on ground that purchase not authorised by statute—Application made within six weeks of publication of order—Application after termination of six weeks to add further ground—Jurisdiction to permit amendment—Acquisition of Land (Authorisation Procedure) Act 1946, Sch 1, Pt 4, para 15—RSC Ord 55B, r 73. **Hanily v Minister of Local Government and Planning** [1951] 2 749, CA.

Expiration of time allowed for application—Whether possible subsequently to question validity of order—Acquisition of Land (Authorisation Procedure) Act 1946, Sch 1, para 16. **Uttoxeter Urban District Council v Clarke** [1952] 1 1318, ChD.

Notification of owner of land comprised in order—Failure to notify owner of semi-detached house adjoining house subject to order—Whether easement of support 'land comprised in the order'—Acquisition of Land (Authorisation Procedure) Act 1946, s 8(1), Sch 1, para 3(i)(b)—**Liverpool Corpn (General Powers) Act 1966**, s 3(2). **Grimley v Minister of Housing and Local Government** [1971] 2 431, QBD.

Time limit—Bad faith alleged—Application after expiry of time limit—Order not to be questioned in any legal proceedings—Whether court having jurisdiction to entertain application where bad faith alleged—Highways Act 1959, Sch 2, paras 2, 4. **R v Secretary of State for the Environment, ex parte Ostler** [1976] 3 90, CA.

Notice of order—

Service of notice on every owner, lessee and occupier of land comprised in order—Failure to notify owner of semi-detached house adjoining house subject to order—Application to quash order. *See* Compulsory purchase order—Application to quash order—Notification of owner of land comprised in order—Failure to notify owner of semi-detached house adjoining subject to order, *ante*.

COMPULSORY PURCHASE (cont)

Compulsory purchase order (cont)—

Notice of order (cont)—

Service of notice on every owner, lessee and occupier of land comprised in order—'Occupier'—Whether including statutory tenant—Acquisition of Land (Authorisation Procedure) Act 1946, Sch I, para 3(1)(b). **Brown v Ministry of Housing and Local Government, Ford v Same** [1953] 2 1385, QBD.

Objections to order—

Objections to order in respect of local authority's land—Special parliamentary procedure—Material date of ownership by local authority—Persons competent to object to purchase order—Acquisition of Land (Authorisation Procedure) Act 1946, Sch I, Pt III, para 9. **Middlesex County Council v Minister of Local Government and Planning** [1952] 2 709, CA.

Validity—

Jurisdiction to question validity of order—Bad faith alleged—Acquisition of Land (Authorisation Procedure) Act 1946, Sch I, Pt IV, para 15, para 16. **Smith v East Elloe Rural District Council** [1956] 1 855, HL.

Jurisdiction to question validity of order—Expiration of time allowed for application to quash order. *See* Compulsory purchase order—Application to quash order—Expiration of time allowed for application—Whether possible subsequently to question validity of order, *ante*.

Costs—

Claim for compensation. *See* Compensation—Claim—Costs, *ante*.

Promoter's liability—

Registered land—Vendors' costs, charges and expenses—Basis of computation—Lands Clauses Consolidation Act 1845, s 82—Solicitors' Remuneration (Registered Land) Order 1925 (SR & O 1926 No 2), art 1 (D), (H), schedule, as amended by Solicitors' Remuneration (Registered Land) Order 1953 (SI 1953 No 118). **Re West Ferry Road, Poplar, London, Re Padwick's Estate** [1955] 2 638, CA.

Development scheme—

Compulsory purchase in pursuance of scheme—

Compensation—Assessment. *See* Compensation—Assessment—Development scheme—Compulsory purchase in pursuance of scheme, *ante*.

Housing Acts, under. *See* Housing (Compulsory purchase).

Inquiry—

Natural justice—

Duty to hear parties—Opportunity to consider reasons for decision. *See* Natural justice (Public inquiry)—Duty to hear parties—Opportunity to consider reasons for decision—Reasons not put forward at hearing—Housing—Compulsory purchase order).

Land subject to controls—

Compensation—

Assessment. *See* Compensation—Assessment—Land subject to controls, *ante*.

Lands Tribunal—

Discretion as to costs. *See* Lands Tribunal (Costs—Discretion).

Purchase notice—

Jurisdiction under planning legislation. *See* Lands Tribunal (Jurisdiction—Consent—Statutory tribunal).

Leasehold premises—

Registered land—

Implied covenants on transfer. *See* Land registration (Transfer—Leaseholds—Implied covenants on transfer of leaseholds—Covenants for title—Assignment of leasehold premises compulsorily acquired in dilapidated condition).

Licensed premises—

Compensation—

Assessment. *See* Compensation—Assessment—Licensed premises, *ante*.

Notice to treat—

Abandonment—

Delay—Misconduct—Ultra vires. **Simpsons Motor Sales (London) Ltd v Hendon Corp'n** [1963] 2 485, HL.

Service—

Post—Recorded delivery service—Unless contrary proved service deemed to be effected in ordinary course of post—Letter returned through the post—Marked 'gone away'—Time of service important—Affecting valuation of property—Not deemed to have been effected in ordinary course of post—Interpretation Act 1889, s 26. **Hewitt v Leicester City Council** [1969] 2 802, CA.

Short tenancy—Whether proper to serve notice to treat on tenant having interest no greater than from year to year. **London Borough of Newham v Benjamin** [1968] 1 1195, CA.

Whether service of notice an exercise of power of compulsory acquisition—Lands Clauses Consolidation Act 1845, s 123. **Grice v Dudley Corp'n** [1957] 2 673, ChD.

Order. *See* Compulsory purchase order, *ante*.

Police purposes—

Duty of local authority—

Local authority requested by standing joint committee to acquire particular plot of land—Local authority satisfied other equally suitable sites available—Whether local authority bound to acquire particular plot requested—Police Act 1946, s 15. **Wiltshire Standing Joint Committee v Wiltshire County Council** [1951] 1 1041, KBD.

Land required for purposes of the functions of the police authority—

Land required for housing for police—Whether land required for the 'purpose of any of the functions of the police authority'—Police Act 1946, s 5(3), s 15. **Hazeldine v Minister of Housing and Local Government** [1959] 3 693, CA.

Purchase notice—

Town and country planning legislation—

Generally. *See* Town and country planning (Purchase notice).

COMPULSORY PURCHASE (cont)

Purchase notice (cont)—

Town and country planning legislation (cont)—

Jurisdiction of Lands Tribunal. *See* **Lands Tribunal** (Jurisdiction—Consent—Statutory tribunal).

Speedy acquisition of land in urgent cases—

Authorisation—

Procedure—First authorisation rendered abortive—Second authorisation given—No change of circumstances—Validity of second authorisation—Acquisition of Land (Authorisation Procedure) Act 1946, s 2(2),(3)—Town and Country Planning Act 1947, s 37(2). **Land Realisation Co Ltd v Post Office** [1950] 1 1062, ChD.War damage. *See* **Town and country planning** (War damage).**COMPULSORY WINDING-UP**Company. *See* **Company** (Compulsory winding-up).**COMPUTATION OF PROFITS**Income tax. *See* **Income tax** (Computation of profits).**CONCEALED DANGER**Occupier's liability to child trespasser. *See* **Occupier's liability** (Child trespasser—Concealed danger).**CONCEALMENT**

Right of action—

Fraud. *See* **Limitation of action** (Concealment of right of action by fraud).**CONCILIATION OFFICER**Industrial relations. *See* **Industrial relations** (Conciliation officers).**CONDEMNATION**

Condemnation of goods by magistrates—

Customs offence—

Appeal against order. *See* **Quarter sessions** (Appeal to—Customs offence).Food unfit for human consumption. *See* **Food and drugs** (Food unfit for human consumption—Condemnation).Prize law. *See* **Prize law** (Condemnation).**CONDITION**Admission of Commonwealth citizen subject to. *See* **Commonwealth immigrant** (Admission—Condition).Attendance allowance. *See* **National insurance** (Attendance allowance).Bail. *See* **Criminal law** (Bail—Condition).

Breach of condition—

Enforcement notice—

Appeal against notice. *See* **Town and country planning** (Enforcement notice—Appeal against notice—Notice founded on breach of condition of grant of planning permission).

Committal order—

Contempt of court. *See* **Contempt of court** (Committal—Order—Suspension on conditions).Consent to discharge of effluent. *See* **Water and watercourses** (Pollution of river—Discharge of trade effluent).

Contract—

Generally. *See* **Contract** (Condition).Sale of goods. *See* **Sale of goods** (Condition).Escrow. *See* **Deed** (Escrow—Condition).

Implied—

Contract—

Hire-purchase. *See* **Hire-purchase** (Implied condition).Escrow. *See* **Deed** (Escrow—Condition—Implied condition).

Sale of goods—

Fitness. *See* **Sale of goods** (Implied condition as to fitness).Sale of land. *See* **Sale of land** (Condition—Implied condition).

Insurance policy—

Motor insurance. *See* **Motor insurance** (Conditions).

Lease—

Conditions and covenants distinguished. *See* **Landlord and tenant** (Lease—Condition—Conditions and covenants distinguished).

Licence—

Sunday entertainment—

Cinema. *See* **Cinema** (Licence—Sunday performance—Condition).

Merchantable quality—

Contract for sale of goods. *See* **Sale of goods** (Implied condition as to merchantable quality).Motor insurance policy. *See* **Motor insurance** (Conditions).

Music and dancing licence—

Power to impose condition. *See* **Entertainment** (Music and dancing licence—Conditions—Power to impose conditions).

On-licence—

Grant subject to condition. *See* **Licensing** (Licence—Grant of on-licence subject to condition).Permission for development. *See* **Town and country planning** (Permission for development—Condition).

Sale of land—

Consent to assignment of leasehold interest. *See* **Sale of land** (Leasehold interest—Contract—Condition—Subject to landlords' consent to assignment).Generally. *See* **Sale of land** (Condition).Settlement. *See* **Settlement** (Condition).

CONDITION (cont)

Uncertainty—

Condition precedent—

Trust. *See* **Settlement** (Trust—Uncertainty—Condition precedent).

Waiver—

Contract for sale of land. *See* **Sale of land** (Contract—Condition—Waiver of condition).Will. *See* **Will** (Condition).**CONDITIONAL CONTRACT**Sale of land. *See* **Sale of land** (Contract of sale—Conditional contract).

Sale of land—

Specific performance. *See* **Specific performance** (Sale of Land—Conditional contract).**CONDITIONAL GIFT**Will. *See* **Will** (Conditional gift).**CONDITIONS OF SALE**Auction. *See* **Auction** (Conditions of sale).**CONDONATION**Divorce. *See* **Divorce** (Condonation).Magistrates' courts proceedings. *See* **Husband and wife** (Summary proceedings—Condonation).**CONDUCT**

Divorce—

Financial provision. *See* **Divorce** (Financial provision—Conduct of parties).Estoppel. *See* **Estoppel** (Conduct).**CONFERENCE**

Expenses of attending conference—

Income tax—

Deduction from emoluments of office or employment. *See* **Income tax** (Emoluments from office or employment—Expenses wholly, exclusively and necessarily incurred—Conference expenses).Deduction in computing profits. *See* **Income tax** (Deduction in computing profits—Expenses wholly and exclusively laid out for purposes of trade—Conference expenses).**CONFESSION**

Criminal proceedings—

Admissibility. *See* **Criminal evidence** (Admissions and confessions).**CONFIDENTIAL DOCUMENT**

Disclosure—

Privilege. *See* **Discovery** (Privilege—Confidential documents).**CONFIDENTIAL INFORMATION**

Adoption proceedings—

Disclosure of reports. *See* **Adoption** (Practice—Reports—Disclosure—Confidential reports).Breach of confidence. *See* **Equity** (Breach of confidence).Cabinet proceedings. *See* **Constitutional law** (Cabinet—Proceedings—Disclosure of documents or information—Confidential information).

Disclosure—

Disclosure by persons responsible for public duty as result of deception practised on them—

Whether persons practising deception guilty of conspiracy to effect a public mischief. *See* **Criminal law** (Conspiracy—Public mischief—Injury to public—Conspiracy to effect a public mischief—Agreement to do acts extremely injurious to the Public—Acts not unlawful—Agreement to obtain confidential information about individuals by deceit).

Discovery—

Documents—

Confidential use of documents disclosed. *See* **Discovery** (Production of documents—Confidence).Duty of servant. *See* **Master and servant** (Duty of servant—Confidential information).

Injunction against disclosure of confidential information—

Enforcement of injunction—

Certainty of what was prohibited. **P A Thomas & Co v Mould** [1968] 1 963, QBD.

Medical practitioner—

Disclosure of confidential information—

Generally. *See* **Medical practitioner** (Doctor and patient—Disclosure of confidential information).Venereal disease—Nullity suit. *See* **Nullity** (Venereal disease—Disclosure of confidential information by doctor).**CONFLICT OF LAWS**

Adoption—

Dispensing with consent of parent or guardian. *See* **Adoption** (Dispensing with consent of parent or guardian—Foreign element).

Affiliation proceedings—

Jurisdiction. *See* **Affiliation** (Application for order—Jurisdiction).

Children—

Custody. *See* **Ward of court** (Jurisdiction).

Comity—

Prerequisites to consideration—

Foreign court order essential prerequisite to consideration. **J v C** [1969] 1 788, HL.

CONFLICT OF LAWS (cont)**Company—****Floating charge—**

Company registered in England with property in Scotland—Floating charge on whole undertaking ranking as first charge—Floating charge unknown to Scots law—Validity of charge in respect of property in Scotland—Companies Act 1929, s 270. *Re Anchor Line (Henderson Bros) Ltd* [1937] 2 823, ChD.

Foreign company—

Recognition of universal law of succession of one foreign company to another. *See* Foreign law—Recognition—Law of succession—Succession, by foreign law, of newly created foreign company to liability of company then dissolved, *post*.

Universal succession by foreign law of one foreign company to another. *See* Succession—Foreign company—Universal succession by foreign law of one foreign company to another, *post*.

Contract—**Arbitration—**

Time-bar—Extension of time—Jurisdiction of English court—Contract made outside jurisdiction—Proper law of contract English law—Clause conferring right to refer disputes to arbitration within specified time limit—Arbitration procedure to be governed by foreign law—Dispute arising—Expiry of time limit under arbitration clause—Application by party to English court to extend time limit—Whether English court having jurisdiction to grant extension—Arbitration Act 1950, s 27. *International Tank and Pipe SAK v Kuwait Aviation Fuelling Co KSC* [1975] 1 242, CA.

Breach—

Damages—Remoteness of damage—Contract governed by *lex loci contractus*—Law applicable to question of remoteness. *J D'Almeida Araujo Lda v Sir Frederick Becker & Co Ltd* [1953] 2 288, QBD.

Discharge of contract—

Novation—Debt—Whether proper law of contract applicable. *Re United Railways of The Havana and Regla Warehouses Ltd* [1960] 2 332, HL.

Insurance—

Foreign jurisdiction clause—Effect of illegality and non-disclosure. *See* Insurance (Property insurance—Non-disclosure—Duty of assured to disclose material facts—Lloyd's jewellers' block policy—Foreign jurisdiction clause).

Legality—

Lex loci contractus and *lex loci solutionis*—Both in foreign country—Foreign exchange control regulations—Customer's debentures in foreign company deposited by foreign bank in bank's name at London branch—Bretton Woods Agreements Order in Council 1946 (SR & O 1946 No 36), art 3, Sch, Part 1 (Fund Agreement, art VIII, s 2(b)). *Zivnostenska Banka National Corp v Frankman* [1949] 2 671, HL.

Proper law of contract—

Agency agreement—Sole agency agreement for different jurisdictions within British Isles—Agent resident in England—Agent seeking out principal resident abroad—Agreement with company resident in Portugal—Exclusive agency for export of wines etc from Portugal—No reference in agreement to proper law—Whether contract governed by English or Portuguese law. *Mauroux v Sociedade Comercial Abel Pereira da Fonseca SARL* [1972] 2 1085, ChD.

Bond issued by British Government in America—Payment under bond—Law applicable—Intentions of parties. *R v International Trustee for the Protection of Bondholders Akt* [1937] 2 164, HL.

Building contract—Intention of parties—No reference in contract to proper law—Choice of English form contract conclusive—Building contract in RIBA form. *James Miller and Partners Ltd v Whitworth Street Estates (Manchester) Ltd* [1970] 1 796, HL.

Charterparty—Adapted standard form—Law of flag of vessels carrying goods—Arbitration clause providing for arbitration in London—Parties expecting goods to be carried under French flag—Goods carried under different flags—Intention of parties—Whether proper law French or English. *Compagnie D'Armement Maritime SA v Compagnie Tunisienne de Navigation SA* [1970] 3 71, HL.

Charterparty—Law with which transaction has closest and most real connection—Charterparty between English owners and Dutch charterers—Factors pointing to English or Dutch law equally balanced—Subject-matter of charterparty English ship—Relevance of law of flag—Claim by owners based on exemption clause—Clause invalid under Dutch law—English law proper law. *Coast Lines Ltd v Hudig & Veder Chartering NV* [1972] 1 451, CA.

Contract for sale of ship—Sale by Swedish sellers to Greek buyers—Arbitration clause providing for arbitration in London. *Tzortzis v Monark Line A/B* [1968] 1 949, CA.

Contract of affranchisement—Intention of parties not expressed—Conflicting inferences—Matters to be taken into consideration. *The Assunzione* [1954] 1 278, CA.

Contract of employment—Dutch company engaged in off-shore oil drilling—Contract of employment with Englishman to work on oil rig off Nigerian coast—Contract in English language—Salary payable in sterling—Printed form of contract used for employing European personnel from different countries—Duties of employee to be wholly performed outside United Kingdom—Clause excluding liability of company in respect of claims under English law—Exclusion clause void under English law—Whether proper law of contract English or Dutch law. *Sayers v International Drilling Co NV* [1971] 3 163, CA.

Contract of marriage—Englishman and foreign girl—Marriage to take place abroad—Parties to live in England thereafter—Breach of promise action—Action commenced in England—English and foreign law the same—Difference in remedy for breach—Jurisdiction of English court. *Kremezi v Ridgway* [1949] 1 662, KBD.

CONFLICT OF LAWS (cont)

Contract (cont)—

Proper law of contract (cont)—

Deed executed by husband in United States—Husband resident in England—No assets in United States—Payments under deed in dollars—American law applied by deed to investment of funds—Rights of inspection exercisable in America—Right of husband to deduct from payments sums for income tax under English law. **Keiner v Keiner** [1952] 1 643, QBD.

Insurance policy—Fire and riot—Nature of claim under policy—Situation of chose in action—Policy issued in Palestine by sub-agents of English company—Company ceasing to accept business in Palestine—Alteration of title to chose in action—Proper law of policy. **Fouad Bishara Jabbour v Custodian of Absentee's Property of State of Israel** [1954] 1 145, QBD.

Insurance policy—Insurance policies issued to Egyptian national by Egyptian office of Canadian company—Payable by bankers' drafts on London and New York—Payment prohibited by Egyptian exchange control legislation. **Rossano v Manufacturers Life Insurance Co Ltd** [1962] 2 214, QBD.

Lease of railway rolling stock—Trust agreement assigning railway rolling stock and lease to trustee as security for service of trust certificate. **Re United Railways of the Havana and Regla Warehouses Ltd** [1960] 2 332, HL.

Convention. *See* International convention, *post*.

Criminal jurisdiction. *See* Criminal law (Jurisdiction).

Currency—

Judgment—

Payment of sum expressed in foreign currency. *See* Judgment (Payment of sum of money—Foreign currency).

Currency in which debt payable. *See* Money (Currency—Currency in which debt payable).

Divorce—

Foreign decree. *See* Divorce (Foreign decree).

Foreign proceedings—

Injunction. *See* Injunction (Foreign proceedings—Divorce petition by wife).

Lex loci celebrationis not providing for divorce—

Second marriage. *See* Nullity (Foreign marriage—Second marriage—Lex loci celebrationis not providing for divorce).

Domicile—

Administration of estates—

Deceased domiciled abroad—Intestacy. *See* Intestacy (Grant of administration—Grant where deceased domiciled abroad).

Divorce jurisdiction. *See* Divorce (Domicile).

Generally. *See* Domicile.

Income tax. *See* Income tax (Domicile).

Legitimation—

Relevance of father's domicile in legitimation by subsequent marriage. *See* Legitimation (Legitimation by subsequent marriage of parents—Domicile of father at date of marriage).

Nullity of marriage. *See* Nullity (Jurisdiction—Domicile).

Double taxation—

Relief. *See* Income tax (Double taxation relief).

Evidence—

Probate action. *See* Probate (Action—Evidence—Conflict of laws).

Exchange control. *See* Currency control (Exchange control).

Foreign adoption. *See* Adoption (Foreign adoption).

Foreign decree—

Divorce—

Recognition. *See* Divorce (Foreign decree—Recognition by English court).

Foreign government—

Recognition—

Law as declared by courts of foreign country—Validity of laws of foreign country in question—Duty of court to inquire of Foreign Secretary whether foreign government recognised by HM Government. **Carl-Zeiss-Stiftung v Rayner and Keeler Ltd** [1964] 3 326, CA.

Law as declared by courts of foreign country—Zonal government in Germany—German Democratic Republic not recognised by United Kingdom government as independent sovereign state, but USSR recognised as having de jure sovereignty in Eastern Zone of Germany—Council of Gera, created by laws of German Democratic Republic, exercised authority in the district of the Eastern Zone that included Jena—Council entitled according to law of Eastern Zone to act as the special board (the governing authority) of Carl-Zeiss-Stiftung, a corporation domiciled at Jena in Eastern Zone—Council authorised the bringing of an action in England in the name of the foundation—Whether action brought without authority. **Carl-Zeiss-Stiftung v Rayner and Keeler Ltd (No 2)** [1966] 2 536, HL.

Foreign judgment—

Administration action—

Claim based on foreign judgment. *See* Administration of estates (Administration action—Claim based on foreign judgment).

Conclusiveness in English proceedings—

Recognition of judgment as conclusive between the parties in proceedings founded on same cause of action—Reliance on judgment by way of defence—Foreign judgment dismissing action by plaintiff—Judgment based on limitation period and not on merits of claim—Plaintiff bringing proceedings in English courts founded on same cause of action—Whether defendant entitled to rely on foreign judgment by way of defence—Whether judgment to be recognised as conclusive between parties—Foreign Judgments (Reciprocal Enforcement) Act 1933, s 8(1). **Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG** [1975] 1 810, HL.

Divorce proceedings. *See* Divorce (Foreign decree).

CONFLICT OF LAWS (cont)

Foreign judgment (cont)—
Enforcement—

Action in England—Bankruptcy proceedings—Judgment of French court—Registration of judgment—Power to issue bankruptcy notice—Bankruptcy Act 1914, s 1—Foreign Judgments (Reciprocal Enforcement) Act 1933. *Re A Judgment Debtor (No 2176 of 1938)* [1939] 1 1, CA.

Action in England—Finality of foreign judgment—Judgment of Supreme Court of State of New York—Subject to appeal—Appeal therefrom dismissed—Application for further appeal in New York pending—Summary judgment under RSC Ord 14 obtained in England—Whether judgment in New York 'final and conclusive' for purposes of action on it being maintainable in England. *Colt Industries Inc v Sarlie (No 2)* [1966] 3 85, CA.

Action in England—Foreign judgment against partnership—Action in England against individual partner—Whether foreign judgment against partnership a final and conclusive judgment on which to found action against individual partner. *Blohn v Dessler* [1961] 3 1, QBD.

Action in England—Judgment of Supreme Court of Ontario—Stay—Appeal to Privy Council—Administration of Justice Act 1920, s 9(1)—Foreign Judgments (Reciprocal Enforcement) Act 1933, ss 1, 6, 7—Privy Council Appeals Act (Revised Statutes of Ontario 1927), ss 2, 3(d)—Reciprocal Enforcement of Judgments (General Application to His Majesty's Dominions, etc) Order 1933 (SR & O 1933 No 1073). *Yukon Consolidated Gold Corp Ltd v Clark* [1938] 1 366, CA.

Action in England—Jurisdiction of foreign court—Partnership abroad—Sleeping partner in United Kingdom—Action in personam against debtor not resident in foreign country but carrying on business there through partnership. *Blohn v Dessler* [1961] 3 1, QBD.

Action in England—Jurisdiction of foreign court—Residence of defendant within jurisdiction—Residence through representative—Judgment of Israeli court against English company—Company having representative resident in Israel—Representative acting as go-between between company and customers in Israel—Representative having no authority to contract on behalf of company—Action by customer in Israeli court for breach of contract—Contract made in England—Judgment by Israeli court against company—Whether company resident in Israel by their representative—Whether Israeli court having jurisdiction. *Vogel v R & A Kohnstamm Ltd* [1971] 2 1428, QBD.

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Limitation period—When time begins to run—Judgment subject to stay of execution—Final and conclusive judgment—German bankruptcy proceedings—Ascertainment of debt having effect of final and conclusive judgment—Execution on ascertainment stayed until termination of bankruptcy proceedings—Whether time beginning to run from date of ascertainment or date of termination. *Berliner Industriebank Aktiengesellschaft v Jost* [1971] 2 1513, CA.

Recognition by English courts—

Competence of court giving judgment—Competence according to municipal law—Court irregularly constituted—Whether judgment recognisable by reason of necessity or of validity of acts of de facto officer. *Adams v Adams (Attorney-General intervening)* [1970] 3 572, Div.

Competence of court giving judgment—Competence according to municipal law—Judges validly appointed under Constitution—Whether subsequent declaration can affect validity of continuation in office—Judges appointed in Southern Rhodesia before unilateral declaration of independence—Judges continuing to sit in High Court thereafter and declared to be sitting by virtue of Constitution held by Privy Council to be invalid. *Adams v Adams (Attorney-General intervening)* [1970] 3 572, Div.

Foreign decree of judicial separation. *See Divorce* (Foreign decree—Judicial separation—Recognition by English courts).

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Registration in England—

Setting aside registration—Judgment in default—No notice to debtor—Appeal pending in foreign court—Application to set aside bankruptcy notice—Foreign Judgments (Reciprocal Enforcement) Act 1933, ss 2(1)(b), 4(1)(a)(iii), 5(1). *Re A Debtor (No 11 of 1939)* [1939] 2 400, CA.

CONFLICT OF LAWS (cont)

Foreign judgment (cont)—

Registration in England (cont)—

Setting aside registration—Judgment obtained by fraud on foreign court—Facts relied on known to defendants at time of proceedings in foreign court—Order for trial of issue of fraud—Condition that defendants should bring money into court—Foreign Judgments (Reciprocal Enforcement) Act 1933, s 4(1)(a)(iv)—RSC Ord 41B, r 3. *Syal v Heyward* [1948] 2 576, CA.

Stay of execution—Conclusive foreign judgment in plaintiff's favour—Cross-action commenced in England by defendants raising same issues as were raised in foreign action but claiming greater sum than plaintiffs awarded on foreign judgment—Cross-action not a special circumstance rendering it inexpedient to enforce foreign judgment—Foreign Judgments (Reciprocal Enforcement) Act 1933, s 2(2)—RSC Ord 47, r 1(1). *Ferdinand Wagner (a firm) v Laubscher Brothers & Co (a firm)* [1970] 2 174, CA.

Registration in England—Setting aside registration—196530494

Foreign law—

Recognition—

Decree of foreign government affecting movables situate outside its jurisdiction—Gold belonging to Dutch bank and deposited in London—Vested in and sold by Custodian of Enemy Property after occupation of Netherlands by Germany—Netherlands government decree purporting to vest property of bank in Netherlands government—Whether decree effective to pass gold to Netherlands government—Whether Custodian of Enemy Property liable to transfer proceeds of sale to bank—Trading with the Enemy Act 1939, s 7—Trading with the Enemy (Custodian) Order 1939 (SR & O 1939 No 1198), art 4. *Bank voor Handel en Scheepvaart v Slatford (Sued, as Custodian of Enemy Property)* [1951] 2 779, KBD.

Foreign exchange control law—Recognition by English courts—Grounds for withholding recognition. *Re Helbert Wagg & Co Ltd, Re Prudential Assurance Co Ltd* [1956] 1 129, ChD.

Law of succession—Succession, by foreign law, of newly-created foreign company to liability of company then dissolved—Subsequent foreign decree altering law of succession so as to exclude retrospectively succession to obligations of dissolved company under English guarantees—Whether decree effective to discharge liabilities under English contract. *Adams v National Bank of Greece SA, Darling v Same, Adams v Same* [1960] 2 421, HL.

Moratorium on guaranteed bonds—Proper law of contract of guarantee English—Whether moratorium recognised by English courts. *National Bank of Greece and Athens SA v Metliss* [1957] 3 608, HL.

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Revenue law—Administrative garnishee orders for tax liabilities. *Rossano v Manufacturers Life Insurance Co Ltd* [1962] 2 214, QBD.

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Right to dowry—Discretion of foreign court in fixing dowry—Difference in nature of foreign right and of remedies available in English court—Whether right to dowry recognised by English court—Whether right to dowry enforceable. *Phrantzes v Argenti* [1960] 1 778, QBD.

Seizure of property—Legislation violating human rights—Legislation depriving section of citizen body selected on racial grounds of property—Legislation also depriving them of nationality—Whether English courts should refuse to recognise validity of legislation. *Oppenheimer v Cattermole (Inspector of Taxes)* [1975] 1 538, HL.

Status—Guardianship order conferring status of incompetence on settlor of English settlement and appointing guardian of his estate and person—Settlor not under incapacity by English law—Withdrawal of funds under power reserved to settlor by settlement—Notice of withdrawal executed by settlor and guardian—Whether notice effective—Extent to which English court will recognise effects of foreign order imposing status. *Re Langley's Settlement Trusts* [1961] 3 803, CA.

Withholding of recognition—Confiscatory law of foreign country—Appointment of trustee under confiscatory decree—Sale in Germany of Jewish property by trustee appointed under confiscatory decree—Whether effective to pass English copyright in United Kingdom. *Novello & Co v Hinrichsen Edition Ltd* [1951] 1 779, ChD.

Revenue law—

Enforcement—Neglect to pay tax—Notice of levy on goods by foreign government—Goods on vessel bound for England—Notice of levy by US government—Claim by US government to possession—Whether notice of levy giving US government possessory title—Whether claim by US government attempt to enforce foreign revenue law. *Brokaw v Seatrain UK Ltd* [1971] 2 98, CA.

Enforcement—Refusal to make order compelling violation of foreign law—Indian exchange control legislation—Indian estate duty—Action by beneficiaries not resident or domiciled in India seeking execution of trusts of will of testator dying domiciled in India—Plaintiffs seeking interlocutory injunction restraining transmission of proceeds of redemption of savings bonds registered in name of Indian company controlled by trustees—Permission to retain redemption moneys in England refused by Indian government—Penal consequences under Indian law for trustees and company for failure to remit moneys—Whether effect of refusing injunction to enforce foreign revenue law. *Re Lord Cable (deceased)* [1976] 3 417, ChD.

CONFLICT OF LAWS (cont)

Foreign proceedings—

Restraint of foreign proceedings—

Discretion—Administration of estate of deceased alleged to have been domiciled in France at his death—Compromise agreement in 1961 between first and second plaintiffs and defendant whereby defendant approved a settlement, made in 1960, of shares of Panamanian corporation—Settlement governed by law of Bahamas—Shares were settled by act of defendant's father—Death of defendant's father in Paris in 1965—Defendant commenced proceedings in France in substance directed to setting aside compromise agreement—Whether interlocutory injunction should be granted against defendant, resident in England, to restrain the French proceedings. **Settlement Corp v Hochschild** [1965] 3 486, ChD.

Discretion—Principles governing exercise of discretion—Burden of proof—Divorce petition—Injunction to restrain respondent from proceeding with divorce suit in France. **Orr-Lewis v Orr-Lewis** [1949] 1 504, Div.

Foreign revenue law—

Recognition. *See* Foreign law—Recognition—Revenue law, *ante*.

Foreign sovereign state—

Immunity from suit. *See* Constitutional law (Foreign sovereign state—Immunity from suit).

Forum conveniens. *See* Ward of court (Jurisdiction).Impleading foreign sovereign. *See* Constitutional law (Foreign sovereign state—Immunity from suit).

Income tax—

Foreign possessions. *See* Income tax (Foreign possessions).

Injunction—

Foreign corporation—

Breach of contract. *See* Injunction (Breach of contract—Foreign corporation).

International convention—

Incorporated into municipal laws—

Difference between United States and English law—Proper law of contract that of United States—English statute paramount in action in England. **Corocraft Ltd v Pan American Airways Ltd** [1968] 2 1059, QBD.

Ratified by executive—Implemented by statute—1968 10779

Judgment—

Foreign currency. *See* Judgment (Payment of sum of money—Foreign currency).

Jurisdiction—

Foreign court—

Enforcement of judgment. *See* Foreign judgment—Enforcement—Action in England—Jurisdiction of foreign court, *ante*.

Legitimacy—

Children of polygamous marriage. *See* Legitimacy (Polygamous marriage).

Will—

Succession to personal property in England—Child illegitimate by English law, but legitimate by law of domicile of origin—Right to beneficial interest in testator's residuary trust fund. **Re Bischoffsheim** [1947] 2 830, ChD.

Legitimation—

Recognition—

Legitimation according to law of foreign domicile—Law of domicile recognising subsequent legitimation by adoption—Father not domiciled in foreign country at time of child's birth—Father domiciled in foreign country at time of child's legitimation—Public policy—Legitimation Act 1926, s 1, s 8. **Re Luck** [1940] 3 307, CA.

Validity of Austrian marriage—

Retrospective effect of Austrian legislation—Determination according to Austrian Act 1926, s 1(1)—Matrimonial Causes Act 1950, s 17(1). **Starkowski (by his next friend) v Attorney-General** [1953] 2 1272, HL.

Letter of credit—

Proper law. *See* Contract—Proper law—Commercial credit, *ante*.

Lis alibi pendens—

Foreign defendant—

Writ served when on visit to England—No foreign proceedings commenced. *See* Practice (Stay of proceedings—Foreign defendant—Writ served on defendant whilst on short visit to England—No foreign proceedings commenced).

Marriage—

Foreign marriage—

Potentially polygamous—Protection of young persons. *See* Children and young persons (Protection—Recognition of foreign marriage—Potentially polygamous marriage—Fit person order).

Termination by decree of divorce—Divorce obtained under duress. *See* Divorce (Foreign decree—Invalidity—Basis of invalidity—Lack of consent to divorce proceedings—Duress).

Polygamous marriage—

Legitimacy of children. *See* Legitimacy (Polygamous marriage).

Validity—

Essential validity—Capacity to marry—Choice of law—Law of intended matrimonial residence—Marriage in foreign country—Polygamous marriage—One party having English domicile—Parties intending to set up matrimonial home in country where polygamy lawful—Whether validity of marriage governed by parties' prenuptial domicile or by law of intended matrimonial home. **Radwan v Radwan (No 2)** [1972] 3 1026, FamD.

Nationality—

Deprivation of nationality by decree of enemy state—

Recognition by English courts—Double taxation relief. *See* Income tax (Double taxation relief—Nationality).

CONFLICT OF LAWS (cont)

New Zealand. *See* **New Zealand** (Conflict of laws).

Nullity—

Foreign marriage. *See* **Nullity** (Foreign marriage).

Recognition of foreign decree. *See* **Nullity** (Recognition of foreign decree).

Palestine. *See* **Palestine** (Money—Currency).

Power of appointment—

General power—

Exercise of power—Foreign will—Power given by English settlement—Residuary gift by will of testatrix domiciled abroad—Whether valid exercise of power—Wills Act 1837, s 27. **Re Waite's Settlement Trusts** [1957] 1 629, ChD.

Exercise of power—Foreign will—Power to appoint trust fund given by English settlement—Foreign will executed by donee of power domiciled abroad—General gift of personal property—Whether power exercised by will—Application of Wills Act 1837 to foreign will—Wills Act 1837, s 27. **Re Fenston's Settlement** [1971] 3 1092, ChD.

Exercise of power—Power given by English settlement—Exercise by will of testator domiciled abroad—Property so appointed as to be blended or massed with testator's free estate in United Kingdom—Whether settled funds subjected to restrictions on testamentary disposition imposed by testator's domiciliary law on his free personal estate. **Re Khan's Settlement** [1966] 1 160, ChD.

Special power—

Exercise of power—Power given by English will—Exercise by Scottish will—Law relevant for construction of instrument exercising power—Whether valid exercise of power. **Re McMorran (dec'd)** [1958] 1 186, ChD.

Power of attorney—

Law governing operation of power—

Formation of power governed by foreign law—Operation of power to take place in England—English law applicable. **Sinfra Aktiengesellschaft v Sinfra Ltd** [1939] 2 675, KBD.

Probate action—

Evidence. *See* **Probate** (Action—Evidence—Conflict of laws).

Receiver—

Foreign receiver—

Title to assets in England—Recognition by English court—Circumstances in which recognition should be given—Sufficient connection between defendant and jurisdiction in which receiver appointed—Receiver appointed for purpose of enforcing penal law. **Schemmer v Property Resources Ltd** [1974] 3 451, ChD.

Service out of the jurisdiction. *See* **Practice** (Service out of the jurisdiction).

Settlement—

Proper law of settlement—

Draft in English form for benefit of family in Ireland—English and Irish law the same at date of settlement—Proper law of settlement Irish law. **Re Iveagh Trusts** [1954] 1 609, ChD.

Marriage settlement—Marriage settlement drafted in English form in New York—American securities—Settlor domiciled in New York—American and English trustee—Matrimonial domicile English—Certain terms of settlement referable to English law—Proper law governing settlement—Intention of parties not expressly stipulated—Surrounding circumstances—Performance of stipulations. **Duke of Marlborough v Attorney-General** [1945] 1 165, CA.

Shipping—

Carriage of goods by sea—

Bill of lading governed by English law—Paramount clause that United States Carriage of Goods by Sea Act 1936 should apply to shipments from a port in the United States—Whether applicable to shipment from a port in the Panama Canal Zone. **Stafford Allen & Sons Ltd v Pacific Steam Navigation Co** [1956] 2 716, CA.

Charterparty—

Proper law of contract. *See* **Contract**—Proper law of contract—Charterparty, *ante*.

Stay of proceedings—

Agreement to refer to foreign court—

Action commenced in England—Admiralty action—Damage to cargo—Contract providing for disputes to be judged by foreign court—Discretion to allow proceedings in England—Administration of Justice Act 1956, s 1(1)(g). **The Fehmarn** [1958] 1 333, CA.

Action commenced in England—Principles to be applied by English court in deciding whether to stay action—Supreme Court of Judicature (Consolidation) Act 1925, s 41, proviso (a). **The Eleftheria** [1969] 2 641, Adm.

Succession—

Foreign company—

Universal succession by foreign law of one foreign company to another—Retrospective alteration by subsequent foreign law to discharge liabilities to which successor succeeded—Whether effective to free foreign company from liabilities under English contracts of guarantee. **Adams v National Bank of Greece SA, Darling v Same, Adams v Same** [1960] 2 421, HL.

Universal succession by foreign law of one foreign company to another—Whether recognised by English courts—Creditor's action against successor company protected by moratorium imposed by foreign law. **National Bank of Greece and Athens SA v Metliss** [1957] 3 608, HL.

Immovables—

Community of property between spouses—Danish joint will by spouses of their joint estate—Husband domiciled in Danish colony of Virgin Islands—Husband entitled to land in British territory in Virgin Islands—No evidence whether Danish law of community extended extra-territorially—Whether land in British territory passed as on husband's intestacy. **Callwood v Callwood** [1960] 2 1, PC.

CONFLICT OF LAWS (cont)

Succession (cont)—

Immovables (cont)—

Renvoi—Gift by English testator of property in Spain—Provision in Spanish Civil Code for succession to be governed by national law of deceased, whatever the nature of the property—Exclusion of doctrine of renvoi—Devolution under English law. **Re Duke of Wellington** [1947] 2 854, ChD & CA.

Intestacy—

Movables—Foreign domicile of intestate—Personal property in England—Claim by foreign State as sole and universal heir. **Re Maldonado (decd)** [1953] 2 1579, CA.

Movables—Intestate's domicile of choice—Law of nationality applicable by virtue of law of domicile of choice—Different municipal systems of law of nationality. **Re O'Keefe** [1940] 1 216, ChD.

Movables—Intestacy without heirs—Turkish domicile of intestate—Personal property in England—Bona vacantia. **In the Estate of Musurus** [1936] 2 1666, Prob.

Succession to proceeds of sale of settled land—Whether movables or immovables—Settled Land Act 1925, s 75(5). **Re Cutcliffe's Will Trusts** [1940] 2 297, ChD.

Windward and Leeward Islands. *See* **Windward and Leeward Islands** (Conflict of laws—Succession).

Tort—

Actionability in England—

Act justifiable according to law of foreign country—Whether actionable in England. **Re United Railways of the Havana and Regla Warehouses Ltd** [1960] 2 332, HL.

Passing-off—Tort actionable by law of Ecuador—Tortious acts originating within jurisdiction of English court—Public policy. **John Walker & Sons Ltd v Henry Ost & Co Ltd** [1970] 2 106, ChD.

Tort not justified by *lex loci delicti*—'Not justified'—Prevention of forum shopping as a matter of public policy. **Chaplin v Boys** [1969] 2 1085, HL.

Claim based on tort—

Defence under exclusion clause in contract—Proper law of tort foreign law—Proper law of contract English law—Contract of employment—Duties of employee to be wholly performed abroad—Employer Dutch company—Clause excluding liability of company for claims under English law—Exclusion clause void under English law—Issues to be determined by law with which having closest connection. **Sayers International Drilling Co NV** [1971] 3 163, CA.

Damages—

Assessment—Accident in Malta between servicemen normally resident in England but stationed in Malta—Action in England—Whether damages to be assessed in accordance with English or Maltese law. **Chaplin v Boys** [1969] 2 1085, HL.

Libel—

Defence—Privilege—Official communications on State matters—Official communication sent in England by Czechoslovak military prosecutor—Communication containing defamatory statements about Czechoslovak citizen—Czech government functioning in England owing to emergency of war—Application to Czech official documents of principles applicable to English documents. **Szalatnay-Stacho v Fink** [1946] 2 231, CA.

Will—

Construction—

Election—Testator domiciled in South Africa and subject to South African law regarding community of property between husband and wife—Will made in England—Purported disposition of joint property—Indication on face of will that testator contemplated application of English law—Residuary bequest—Doctrine of election applicable. **Re Allen's Estate** [1945] 2 264, ChD.

English power of appointment given to testator domiciled abroad—General power—Will made in country of domicile—Execution of general power—Bequest of personal estate or property described in a general manner—Construction of foreign will—Whether a 'bequest' of personal property—Application of law of testator's domicile—Wills Act 1837, s 27. **Re Fenston's Settlement** [1971] 3 1092, ChD.

Revocation—

Validity—Will made in England in accordance with English law disposing of real estate in England—Subsequent will made in Switzerland according to Swiss law—Purported revocation of any former will—Subsequent will not executed in accordance with English law—Wills Act 1837, s 9, s 20. **In the Estate of Alberti (decd)** [1955] 3 730, Prob.

CONJURATION OF SPIRITS

Criminal offence. *See* **Criminal law** (Witchcraft—Conjuration of spirits).

CONNIVANCE

Divorce. *See* **Divorce** (Connivance).

CONSANGUINITY

Prohibited degrees. *See* **Marriage** (Prohibited degrees of consanguinity).

CONSCIENTIOUS OBJECTOR

See **National Service** (Conscientious objector).

CONSECRATED GROUND

Secular use—

Faculty. *See* **Ecclesiastical law** (Faculty—Secular use of consecrated ground).

CONSENSUAL SEPARATION

Husband and wife—

Withdrawal of consent. *See* **Divorce** (Desertion—Consensual separation—Withdrawal of consent).

CONSENT

- Adoption—
 - Consent of parent or guardian. *See* **Adoption** (Consent—Parent or guardian).
- Appeal—
 - Allowing appeal by consent—
 - Income tax appeal. *See* **Income tax** (Appeal—Allowing—Consent).
- Assignment—
 - Leasehold interest. *See* **Sale of land** (Leasehold interest—Consent to assignment).
- Assignment of lease—
 - Consent of landlord not to be unreasonably withheld. *See* **Landlord and tenant** (Assignment of lease—Consent of landlord not to be unreasonably withheld).
- Building—
 - London. *See* **Building** (London—Consent to erection of buildings or structure beyond general line of buildings).
- Carriage of passenger in hackney carriage. *See* **Road traffic** (Hackney carriage—Carriage of person with consent of hirer).
- Change of surname—
 - Father's consent to child's change of surname. *See* **Minor** (Change of surname).
- Charity Commissioners—
 - Sale of charity estate. *See* **Charity** (Sale of charity estate—Consent of Charity Commissioners).
- Compromise of appeal—
 - Court of Appeal. *See* **Court of Appeal** (Appeal—Compromise).
- Discharge of effluent into river. *See* **Water and watercourses** (Pollution of river—Discharge of trade effluent).
- Dismissal of appeal—
 - Court of Appeal. *See* **Court of Appeal** (Appeal—Dismissal—Consent).
- Divorce by consent—
 - Generally. *See* **Divorce** (Separation—Two year separation).
 - Petition—
 - Procedure where defended petition filed before 1st January 1971. *See* **Divorce** (Petition—Petition filed before 1st January 1971—Defended petition—Subsequent proceedings contemplated for divorce by consent after two years' separation).
- Indecent assault—
 - Consent to assault. *See* **Criminal law** (Indecent assault—Assault as ingredient of offence—Consent of victim).
- Lease—
 - Mortgaged property—
 - Consent by mortgagee. *See* **Mortgage** (Power of leasing—Consent by mortgagee).
- Manslaughter—
 - Recklessness or gross negligence—
 - Consent of victim. *See* **Criminal law** (Manslaughter—Recklessness or gross negligence—Consent of victim).
- Marriage—
 - Nullity. *See* **Nullity** (Consent to marriage).
- Mental health—
 - Consent of nearest relative to admission of patient to hospital. *See* **Mental health** (Admission of patient to hospital).
- Minister—
 - Appropriation of land by local authority. *See* **Local authority** (Land—Power to appropriate land—Exercise of power—Consent of Minister).
- Motor vehicle—
 - Insurance—
 - Person driving with consent of insured. *See* **Motor insurance** (Compulsory insurance against third party risks—Person driving with consent of insured).
 - Taking without owner's consent. *See* **Road traffic** (Taking vehicle without authority—Consent—Taking and driving away without owner's consent).
- Planning—
 - Advertisement—
 - Display without consent. *See* **Town and county planning** (Advertisement—Display without express consent).
- Prosecution—
 - Offence under Explosive Substances Act 1883. *See* **Explosives** (Offence—Prosecution for offence—Consent of Attorney-General).
- Rape. *See* **Criminal law** (Rape—Consent).
- Risk of injury—
 - Defence to action for negligence. *See* **Negligence** (Volenti non fit injuria—Consent to risk of injury).
- Sale of land. *See* **Sale of land** (Condition—Consent to sale required by statute).
- Specimen of blood or urine—
 - Driving while unfit through drink or drugs. *See* **Road traffic** (Driving while unfit to drive through drink or drugs—Specimen of blood or urine—Consent to).
- Summary trial for indictable offence—
 - Consent of accused. *See* **Magistrates** (Summary trial for indictable offence—Consent of accused to summary trial).
- Theft—
 - Defence to criminal charge. *See* **Criminal law** (Theft—Dishonesty—Consent of owner).
- Trust—
 - Consent of beneficiaries to variation. *See* **Variation of trusts** (Effect of arrangement—Variation taking effect by virtue of consents of beneficiaries).

CONSENT ORDER

Breach of—

Committal for contempt of court. *See* **Contempt of court** (Committal—Breach of consent order).

Generally. *See* **Judgment** (Consent order).

Practice—

Chancery Division—

Stay of proceedings. *See* **Practice** (Chancery Division—Stay of proceedings—Consent order without personal attendance).

CONSEQUENTIAL LOSS

Damage to property—

Economic loss. *See* **Negligence** (Duty to take care—Economic loss—Damage to property).

Duty to take care—

Damage to property of another. *See* **Negligence** (Duty to take care—Damage to property of another—Consequential loss to plaintiffs).

CONSIDERATION

Bill of exchange. *See* **Bill of exchange** (Consideration).

Cheque. *See* **Bill of exchange** (Cheque—Consideration).

Contract. *See* **Contract** (Consideration).

Maintenance agreement. *See* **Husband and wife** (Maintenance—Agreement—Consideration).

Promissory note. *See* **Bill of exchange** (Promissory note—Consideration).

CONSISTORY COURT

Certiorari to quash decision of. *See* **Certiorari** (Jurisdiction—Consistory court).

Generally. *See* **Ecclesiastical law**.

CONSOLIDATED ACTIONS

Payment into court—

Costs. *See* **Costs** (Consolidated actions—Payment into court).

CONSOLIDATION ACT

Construction. *See* **Statute** (Construction—Consolidation Act).

Generally. *See* **Statute** (Consolidation Act).

CONSOLIDATION OF ACTIONS

See **Practice** (Consolidation of actions).

CONSORTIUM

Husband and wife—

Generally. *See* **Husband and wife** (Consortium).

Impairment of consortium—

Damages. *See* **Damages** (Personal injury—Consortium—Impairment of consortium).

CONSPIRACY

Criminal. *See* **Criminal law** (Conspiracy).

Illegal bidding agreement at auction. *See* **Auction** (Illegal bidding agreement—Conspiracy).

Tort—

Defence—

Act of state. *See* **Constitutional law** (Act of state—Acts of foreign government—Justiciability in European courts—Conspiracy).

Trade dispute. *See* **Trade dispute** (Conspiracy).

Trade union—

Position at common law. *See* **Trade Union** (Conspiracy—Position at common law).

CONSTABLE

Arrest without warrant, by. *See* **Arrest** (Arrest without warrant).

Billeting notice—

Service by constable. *See* **Billeting** (Billeting notice—Service—Service by police constable in presence of billeting officer).

Licensed premises—

Right of entry. *See* **Intoxicating liquor** (Licensed premises—Constable).

Obstruction. *See* **Criminal law** (Obstructing constable in execution of duty).

Police constable. *See* **Police** (Constable).

CONSTITUTION

Unincorporated association. *See* **Unincorporated association** (Rules).

CONSTITUTIONAL LAW

Act of state—

Acts of foreign government—

Justiciability in English courts—Conspiracy—Plaintiffs alleging defendants had conspired together and with foreign ruler—Object of conspiracy to procure ruler to make decree so as to benefit defendants at plaintiffs' expense—Plaintiffs not challenging validity of decree—Whether defendants entitled to immunity on ground acts of ruler were acts of state—Whether action should be struck out. **Buttes Gas and Oil Co v Hammer** (No 2) [1975] 2 51, CA.

Emergency—

Treaty with foreign independent sovereign power—British subject hotel owner in territory of that power—Occupation of hotel by British troops pursuant to treaty with that power for preservation of internal peace—Claim for compensation—Defence of act of state of Crown and, by reason of agency, of act of state of sovereign power. **Attorney-General v Nissan** [1969] 1 629, HL.

India. *See* **India** (Public authorities—Acts of State).

CONSTITUTIONAL LAW (cont)

- Act of state (cont)—
 - Treaty of Cession—
 - Rights passing to Crown—Ascertainment—Right of former ruler to official residence—Rights passing to the Crown or remaining with inhabitants ascertained from the conduct of the Crown. *Oyekan v Adele* [1957] 2 785, PC.
- Cabinet—
 - Proceedings—
 - Disclosure of documents or information—Confidential information—Public interest in non-disclosure—Disclosure of information by cabinet minister—Injunction—Power of court to restrain disclosure—Circumstances in which injunction will be made—Disclosure contrary to public interest—Public interest based on doctrine of collective cabinet responsibility—Publication of documents disclosing differences of opinion between members of cabinet—Publication likely to inhibit free and open discussion in cabinet meetings—Public interest in non-disclosure limited in point of time—Publication of diaries of former cabinet minister—Publication ten years after events described—Whether court having power to restrain publication—Whether publication should be restrained. *Attorney-General v Jonathan Cape Ltd* [1975] 3 484, QBD.
- Canada. *See* **Canada** (Constitutional law).
- Ceylon. *See* **Ceylon** (Constitutional law).
- Constitution—
 - Amendment—
 - Ceylon. *See* **Ceylon** (Constitutional law—Amendment of constitution).
 - Separation of powers—
 - Judicature—Legislation infringing judicial power—Retrospective criminal legislation directed to individuals concerned in abortive coup d'etat in Ceylon—Ultra vires—Criminal Law (Special Provisions) Act No 1 of 1962—Criminal Law Act No 31 of 1962. *Liyanage v Reginam* [1966] 1 650, PC.
- Sierra Leone. *See* **Sierra Leone** (Constitution—Discrimination—Race).
- Corporation—
 - Immunity from suit—
 - Corporation set up by foreign legislative enactment as alter ego of government. *See* Foreign sovereign state—Immunity from suit—Corporation, *post*.
- Diplomatic privilege—
 - Immunity from legal process—
 - Acceptance of diplomat by receiving country—Member of permanent mission—Indian citizen with Costa Rican diplomatic passport—Stated to be economic adviser to Costa Rican trade mission—Not an accredited diplomatic agent in United Kingdom—Not a representative of Costa Rican government for dealing with other states—Whether entitled to diplomatic privilege and immunity from arrest for extradition to India on criminal charge—Diplomatic Privileges Act 1964, Sch 1, art 39. *R v Governor of Pentonville Prison, ex parte Teja* [1971] 2 11, QBD.
 - Assistant military attaché—Nature and extent of immunity—Diplomatic Privileges Act 1708, s 3. *Re The Amazone* [1940] 1 269, CA.
 - Criminal proceedings—Purported waiver on behalf of accused—Conviction—Subsequent purported waiver by High Commissioner on whose staff accused was—Whether accused entitled to immunity at date of conviction—Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Act 1952, s 1. *R v Madan* [1961] 1 588, CCA.
 - Diplomat proceeding to take up or return to post—Diplomat accredited as Costa Rican representative in El Salvador—Presence in territory of United Kingdom—Whether proceeding to take up or return to post in El Salvador—Diplomatic Privileges Act 1964, Sch 1, art 40. *R v Governor of Pentonville Prison, Ex parte Teja* [1971] 2 11, QBD.
 - Duration of immunity—Continuance of immunity, in respect of acts done in course of official duties, after envoy ceased to be such—International organisations—Members of European Commission of Human Rights—Members entitled, in respect of acts done in official capacity, to like immunity of envoy of foreign power—Inclusion of name on list conclusive of entitlement to immunity—International Organisations (Immunities and Privileges) Act 1950, s 1, s 2—Council of Europe (Immunities and Privileges) Order 1960 (SI 1960 No 442). *Zoernsch v Waldoek* [1964] 2 256, CA.
 - Employee of foreign embassy—Extension to member of his family—Application to make infant son ward of court—Law Reform (Miscellaneous Provisions) Act 1949, s 9. *Re C (an infant)* [1958] 2 656, ChD.
- Immunity after commencement of action—Defendant becoming entitled to immunity after commencement of action against him and after having taken steps therein—Right to stay of action—Diplomatic Privileges Act 1708, preamble, s 3—Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Act 1952, s 1(4). *Ghosh v D'Rozario* [1962] 2 640, CA.
- Removal of immunity by statute—Effect on existing action which had been stayed, but not set aside nor dismissed—Diplomatic Privileges Act 1708, s 3—Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Act 1952, s 1(1)(b)—Diplomatic Privileges Act 1964, Sch 1, art 31, para 1(a), art 37, para 2. *Empson v Smith* [1965] 2 881, CA.
- Private residence of diplomatic agent—
 - Request by High Commissioner to H M Government to evict a person from residence—Residence no longer that of diplomatic agent—No power of executive to evict—Diplomatic Privileges Act 1964, Sch 1, art 22, art 30. *Agbor v Metropolitan Police Commissioner* [1969] 2 707, CA.
- Federal state—
 - Provincial government—
 - Immunity from suit as foreign sovereign. *See* Foreign sovereign state—Immunity from suit—Province in federal constitution, *post*.
- Foreign compensation. *See* **Foreign compensation**.

CONSTITUTIONAL LAW (cont)

Foreign sovereign state—

Armed forces of foreign state—

Deserter or absentee without leave from forces of designated country—Apprehension and disposal—Power of court to deliver deserter into custody of foreign state—Deserter from foreign forces stationed outside United Kingdom—Deserter ordered to be handed over to representative of foreign forces—Whether order ultra vires as relating to deserter from forces stationed outside United Kingdom—Whether receiving authority having jurisdiction over deserter—Visiting Forces Act 1952, ss 2, 12(1), 13(1) (as substituted by the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1955, s 3, Sch 2, para 17(1)), 17(1)—Army Act 1955, s 187(2). **R v Thames Justices, ex parte Brindle** [1975] 3 941, CA.

Immunity from suit—

Central bank of foreign state—Separate legal entity incorporated by legislative enactment—Bank not declared to be a department of state—Bank owned by government—Bank responsible for issue of currency and entrusted with government's banking and foreign exchange transactions—Bank engaging in ordinary banking transactions but having limited power to act as private banker—Whether bank's principle functions essential functions of the state—Whether bank entitled to claim sovereign immunity. **Trendtex Trading Corp v Central Bank of Nigeria** [1976] 3 437, QBD.

Corporation—Corporation set up by legislative enactment—Functions and powers of corporation—Development corporation set up by statute of Province of New Brunswick—Corporation constituted 'on behalf of Her Majesty in right of New Brunswick'—Principal power of corporation to promote industrial development in New Brunswick—Power to engage in trade or commerce not in practice exercised—Directors appointed by government—Corporation government's alter ego carrying out its policy—Corporation entitled to claim sovereign immunity. **Mellenger v New Brunswick Development Corp** [1971] 2 593, CA.

Department of foreign sovereign state—Burden of proving separate legal existence—Evidence—Particulars under Registration of Business Names Act 1916—Soviet news agency. **Krajina v Tass Agency** [1949] 2 274, CA.

Department of foreign sovereign state—Department of foreign sovereign state being separate legal entity—Waiver of immunity—Steps taken in action without authority of foreign sovereign state—Whether immunity waived. **Baccus SRL v Servicio Nacional del Trigo** [1956] 3 715, CA.

Exceptions—Commercial transaction—Action arising out of commercial transaction—Department of foreign government—None of the incidents of transaction taking place within jurisdiction—Contract for sale of goods by German charterers to Pakistani corporation—Charterparty providing that corporation liable to shipowners for demurrage—Vessel on which goods shipped delayed in Karachi because of state of war—Corporation dissolved and assets and liabilities transferred to Pakistani government—Action by shipowners against Pakistani government for demurrage—Whether government entitled to immunity from suit. **Thai-Europe Tapioca Service Ltd v Government of Pakistan, Ministry of Food and Agriculture, Directorate of Agricultural Supplies (Imports and Shipping Wing)** [1975] 3 961, CA.

Exceptions—Commercial transaction—Admiralty—Action in rem—Ship owned by foreign state—Ship in possession of third party—Ship used by third party for ordinary commercial purposes—Foreign state having immediate right to possession of ship—Actions in rem against ship brought by charterers and repairers in respect of alleged defaults by third party—Whether foreign state entitled to claim immunity from suit. **Philippine Admiral (Owners) v Wallem Shipping (Hong Kong) Ltd** [1976] 1 78, PC.

Impleading foreign government—Possession—Mere claim to money by foreign government. **Haile Sellassie v Cable & Wireless Ltd** [1938] 3 384, CA.

Impleading foreign sovereign state—Gold bars belonging to French company seized by Germans and carried off to Germany—Discovery by Allied forces—In possession and under control of governments of United States, United Kingdom and France—Deposit with Bank of England for purpose of applying Agreement by Allied governments on restitution of monetary gold—Action by French company against bank claiming delivery of bars or damages for conversion. **United States of America v Dollfus Mieg et Compagnie SA** [1952] 1 572, HL.

Impleading foreign sovereign state—Money deposited with bank in London—Transferred, on instructions of agent of beneficial owner, to credit of account of servant of foreign state—Transfer unauthorised by beneficial owner—Demand for re-transfer—Action by beneficial owner against bank and servant of foreign state claiming money. **Rahimtoola v HEH The Nizam of Hyderabad** [1957] 3 441, HL.

Impleading foreign sovereign state—Order in Council establishing constitution for new independent state of Sierra Leone—Whether validity of order could be impugned in English courts after independent sovereign state established—Sierra Leone (Constitution) Order in Council 1961 (SI 1961 No 741)—Sierra Leone Independence Act 1961, s 1. **Buck v Attorney-General** [1965] 1 882, CA.

Impleading foreign sovereign state—Shipping—Claim by foreign sovereign state to ownership of, or interest in, ship—Evidence of interest of foreign sovereign state needed before proceedings stayed. **Juan Ysmael & Co Incorporated v Government of the Republic of Indonesia** [1954] 3 236, PC.

Impleading independent sovereign—Waiver—Submission to jurisdiction by institution of proceedings—Continuation of proceedings by way of appeal—Japanese Judgments and Civil Proceedings Ordinance 1946 (Singapore Ordinance No 37 of 1946), s 3. **Sultan of Johore v Abubakar, Tunku Aris Bendahara** [1952] 1 1261, PC.

Province in federal constitution—Province retaining independence and autonomy in own sphere—Provinces of Canada—Status of province of New Brunswick—Province foreign sovereign state in own right. **Mellenger v New Brunswick Development Corp** [1971] 2 593, CA.

CONSTITUTIONAL LAW (cont)

Foreign sovereign state (cont)—

Immunity from suit (cont)—

Ruler—Liability to be sued—Partial dependency on another Power—Conclusiveness of certificate of government department—British Nationality Act 1948, s 1. *Sayce v Bahawalpur State (Ameer)* [1952] 2 64, CA.Waiver—Extent of waiver of immunity by sovereign state suing in High Court—Action for money lent—Counterclaim for damages for slander—Whether counterclaim maintainable. *High Comr for India v Ghosh* [1959] 3 659, CA.

Recognition—

Evidence—Conclusiveness of certificate of Secretary of State as to recognition of foreign government. *Carl-Zeiss-Stiftung v Rayner & Keeler, Ltd (No 2)* [1966] 2 536, HL.

Freedom—

Free collective bargaining—

Freedom of association—Trinidad and Tobago. *See Trinidad and Tobago* (Constitutional law—Freedom of association—Abridgment of right to free collective bargaining).

Fundamental democratic freedoms—

Malta. *See Malta* (Constitutional law—Fundamental democratic freedoms).

Governor—

Nigeria—

Power to dismiss Prime Minister. *See Nigeria* (Constitutional Law—Dismissal of Premier by Governor).

International convention—

Enforcement by English courts. *See International law* (Convention—Enforcement by English courts).Jamaica. *See Jamaica* (Constitutional Law).

Minister—

Statutory responsibility—

Surrender of responsibility to Parliament—Debate on Minister's decision before decision implemented—Whether a surrender of statutory responsibility to Parliament—Fugitive Offenders Act 1881, s 6. *R v Brixton Prison (Governor), Ex parte Enahoro* [1963] 2 477, QBD.

Misuse of powers—

Public authority. *See Public authority* (Statutory powers—Misuse of powers).

Parliament—

Legislative power—

Northern Ireland Parliament. *See Northern Ireland* (Parliament—Legislative power).Power of subsequent Parliament to repeal previous enactments—Declaration—Hypothetical question—Government signing irrevocable treaty—Projected legislation to implement treaty—Action seeking declaration whether subsequent Parliament could repeal legislation—Court refusing declaration on hypothetical question. *Blackburn v Attorney-General* [1971] 2 1380, CA.

Prime Minister—

Removal by Governor—

Nigeria. *See Nigeria* (Constitutional law—Dismissal of Premier by Governor).

Privilege—

Member of Parliament—

Action against Member of Parliament. *See Parliament* (Privilege—Action against Member of Parliament).

Separation of judicial and executive power—

Australia. *See Australia* (Constitutional law—Separation of judicial and executive power).Southern Rhodesia. *See Southern Rhodesia* (Constitution).Uganda. *See Uganda* (Constitutional law).**CONSTRUCTION**Articles of association. *See Company* (Articles of association—Construction).Building. *See Building*.Building contract. *See Building contract* (Construction).Building licence. *See Building control* (Building licence—Construction).

Contract—

Exception clause. *See Contract* (Exception clause—Construction).Generally. *See Contract* (Construction).

Conveyance—

Generally. *See Sale of land* (Conveyance—Construction).Reservation of right of way. *See Easement* (Right of way—Reservation in conveyance—Construction of reservation).

Covenant—

Repair. *See Landlord and tenant* (Repair—Construction of covenant).Deed. *See Deed* (Construction).Dock labour scheme. *See Employment* (Dock labour scheme—Application).

Document—

Generally. *See Document* (Construction).

Lease—

Generally. *See Landlord and tenant* (Lease—Construction).

Option to renew—

Perpetual right of renewal. *See Landlord and tenant* (Renewal of lease—Perpetual right of renewal—Construction).

Memorandum of association—

Objects clause. *See Company* (Objects clause—Construction).Permission for development. *See Town and country planning* (Permission for development—Construction).Standard Industrial Classification. *See Selective employment tax* (Standard Industrial Classification).

CONSTRUCTION (cont)

Statute. *See* **Statute** (Construction).

Statutory instrument. *See* **Statutory instrument** (Construction).

Treaty provisions—

European Economic Community—

Direct application in member states. *See* **European Economic Community** (Treaty provisions—Direct application in member states).

Will—

Generally. *See* **Will** (Construction).

Residue—

Double gift. *See* **Will** (Residue—Double gift—Construction).

CONSTRUCTIVE DESERTION

See **Divorce** (Desertion—Constructive desertion).

CONSTRUCTIVE TRUST

See **Trust and trustee** (Constructive trust).

CONSULATE

Premises—

Whether part of territory of receiving state—

Whether divorce obtained on premises in London divorce obtained outside British Isles. *See* **Divorce** (Foreign decree—Recognition by English court—Divorce obtained in country outside British Isles—Foreign territory outside British Isles—Diplomatic premises).

CONSULTANT

Position in National Health Service. *See* **National Health Service** (Specialist services).

Remuneration—

National Health Service. *See* **National Health Service** (Consultant—Remuneration).

CONTEMPT OF COURT

Admiralty—

Interference with ship in custody of Admiralty marshal—

Order for arrest and sale of ship—Defendant entering into independent negotiations for sale of ship—Plans to move ship in event of sale being agreed—Whether a contempt of court. *Re The Jarvis Brake* [1976] 2 886, QBD.

Appeal—

Nigeria—

Right of appeal to West African Court of Appeal. *See* **Nigeria** (Contempt of court—Right of appeal to West African Court of Appeal).

Arrest of vessel—

Breach of arrest. *See* **Admiralty** (Arrest of vessel—Breach of arrest—Contempt of court).

Bringing of action prohibited by statute—

Attempting to disguise true nature of claim by putting forward feigned issue—

Gaming debt—Claim for account stated—Liability of solicitor. *R v Weisz, ex parte Hector MacDonald* [1951] 2 408, KBD.

Cause of action in tort. *See* **Tort** (Cause of action—Contempt of court).

Civil contempt—

Committal—

Committal for breach of court order—Factors to be considered prior to making of committal order—Availability of alternative means of ensuring compliance with court order—Husband in breach of court order to vacate matrimonial home and to co-operate in its sale—Husband committed to prison for breach—Whether committal order appropriate. *Danchevsky v Danchevsky* [1974] 3 934, CA.

Committal proceedings—

Evidence. *See* **Committal**—Evidence, *post*.

Proof—

Standard of proof. *Re Bramblevale Ltd* [1969] 3 1062, CA.

Remedies—

Fine—Sequestration—Committal—Order of court wilfully disobeyed by defendants—Motion for sequestration and committal—Order complied with before hearing—Whether court had jurisdiction to impose lesser penalties—RSC Ord 42, r 31, Ord 44, r 2. *Phonographic Performance Ltd v Amusement Caterers (Peckham) Ltd* [1963] 3 493, ChD.

Committal—

Appeal against committal—

Committal by county court—Motion for release pending appeal to Court of Appeal—Service of notice of motion—Defendant sentenced to imprisonment on complaint by bailiff for contempt of court in assaulting bailiff in execution of duty—Whether notice required to be served on bailiff—RSC Ord 58, r 20(3). *Brown v Crowley* [1963] 3 655, CA.

Committal by county court—Sentence alleged to be excessive—Appeal to Court of Appeal on ground that county court judge's committal of contemnor to prison for a month was excessive—No request to county court to revoke order—Appeal treated as application for clemency. *Brown v Crowley (No 2)* [1964] 1 72, CA.

Notice of appeal—Service—Probate, Divorce and Admiralty Division—RSC Ord 58, r 20(1). *Practice Direction* [1961] 2 11, PDA.

Notice of appeal—Service—Chancery Division. *Practice Direction* [1961] 1 494, ChD.

Notice of appeal—Service—Restrictive Practices Court—RSC Ord 58, r 20(1). *Practice Direction* [1961] 2 11, RPC.

Application—

Application for order by complainant in person—Whether necessary for application to be made by barrister. *Re G's Application for a Committal Order* [1954] 2 794, ChD.

Divorce Division—Procedure—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 3(5)(b), r 63, r 65. *Dent v Dent and Hall* [1962] 1 746, Div.

CONTEMPT OF COURT (cont)

Committal (cont)—

Application (cont)—

Ex parte application—Breach of injunction—When order of committal may be made on ex parte application. **Warwick Corpn v Russell** [1964] 2 337, ChD.

Ex parte application—Breach of undertaking. *See* Committal—Breach of undertaking—Ex parte application for committal, *post*.

Ex parte application—Jurisdiction of High Court—Order made by County Palatine Court on ex parte application—Jurisdiction of High Court to make that order an order of the High Court—Ward of court taken out of jurisdiction—Court of Chancery of Lancaster Act 1850, s 15—RSC Ord 52, r 3. **Bernstein v Bernstein** [1959] 2 735, ChD.

Hearing—Contempt in relation to wardship proceedings—Hearing in camera—No rule or practice that application for committal arising from proceedings relating to wardship must be heard in public—RSC Ord 44, r 2(4). **Re An Infant** [1965] 2 254, ChD.

Breach of consent order—

Breach of consent order against company to abate nuisance—Motions for leave to issue writ of sequestration against company and to commit active director of company to prison—Steps taken to abate nuisance which were unsuccessful—Whether disobedience was wilful—Disobedience was not contumacious—No orders made on motions save orders for payment of costs by company on common fund basis—RSC Ord 42, r 31. **Worthington v Ad-Lib Club Ltd** [1964] 3 674, ChD.

Breach of injunction—

Divorce—Order for injunction not served on husband—Husband present in court when injunction granted to wife—No notice of application for committal order served on husband—Committal order made—RSC Ord 42, r 7. **Husson v Husson** [1962] 3 1056, Div.

Evidence of contempt—National Industrial Relations Court—Order restraining respondents from preventing vehicles from entering complainants' employers' place of business—Breach of order to be proved with same strictness as required in High Court—Need to give notice to respondents of charges against them. **Churchman v Joint Shop Stewards' Committee of the Workers of the Port of London** [1972] 3 603, CA.

Ex parte application for committal. *See* Committal—Application—Ex parte application—Breach of injunction, *ante*.

Interim injunction—Breach of confidence—Injunction not specifying precisely what material was confidential and of what disclosure was prohibited—Whether alleged disclosure proved with sufficient certainty for injunction to be enforced by committal. **P A Thomas & Co v Mould** [1968] 1 963, QBD.

Jurisdiction—County court—Injunction spent at date of order—Effect of committal punishment only—Landlord harassing tenants to procure their departure—Injunction prohibiting harassment—Landlord continuing to harass tenants in spite of injunction—Tenants all departing in consequence—Subsequent application for attachment—Power of county court to commit for contempt even though injunction no longer effective—County Courts Act 1959, s 74. **Jennison v Baker** [1972] 1 997, CA.

Jurisdiction—Injunction restraining defendants from obstructing roadway—Breach of injunction by one defendant—Power to make committal order against that defendant—Refusal of committal order on construction of injunction—Appellate jurisdiction. **Lenton v Tregoning** [1960] 1 717, CA.

Relevance of defendant's state of mind—Whether necessary to show that defendant's conduct wilful or contumacious. **Knight v Clifton** [1971] 2 378, CA.

Wilful disobedience—Wilful—Not necessary to show that breach was contumacious—Sufficient to show that disobedience not casual or accidental and unintentional. **Heatons Transport (St Helens) Ltd v Transport and General Workers Union** [1972] 3 101, HL.

Breach of undertaking—

Act or omission of third parties precluding implementation of undertaking by defendant—Liability of third parties for contempt. **Thorne Rural District Council v Bunting (No 2)** [1972] 3 1084, CA.

Company—Director—Liability for company's breach—Order of court incorporating undertaking by company not to do specified Committal—Of undertaking by company—Director not exercising day to day control or management of company—Director not aiding or abetting breach of undertaking but adopting purely passive role—Whether undertaking equivalent to an order of court—Whether director liable for contempt of court—RSC Ord 45, r 5. **Biba Ltd v Stratford Investments Ltd** [1972] 3 1041, ChD.

Company—Director—Liability for company's breach—Order of court incorporating undertaking by company not to do specified acts—Order not served on director of company—Breach of undertaking by company constituting contempt—Director aware of undertaking and its breach—Whether director liable for contempt of court. **Ronson Products Ltd v Ronson Furniture Ltd** [1966] 2 381, ChD.

Ex parte application for committal—Breach of undertaking by husband—Jurisdiction of Divorce Court—RSC Ord 52, r 3. **Hipgrave v Hipgrave** [1962] 1 75, Div.

Ex parte application for committal—Breach of undertaking by person resident out of jurisdiction—Summons not served—Jurisdiction to make committal order. **O'Donovan v O'Donovan** [1955] 3 278, Div.

Period of custody—Company director failing to honour undertaking to deliver documents after court order—Documents including valuable securities—Director continuing to disobey order after six months' imprisonment for contempt—Whether director to be imprisoned indefinitely until contempt cleared. **Re Barrell Enterprises** [1972] 3 631, CA.

Costs—

No order on motion except costs to be paid by respondents as between solicitor and client—Whether indemnity for costs. **Morgan v Carmarthen Corpn** [1957] 2 232, CA.

Evidence—

Witness—Court's power to call witnesses without consent of parties—Civil contempt. **Yianni v Yianni** [1966] 1 231, ChD.

CONTEMPT OF COURT (cont)

Committal (cont)—

Jurisdiction—

Breach of undertaking by person resident out of jurisdiction. *See* Committal—Breach of undertaking—Ex parte application for committal—Breach of undertaking by person resident out of jurisdiction, *ante*.

County court—Breach of injunction. *See* Committal—Breach of injunction—Jurisdiction—County court, *ante*.

Execution of writ of possession—Resumption of possession by person evicted—Jurisdiction to commit for contempt person evicted. **Alliance Building Society v Austen** [1951] 2 1068, ChD.

Judge—Criminal contempt—Summary committal. *See* Criminal contempt—Jurisdiction—Summary committal—Power of judge on own motion to commit summarily for contempt, *post*.

Order—

County court—Form of order—Particular matter of contempt not set out in county court order—Necessity for particular matter of contempt to be set out—CCR 1936, Ord 25, r 68(4), Form 195. **McIlraith v Grady** [1967] 3 625, CA.

Execution—Restrictive Practices Court—Procedure. **Practice Direction** [1961] 2 11, RPC. Form of order—County court. *See* Committal—Order—County court—Form of order, *ante*.

Form of order—Restriction on liberty to apply to court for order for release prior to specific date—Propriety. **Vaughan v Vaughan** [1973] 3 449, CA.

Form of order—Restriction on liberty to apply to court for order for release prior to specific date—Propriety. **Yager v Musa** [1961] 2 561, CA.

Suspension on conditions—Breach of condition—Wardship proceedings—Whether committal automatic on judge's finding breach of condition—Discretion. **Re W (B) (an infant)** [1969] 1 594, CA.

Proceedings for committal—

Breach of interim injunction—Cross-examination of defendant—Affidavit of defendant read to court—Cross-examination on affidavit—Discretion of court not to allow cross-examination—Civil contempt—Proceedings criminal in nature—Cross-examination raising collateral issues relating to action as a whole—Whether defendant a compellable witness. **Comet Products UK Ltd v Hawtex Plastics Ltd** [1971] 1 1141, CA.

Propriety—Order for custody of child—Failure to hand over child—Service of order—Order to be complied with on or before stated time—Order served out of time—Intention not to comply with order—Knowledge of order by person affected immaterial—Process of committal—Enforcement only if rules strictly complied with—RSC Ord 41, r 5—Matrimonial Causes Rules 1944 (SR & O 1944 No 389), r 62(2). **Gordon v Gordon** [1946] 1 247, CA.

Company—

Breach of undertaking—

Liability of director for company's breach. *See* Committal—Breach of undertaking—Company—Director—Liability for company's breach, *ante*.

Shareholders—

Order for specific performance of shares agreement—Company undertaking to use best endeavours to obtain quotation for and permission to deal in shares and issue same—Stock exchange requiring that issue be subject to consent of 'company in general meeting'—Whether shareholders would be in contempt of court if voting against resolution to issue shares. **Northern Counties Securities Ltd v Jackson & Steeple Ltd** [1974] 2 625, ChD.

Contumacious conduct—

Relevance of defendant's state of mind. *See* Committal—Breach of injunction—Relevance of defendant's state of mind, *ante*.

Costs—

Order that successful defendant pay costs of proceedings. *See* Costs (Order for costs—Discretion of judge—Successful defendant—Jurisdiction to make order—Exercise of discretion—Committal proceedings for contempt).

Counsel—

Failure to attend court—

Act of discourtesy—Whether amounting to contempt of court. **Izuora v Reginam** [1953] 1 827, PC.

County court—

Jurisdiction—

Committal for breach of injunction. *See* Committal—Breach of injunction—Jurisdiction—County court, *ante*.

Jurisdiction to imprison contemnor for fixed term. **Danchevsky v Danchevsky** [1974] 3 934, CA.

Criminal contempt—

Attempt to commit contempt—

Distinction between attempt and act preparatory to contempt—Not contempt to plan or intend contempt. **Balogh v Crown Court at St Albans** [1974] 3 283, CA.

Contempt in face of court—

Sentence—Three month's imprisonment imposed—Whether sentence excessive—Students breaking up hearing by shouting and singing in court. **Morris v The Crown Office** [1970] 1 1079, CA.

Intention to interfere with course of justice—

Solicitor—Discourtesy and contempt distinguished—Abusive letter to court official—Failure to attend court on date fixed for hearing of case against client—Failure to comply with order of judge to attend court—Order not communicated to solicitor by court—Solicitor's actions intended as a protest against fixing of early date without warning for trial of client—Whether actions of solicitor amounting to contempt. **Weston v Courts Administrator of the Central Criminal Court** [1976] 2 875, CA.

CONTEMPT OF COURT (cont)

Criminal contempt (cont)—

Jurisdiction—

Summary committal—Power of judge on own motion to commit summarily for contempt—Circumstances in which power exercisable—Gross interference with course of justice in case being tried or about to be tried—Unnecessary for judge himself to have seen contempt—Power not limited to contempt to the face of the court—Power exercisable only where urgent and imperative for judge to act immediately. **Balogh v Crown Court at St Albans** [1974] 3 283, CA.

Summary committal—Witness speaking during trial to juror about defendant—Witness charged with embracery—Whether summary committal for contempt more appropriate—Whether sentence of imprisonment should be suspended. **R v Owen** [1976] 3 239, CA.

Power to commit instantly to prison—

Provisions relating to suspended sentences not applicable to criminal contempt—Criminal Justice Act 1967, s 39. **Morris v The Crown Office** [1970] 1 1079, CA.

Sentence—

Contempt in face of court. *See* Criminal contempt—Contempt in face of court—Sentence, *ante*.

Imprisonment for fixed term—Jurisdiction of court to order release before end of fixed term. **Attorney-General v James** [1962] 1 255, QBD.

Discharge from custody after committal for contempt—

Grounds for discharge—

Waiver of contempt—Committal of husband for failure to obey order to deliver child to custody of mother—Child sent out of jurisdiction—Proceedings for custody by wife in Eire—Waiver—No grounds for discharge of husband—Need to purge contempt. **Corcoran v Corcoran** [1950] 1 495, Div.

Libel action—

Republication of alleged libel after issue of writ. *See* Republication of alleged libel—Pending proceedings, *post*.

Mitigation—

Legal advice that a course of conduct would not amount to breach of undertakings given to court—

Acts in fact done constituting contempt—Whether acts must be contumacious to constitute contempt of court by breach of undertaking—Whether legal advice mitigated contempt. **Re Agreement of the Mileage Conference Group of the Tyre Manufacturers' Conference Ltd** [1966] 2 849, RPC.

Official Solicitor—

Powers and duties.

See Official Solicitor (Powers and duties—Contempt of court).

Party in contempt—

Right to be heard—

Divorce—Child—Child taken by petitioner out of jurisdiction in disobedience of order—Application by respondent for enforcement of order—Right of petitioner to be heard. **Hadkinson v Hadkinson** [1952] 2 567, CA.

Privy Council—

Jurisdiction. *See* Privy Council (Contempt of court).

Publications concerning legal proceedings—

Attorney-General—

Role of Attorney-General—Right to bring any matter before court which may amount to contempt—Acting on behalf of Crown—Discretion—Decision whether in public interest whether matter should be brought to attention of court. **Attorney-General v Times Newspapers Ltd** [1973] 3 54, HL.

Chambers proceedings—

Action for possession by mortgagee—Inaccurate newspaper report. **Alliance Perpetual Building Society v Belrum Investments Ltd** [1957] 1 635, ChD.

Court sitting in private—

Wardship or adoption proceedings—Publication of information relating to proceedings contempt—Power of court to give leave to publish information—Circumstances in which leave may be given—Interests of child—Information relevant in other legal proceedings—Adoption proceedings—Evidence given of proposed adopter's financial affairs—Proposed adopter adjudicated bankrupt—Application by trustee in bankruptcy for copy of evidence given in adoption proceedings—Publication of information to trustee not contrary to child's interests—Whether leave should be given—Administration of Justice Act 1960, s 12(1)(a)(4). **Re R (M J) (an infant) (proceedings transcripts: publication)** [1975] 2 749, FamD.

Wardship or adoption proceedings—Publication of information relating to proceedings contempt—Proceedings—Continuing process by which court informed about welfare of ward—Whether 'proceedings' limited to hearing before court sitting in wardship—Whether including reports and other information relating to ward—Administration of Justice Act 1960, s 12(1)(a)(4). **Re F (a minor) (publication of information)** [1976] 3 274, FamD.

Wardship or adoption proceedings—Publication of information relating to proceedings contempt—Defence—Publisher having taken all reasonable care but ignorant that proceedings pending or imminent—Whether defence available to publisher of information relating to wardship proceedings—Administration of Justice Act 1960, ss 11(1), 12(1)(a)(4). **Re F (a minor) (publication of information)** [1976] 3 274, FamD.

Court sitting in private —

Wardship or adoption proceedings—Wardship proceedings—Report of order made in chambers. **Re de Beaujeu** [1949] 1 439, ChD.

Criticism of administration of justice—

Court of Appeal—Judgment regarding non-enforcement of gaming laws criticised—Error of fact in matter published—Right of fair comment on matters of public importance. **R v Metropolitan Police Comrs, ex parte Blackburn (No 2)** [1968] 2 319, CA.

Imputation—Improper motives—Liberty of the press. **Ambard v Attorney-General of Trinidad and Tobago** [1936] 1 704, PC.

CONTEMPT OF COURT (cont)

Publications concerning legal proceedings (cont)—

Criticism of administration of justice (cont)—

Newspaper published a photograph of an accused, with a derogatory caption, the accused being due to be tried soon—Aspects of seriousness of such contempts—Likelihood of prejudice to fair trial—System designed to avoid contempts was operated by newspaper—Editor unaware of caption before publication—Whether any penalty should be imposed on publishers, printers or editor. **R v Thomson Newspapers Ltd, Ex parte Attorney-General** [1968] 1 268, QBD.

Publications concerning legal proceedings—

Inaccurate report of trial—

Mistake of reporter—Liability of newspaper proprietors. **R v Evening Standard Co Ltd, Ex parte Attorney-General** [1954] 1 1026, QBD.

Publications concerning legal proceedings—

Pending proceedings—

Civil action for declaration—Publication in newspaper of article which plaintiffs claimed was discussion of merits of the pending action—Newspaper article discussing rights in pending action not automatically contempt of court—Test was whether real risk existed that fair trial of action would be prejudiced. **Vine Products Ltd v Mackenzie & Co Ltd** [1965] 3 58, ChD.

Criminal appeal—Newspaper comments between judgment of Central Criminal Court and hearing of appeal against conviction by Court of Criminal Appeal—'Pending cause'. **Delbert-Evans v Davies and Watson** [1945] 2 167, KBD.

Criminal appeal—Publication of matter after trial and before application for leave to appeal—Proceedings sub judice—Whether publication was intended or calculated to prejudice fair hearing. **R v Duffy, Ex parte Nash** [1960] 2 891, QBD.

Discussion in Parliament—Practice of Parliament in relation to proceedings sub judice—Rules applied by court in contempt proceedings—Desirable that rules should correspond to practice of Parliament. **Attorney-General v Times Newspapers Ltd** [1973] 1 815, CA.

Dispute concerning trade mark and passing off—Letters to editor of trade journal and retailer with regard to publication of advertisements and to sale of articles bearing trade mark—Test of what constitutes contempt of court in such circumstances. **Carl-Zeiss-Stiftung v Rayner & Keeler Ltd** [1960] 3 289, ChD.

Expression of opinion on issue before court for determination—Risk that fair trial of action would be prejudiced—Relevance of public interest in discussion of issues raised by proceedings. **Attorney-General v Times Newspapers Ltd** [1973] 3 54, HL.

Litigation actively in suit before court—Public interest in fair comment on issues raised by litigation—Issues raised by litigation of national concern—Writs issued but proceedings dormant for several years—No evidence that parties intending to bring proceedings to trial—Children injured by drug—Claims against drug manufacturer—Newspaper wishing to publish article concerning drug manufacturer—Article critical of delay in settling claims and accusing drug manufacturer of not facing up to responsibilities. **Attorney-General v Times Newspapers Ltd** [1973] 1 815, CA.

News film showing arrest of accused—Caption—Whether risk that caption liable to prejudice fair trial of accused. **R v Hutchison, Ex parte McMahon** [1936] 2 1514, KBD.

Pressure on litigant—Fair and temperate criticism of litigant—Inhibiting effect of criticism on other potential suitors—Whether article a contempt of court. **Attorney-General v Times Newspapers Ltd** [1973] 3 54, HL.

Public interest—Discussion of matters of public interest—Affairs of public company subject of libel action—Whether contempt to discuss affairs at meeting of company. **Wallersteiner v Moir** [1974] 3 217, CA.

Publication of matter calculated to prejudice a fair trial—Magazine produced out of the jurisdiction—Sale in England, by English distributors, in the way of their trade—Whether defence of innocent dissemination available—Whether English correspondent of foreign publication responsible for contempt. **R v Griffiths, Ex parte Attorney-General** [1957] 2 379, QBD.

Publication of matter calculated to prejudice a fair trial—Whether knowledge that proceedings were pending an essential part of the offence. **R v Odham's Press Ltd, Ex parte Attorney-General** [1956] 3 494, QBD.

Risk of interference with course of justice—No serious risk of interference—No intention to influence pending proceedings—Single showing of television programme—Children allegedly injured by drug—Claims against drug manufacturers—Television programme on plight of children. **Attorney-General v London Weekend Television Ltd** [1972] 3 1146, QBD.

Television interview at time when obvious that person interviewed about to be arrested and tried on charge of gross fraud. **R v Savundranayagan and Walker** [1968] 3 439, CA.

Test to be applied—Serious risk that course of justice likely to be interfered with—Pressure affecting party's freedom of action in settling proceedings—Comment designed to bring pressure on party to settle action on more generous terms—Children allegedly injured by drug—Claims against drug manufacturer—Newspaper wishing to publish article concerning manufacturer—Intention to bring pressure on manufacturer to settle claims at more generous figure—Risk of interference with manufacturer's freedom of action in litigation. **Attorney-General v Times Newspapers Ltd** [1972] 3 1136, QBD.

Writs issued—No further steps taken to bring proceedings to trial—Active steps being taken by parties to reach a settlement—Whether contempt to publish article concerning dispute when proceedings not actively before court. **Attorney-General v Times Newspapers Ltd** [1973] 3 54, HL.

Republication of alleged libel—

Pending proceedings—

Republication after issue of writ. **Thompson v Times Newspapers Ltd** [1969] 3 648, CA.

CONTEMPT OF COURT (cont)

Sequestration—

Bank holding surplus proceeds of sale of contemnor's property on trust—

Equitable chose in action—Whether court order necessary to protect bank—Law of Property Act 1925, s 105. **Bucknell v Bucknell** [1969] 2 998, Div.

Discharge of writ of sequestration—

Writ issued by wife in respect of husband's failure to pay under maintenance order—Husband's subsequent bankruptcy—Husband continuing in contempt of court—Wife's claim not provable in bankruptcy—Writ of sequestration not discharged. **Coles v Coles** [1956] 3 542, Div.

Position of third parties in relation to writ of sequestration—

Third party holding contemnor's assets—Duty to pay over contemnor's assets on demand by sequestrators—Circumstances in which specific order of court required—Trade union fined for contempt of court—Writs of sequestration issued—Demand by sequestrators to union's bankers for payment of fine and costs—Banks declining to pay without first receiving specific order from court to comply with sequestrators' demands—Whether banks under duty to pay fine and costs without specific order from court. **Eckman v Midland Bank Ltd** [1973] 1 609, NIRC.

Wilful disobedience of court order—

Breach of consent order to abate nuisance by noise—Night club—Insufficient steps taken to abate nuisance—Order not 'wilfully disobeyed'—Disobedience not contumacious nor in defiance of order—No order on motion save order for costs on common fund basis—RSC Ord 42, r 31. **Worthington v Ad-Lib Club Ltd** [1964] 3 674, ChD.Breach of undertaking by company—Disregard of undertaking that was not casual, accidental or unintentional—Conduct amounting to contumacious disregard and wilful disobedience of order of court embodying undertaking—Breaches remedied before hearing—Defendant company fined and ordered to pay plaintiffs' costs on a common fund basis—RSC Ord 42, r 31. **Steiner Products Ltd v Willy Steiner Ltd** [1966] 2 387, ChD.Solicitor. *See* **Solicitor** (Contempt of court).

Wardship proceedings—

Chambers—

Publication of proceedings. *See* **Ward of court** (Publication of proceedings—Chambers proceedings—Publication of report of order made in chambers—Whether contempt of court).Generally. *See* **Ward of court** (Contempt of court in wardship proceedings).

Wilful conduct—

Breach of injunction. *See* **Committal**—Breach of injunction—Wilful disobedience, *ante*.Relevance of defendant's state of mind. *See* **Committal**—Breach of injunction—Relevance of defendant's state of mind, *ante*.

Witness—

Interference with witness—

Blackmail proceedings—Identity of witness—Disclosure—Order by judge that identity of witness should not be disclosed in court—Newspaper article—Article published after evidence given by witness—Article identifying witness—Affront to authority of court—Danger that witnesses in future blackmail cases might be unwilling to come forward. **R v Socialist Worker Printers and Publishers Ltd, Ex parte Attorney-General** [1975] 1 142, QBD.Knowledge that person is potential witness sufficient—Threats to induce witness in wardship proceedings to refrain from giving evidence and to withdraw evidence already given. **Re B (J A) (an infant)** [1965] 2 168, ChD.Threatening witness—Threats after witness having given evidence at criminal trial—Trial still continuing—Threats so as to punish witness for what witness has said—Unnecessary to prove that other potential witnesses would get to know of threats. **Moore v Clerk of Assize, Bristol** [1972] 1 58, CA.

Victimisation of witness—

Proceedings no longer pending—Contempt by subsequent victimisation of witness—Witness given notice to quit by his landlord against whom witness had given evidence—Action by tenant for damages—Whether civil action for damages lay. **Chapman v Honig** [1963] 2 513, CA.**CONTINGENCY**Insurance. *See* **Insurance** (Contingency insurance).**CONTINGENCY FEE**Solicitor. *See* **Solicitor** (Costs—Contingency fee).**CONTINGENT INTEREST**Settlement. *See* **Settlement** (Contingent interest).**CONTINGENT LIABILITY**

Income tax—

Computation of Profits. *See* **Income tax** (Computation of profits—Contingent liability).**CONTINUANCE OF LIFE**Presumption. *See* **Presumption** (Continuance of life).**CONTRACEPTION**

Legitimacy—

Presumption of legitimacy—

Rebuttal—Evidence of use of contraceptives. *See* **Legitimacy** (Presumption of legitimacy—Rebuttal—Evidence of use of contraceptives).**CONTRACT**Acceptance. *See* **Offer and acceptance**—Acceptance, *post*.Accord and satisfaction. *See* **Accord and satisfaction**.

CONTRACT (cont)

Action—

Service out of the jurisdiction—

Contract governed by English law. *See* **Practice** (Service out of the jurisdiction—Action on contract governed by English law).

Adoption by receiver and manager of company. *See* **Company** (Receiver—Appointment by debenture-holder—Powers of receiver—Adoption of contracts made between company and unsecured creditors).

Agency agreement—

Proper law of contract. *See* **Conflict of laws** (Contract—Proper law of contract—Agency agreement).

Agent—

Company secretary—

Ostensible authority to make contract. *See* **Company** (Secretary—Authority—Ostensible authority—Power to make contracts).

Generally. *See* **Agent** (Contract).

Undisclosed principal—

Estoppel—No trust relationship with other party to contract. *See* **Estoppel** (Res judicata—Undisclosed principal—Action by agent).

Anticipatory breach—

Repudiation. *See* **Repudiation**—Anticipatory breach, *post*.

Arbitration. *See* **Arbitration**.

Arbitration—

Conflict of laws. *See* **Conflict of laws** (Contract—Arbitration).

Bailment. *See* **Bailment**.

Bank—

Duty of care to customer. *See* **Bank** (Duty of care—Contractual duty to exercise care and skill).

Benefit of infant—

Apprenticeship. *See* **Master and servant** (Apprenticeship—Benefit of infant).

Benefit of infant. *See* **Minor** (Assignment of property—Copyright).

Bill of lading—

Contract of carriage—

Scope of contract. *See* **Shipping** (Bill of lading—Scope of contract of carriage).

Evidence of contract. *See* **Shipping** (Bill of lading—Evidence of the contract).

Breach—

Anticipatory breach—

Renunciation and impossibility—What measure of delay in loading under a charterparty entitles shipowner to rescind—Whether events other than those known at date of rescission may be taken into consideration. **Universal Cargo Carriers Corp v Citati** [1957] 3 234, CA.

Repudiation. *See* **Repudiation**—Anticipatory breach, *post*.

Carriage by sea—

Damages. *See* **Shipping** (Carriage by sea—Damages for breach of contract).

Causation—

Default of sub-contractor—Liability of contractor—Contract by defendant to deliver plant to plaintiff—Contract between defendant and sub-contractor to dismantle plant—Delay in delivery to plaintiff through fault of sub-contractor. **Victoria Laundry Windsor Ltd v Newman Industries Ltd (Coulson & Co Ltd, Third Party)** [1949] 1 997, CA.

Negligent act of plaintiff—Breach of contract creating opportunity for plaintiff to injure himself—Implied contractual term to supply equipment to independent contractor for building work on site—Negligent use by contractor of substitute for equipment not supplied—Whether action by him for damages for personal injuries, based on breach of contract, failed by reason of his negligence causing his injury—Law Reform (Contributory Negligence) Act 1945, s 1(1). **Quinn v Burch Brothers (Builders) Ltd** [1966] 2 283, CA.

Damages. *See* **Damages for breach**, *post*.

Fundamental breach. *See* **Fundamental breach**, *post*.

Inducement to commit breach of contract—

Tort. *See* **Tort** (Inducement to commit breach of contract).

Injunction. *See* **Injunction** (Breach of contract).

Place of commission of breach—

Contract to deliver cargo to one port in United Kingdom to be nominated by plaintiffs—Breach when cargo abroad before nomination—Whether breach committed in England—RSC Ord 11, r 1(e). **Cuban Atlantic Sugar Sales Corp v Compania de Vapores San Elefeterio Limitada** [1960] 1 141, CA.

Repudiation implied from breach. *See* **Repudiation**—Implied repudiation—Repudiation implied from breach, *post*.

Sale of goods. *See* **Sale of goods** (Breach of contract).

Sale of land. *See* **Sale of land** (Breach of contract).

Threat—

Intimidation. *See* **Tort** (Intimidation—Unlawful act—Threat to break contract).

CONTRACT (cont)

Breach (cont)—

Waiver—

- Conduct amounting to waiver—Contract for sale of goods—Stipulation as to payment—Currency of account—Confirmed irrevocable letter of credit—Credit not conforming with contract—Contractual currency of account Kenya shillings—Credit expressed to be payable in sterling—Sellers not objecting—Sellers drawing on credit in part—payment—Sellers making out invoice for balance of goods in sterling—Sterling devalued in relation to Kenya shillings—Sellers presenting documents including invoice to confirming bank on day of devaluation—Sellers subsequently claiming against buyers difference between contract price in Kenya shillings and amount of Kenya shillings realisable in exchange for amount of sterling payment—Whether sellers had waived contractual stipulation as to currency of account—Whether necessary to show buyers had acted to their detriment in order to establish waiver. **W J Alan & Co Ltd v El Nasr Export & Import Co** [1972] 2 127, CA.
- Contract amounting to waiver—Contract for sale of residue of lease—Condition that property be free from adverse entry in land charges register—Contract giving purchaser right to negotiate with reversioner on behalf of vendor for acquisition of freehold—After contract vendor and purchaser informed property listed as historic building—Purchaser pursuing negotiations with reversioner—Negotiations breaking down—Purchaser requiring de-listing of property before date for completion—Vendor unable to secure de-listing in time available—Whether purchaser having waived condition as to adverse entries—Whether purchaser entitled to rescind contract. **Aquis Estates Ltd v Minton** [1975] 3 10, CA.
- Prospective breach—Inaction—Knowledge that other party would or might commit breach—Right to terminate contract on breach—Whether failure to take action in knowledge of prospective breach capable of constituting waiver of right to terminate contract on breach being committed. **China National Foreign Trade Transportation Corporation v Evlogia Shipping Co SA of Panama** [1976] 3 865, QBD.

Building contract. *See* **Building contract**.

C and f contract. *See* **Sale of goods (C and f contract)**.

Carriage—

Carriage by sea—

Damages for breach of contract. *See* **Shipping (Carriage by sea—Damages for breach of contract)**.

Goods. *See* **Carriers (Contract—Carriage of goods)**.

Indemnity—

Negligence. *See* **Indemnity (Negligence—Contract of carriage)**.

Passengers. *See* **Carriers (Contract—Carriage of passengers)**.

Certainty. *See* **Enforceability—Certainty of terms, post**.

Chain of contracts—

Whether genuine transactions. *See* **Agent (Creation of agency—Agency for entering into contract)**.

Charterparty. *See* **Shipping (Charterparty)**.

C i f contract. *See* **Sale of goods (C i f contract)**.

Collateral contract—

Hire-purchase. *See* **Hire-purchase (Collateral agreement)**.

Illegality—

Enforceability. *See* **Illegality—Enforceability of contract—Collateral contract, post**.

Promise or assurance as to future conduct—

Inducement to enter into contract—Assurance as to way in which contract would be carried out—Promisee entering into contract on strength of assurance—Whether assurance enforceable as a collateral contract. **J Evans & Son (Portsmouth) Ltd v Andrea Merzario Ltd** [1976] 2 930, CA.

Commission—

Agreement to pay commission in return for introduction—

Amount to be agreed—Refusal to pay commission after introduction made—Whether agreement binding—Amount of commission—Application to all subsequent transactions. **British Bank for Foreign Trade Ltd** [1949] 1 155, CA.

Common mistake. *See* **Mistake—Common mistake, post**.

Condition—

Breach—

Effect—Right of other party to terminate contract forthwith—Written contract—Clause of contract expressed to be a 'condition'—Breach of clause—Breach trivial—Whether breach entitling other party to repudiate contract. **L Schuler, A G v Wickman Machine Tool Sales Ltd** [1973] 2 39, HL.

Election whether to affirm or not—Delay. **Allen v Robles** [1969] 3 154, CA.

Carriage of goods. *See* **Carriers (Contract—Carriage of goods—Conditions)**.

Condition precedent. *See* **Condition precedent, post**.

Incorporation in contract—

Course of dealing—Exception clause—Oral contract between garage and car owner—Owner requesting garage to repair car—Manager of garage instructing owner to bring car to garage so that defects could be attended to—Garage's normal practice to supply 'invoice' form to be signed by customer—Form including clause stating garage not responsible for damage caused by fire to customers' cars on premises—Car owner having had car repaired at garage on four occasions in previous five years—Car owner having signed 'invoice' on at least two occasions—Whether exception clause incorporated in oral contract by reason of previous course of dealing. **Hollier v Rambler Motors (AMC) Ltd** [1972] 1 399, CA.

Notice—Exception clause—Automatic car park—Notice at entrance showing charges and stating that cars parked 'at owners risk'—Ticket issued automatically by machine on driving car into entrance—Ticket stating that issued subject to conditions displayed on premises—Conditions displayed including clause exempting garage owners' liability for injury to customers on premises—Whether exception clause incorporated in contract. **Thornton v Shoe Lane Parking Ltd** [1971] 1 686, CA.

CONTRACT (cont)

Condition (cont)—

Incorporation in contract (cont)—

Notice—Exception clause—Hotel—Notice in hotel bedroom exempting proprietor from liability for guest's property lost or stolen—Not part of contract between parties—Insufficient clarity of terms. **Olley v Marlborough Court Ltd** [1949] 1 127, CA.

Written document—Conditions printed on back of document—Contract of bailment—Condition excluding liability of bailees. **J Spurling Ltd v Bradshaw** [1956] 2 121, CA.

Incorporation in contract—Trade usage—1974 11059

Incorporation in contract—

Trade usage—Oral contract in course of trade—Contract of hire—Conditions of hire in common use in trade to knowledge of both parties—Suppliers' printed conditions in similar terms to conditions in common use—Contract made orally by hirers to hire crane from suppliers—Suppliers' printed conditions making hirers liable for damage to crane—Hirers not having signed form containing printed conditions before damage occurring to crane—Whether printed conditions incorporated into oral contract. **British Crane Hire Corp Ltd v Ipswich Plant Hire Ltd** [1974] 1 1059, CA.

Insurance policy—

Motor insurance. *See* **Motor insurance** (Conditions).

Sale of goods. *See* **Sale of goods** (Condition).

Condition precedent—

Approval of third party—

Reasonableness of conduct of third party. **Caney v Leith** [1937] 2 532, ChD.

Waiver—

Contract for sale of a holding of shares—Condition precedent precluding vendor's retention of benefit of ownership—Date of passing of beneficial interest in shares—Date before waiver of condition. **Wood Preservation Ltd v Prior (Inspector of Taxes)** [1969] 1 364, CA.

Conditional contract—

Acquisition or disposition deemed to have occurred on fulfilment of condition—

Capital gains. *See* **Capital gains tax** (Short-term gains—Disposal of asset—Disposal within three years of acquisition—Date of acquisition—Contract to acquire or dispose of asset—Conditional contract).

Conflict of laws. *See* **Conflict of laws** (Contract).

Consideration—

Failure of consideration. *See* **Failure of consideration, post**.

Maintenance agreement. *See* **Husband and wife** (Maintenance—Agreement—Consideration).

Nudum pactum—

Offer by mother to maintain daughter on her undertaking legal studies—Subsequent offer to buy large house—Rents from sublettings to provide maintenance—Enforceability. **Jones v Padavatton** [1969] 2 616, CA.

Performance of contractual duty—

Contractual duty to third party—Whether performance of duty to third party capable of constituting consideration. **The New Zealand Shipping Co Ltd v A M Satterthwaite & Co Ltd** [1974] 1 1015, PC.

Performance of statutory duty—

Undertaking by father of illegitimate child to pay towards maintenance by mother—Condition that child should be well looked after and happy—Condition fulfilled by mother. **Ward v Byham** [1956] 2 318, CA.

Rectification claim—

Separation deed amended by supplemental agreement—Possible claim for rectification as consideration for amending agreement. **Horton v Horton** [1960] 3 649, CA.

Undertaking by divorced husband to pay allowance to wife—

No request that wife should abstain from applying for maintenance order. **Combe v Combe** [1951] 1 767, CA.

Construction—

Conduct of parties—

Conduct subsequent to execution of contract—Conduct not relevant to ascertaining intention of parties. **James Miller and Partners Ltd v Whitworth Street Estates (Manchester) Ltd** [1970] 1 796, HL.

Conduct subsequent to execution of contract—Written agreement—Relevance of conduct in ascertaining intention of parties. **L Schuler A G v Wickman Machine Tool Sales Ltd** [1973] 2 39, HL.

Contract subject to rules of Liverpool Cotton Association—

Failure of cotton crop—'Timely fulfilment of contract...rendered impossible owing to...force majeure'—Contract closed by being invoiced back—Difference payable by sellers—Rules of Liverpool Cotton Association, rr 48, 53, 227(8). **Podar Trading Co Ltd, Bombay v Francois Tagher, Barcelona** [1949] 2 62, KBD.

Exception clause—

General words—Clear intention of parties. **James Archdale & Co Ltd v Comservices Ltd** [1954] 1 210, CA.

'Normal working of the contract'—Consideration of commitments under other contracts—Shortage of supply. **Pool Shipping Co Ltd v London Coal Co of Gibraltar Ltd** [1939] 2 432, KBD.

Primary object of clause in agreement to relieve defendant from liability for breach of contract—Hire of tricycle—Exclusion of liability for personal injuries to riders—Owners' liability for negligence. **White v John Warrick & Co Ltd** [1953] 2 1021, CA.

'Subject to force majeure and shipment'—Sale of goods—Goods shipped but delivered in fulfilment of other contracts—Insufficient goods shipped to satisfy all contracts—Whether breach of contract. **Hong Guan & Co Ltd v Jumabhoj & Sons Ltd** [1960] 2 100, PC.

CONTRACT (cont)

Construction (cont)—

Exception clause (cont)—

Tenancy agreement including agreement for tenant's goods to be packed exclusively by landlord—Packing agreement expressed to be subject to conditions set out in schedule to agreement—Exception clause in schedule—Landlord not 'in any circumstances' to be responsible for damage caused by water to any goods—Tenant's goods damaged by escape of water from cistern in water closet—Water closet in landlord's possession—Whether landlord liable for damage. **Akerib v Booth & Others Ltd** [1961] 1 380, CA.

Licence necessary for export—

Duty to obtain licence—Whether buyers' or sellers' duty to obtain. **A V Pound & Co Ltd v M W Hardy & Co Inc** [1956] 1 639, HL.

Loan to company—

Waiver of interest—Waiver 'until such time as the company is in a position to pay'—Company induced to continue business—Consideration. **Ledingham v Bermejo Estancia Co Ltd** [1947] 1 749, KBD.

Pre-contract negotiations—

Evidence of surrounding circumstances—Whether court entitled to look at pre-contract negotiations as an aid to construction. **Prenn v Simmonds** [1971] 3 237, HL.

Printed form—

Typed or written insertions—Effect of repugnancy between printed words and typed or written additions. **G H Renton & Co Ltd v Palmyra Trading Corp of Panama** [1956] 3 957, HL.

Written words on printed or typed form—Whether inconsistent printed or typed words rejected. **Neuchatel Asphalte Co Ltd v Barnett** [1957] 1 362, CA.

Sale of business—

Payment for goodwill to be made by annual instalments ascertained in a prescribed manner—Whether excess profits tax deductible before arriving at amount of divisible profits. **L C Ltd (in liquidation) v G B Ollivant Ltd** [1944] 1 510, HL.

Sale of yacht—

Rectification of defects—Purchaser's right to give notice requiring rectification of defects in yacht if material defects 'shall have been found' after survey—Claim by purchaser to give such notice because he honestly believed in existence of material defects, irrespective whether or not they really existed. **Docker v Hyams** [1969] 3 808, CA.

Substance of transaction—

New bipartite trade marketing agreements replacing old multipartite agreements—Alteration made to avoid registration—Whether continuance of multipartite arrangement inferred—Restrictive Trade Practices Act 1956, s 6(1), s 8(3). **Re Austin Motor Co Ltd's Agreements** [1957] 3 62, ChD.

Theatrical engagement—

'Run of play'—Right of owner or producer to determine. **Gubertini v Waller** [1947] 1 746, KBD.

Transfer of shares—

Article of association providing for automatic transmission of shares to director's widow on his death. (decd) [1949] 1 167, ChD.

Undertaking to furnish guarantee—

No third party guarantee furnished—Personal guarantee furnished by party giving undertaking—Whether a good discharge of undertaking. **Heisler v Anglo-Dal Ltd** [1954] 2 770, CA.

Contract for services—

Effectiveness of work—

Cleaning of suit of clothes—Dermatitis—Proof. **Mayne v Silvermere Cleaners Ltd** [1939] 1 693, Assizes.

Work done by experts—Treatment of dry-rot—Ten year guarantee against reinfestation—Whether specialists' obligation extended or limited by warranty—Ordinary canons of construction applied—'Guarantee'—'And'. **Adams v Richardson and Starling Ltd** [1969] 2 1221, CA.

Fitness of materials for particular purpose—

Hair dye producing dermatitis—Preliminary test negative—Customer failing to disclose ill effects suffered on previous occasion. **Ingham v Ernest** [1955] 2 740, CA.

Contract of carriage—

Scope of contract—

Bill of lading. *See* **Shipping** (Bill of lading—Scope of contract of carriage).

Contract of service—

Loan of servant—

Vicarious liability. *See* **Vicarious liability** (Loan of servant—Contract of service).

Contract to negotiate—

Enforceability. *See* **Enforceability**—Contract to negotiate, *post*.

Copyright—

Assignment by minor. *See* **Minor** (Assignment of property—Copyright).

Damages for breach—

Alternative heads of damage—

Capital cost or loss of profit—Sale of machine—Breach of warranty of performance—Option of buyer to recover capital loss or loss of profit. **Cullinane v British 'Rema' Manufacturing Co Ltd** [1953] 2 1257, CA.

Anticipatory breach—

Charterparty—Undertaking by owners as to expected readiness of vessel—Charterers cancelling before date when option to cancel became exercisable—Whether owners entitled only to nominal damages. **Maredelanto Compania Naviera SA v Bergbau-Handel GmbH** [1970] 3 125, HL.

Carriage by sea—

Loss of or damage to goods. *See* **Shipping** (Carriage by sea—Damages for breach of contract—Loss of or damage to goods).

CONTRACT (cont)**Damages for breach (cont)—****Concerted action—**

Refusal to work—Refusal after issue of writ—Contract by colliery deputy to work such days as reasonably required—Refusal in concert with other deputies to work Saturdays extending over several months—Writ issued after first Saturday's abstention from work—Relevance of breach being in concert to assessment of damages—Whether damages for failure to work Saturdays after issue of writ recoverable in the action—RSC Ord 36, r 58. **National Coal Board v Galley** [1958] 1 91, CA.

County court—

Transfer of action to High Court. *See County court* (Transfer of action—Transfer to High Court—Action founded on contract or tort).

Damages payable by plaintiff for breach of other contract—

Illegal performance by plaintiff of other contract—No moral turpitude. **Marles v Philip Trant & Sons Ltd (Mackinnon, Third Party) (No 2)** [1953] 1 651, CA.

Date at which damages assessed—

Sale of goods c i f—Election by buyers to accept sellers' repudiation on Jan 24—Failure of sellers, if contract had continued, to send shipping documents, which would have reached buyers on Feb 4—Damages, difference between value and contract price, assessed at Feb 4. **Garnac Grain Co Inc v H M F Faure & Fairclough Ltd and Bunge Corp** [1967] 2 353, HL.

Sale of goods c i f—Shipment after contract date—Forged date on bills of lading—Goods accepted by buyers with knowledge of late shipment—Fall in market price of goods—Discovery of forgery—Goods virtually unsaleable. **Chao (Trading as Zung Fu Co) v British Traders and Shippers Ltd (n v Handelsmaatschappij (J Smits Import-Export Third Party))** [1954] 3 165, QBD.

Delay—

Deprivation of use of chattel—Machine let on hire for short periods—Machine idle for one week through delay in transit. **Sunley & Co Ltd v Cunard White Star Ltd** [1940] 2 97, CA.

Devaluation—

C i f contract containing provision for incidence of revaluation of currency—Devaluation taking place after failure of sellers to ship on agreed date—Whether buyers entitled to recover as damages for breach of contract the amount of the contractual increase in price consequent on devaluation. **Aruna Mills Ltd v Dhanrajmal Gobindram** [1968] 1 113, QBD.

Expenditure incurred before contract made—

Expenditure recoverable if within contemplation of parties as likely to be wasted if contract broken—Television company incurring expenditure in respect of proposed film—Expenditure on fees to director, designer and stage managers, before contract made with leading actor—Leading actor subsequently repudiating contract—Television company entitled to recover pre-contract expenditure—Necessity to elect between claiming for wasted expenditure and loss of profits. **Anglia Television Ltd v Reed** [1971] 3 690, CA.

Foreign currency—

Judgment. *See Judgment* (Payment of sum of money—Foreign currency).

Foreseeable consequence of breach—

Application of rule in **Hadley v Baxendale**. **The Herron II** [1966] 2 593, CA.

Head or type of damage in contemplation of parties at date of breach—Quantum of damage under that head not foreseeable—Whether plaintiff entitled to damages in respect of whole of damage sustained under that head. **Wroth v Tyler** [1973] 1 897, ChD.

Sale of chemical for industrial use—No adequate warning to purchaser of danger of chemical reacting violently to water—Violent explosion causing death and damage—Small explosion from reaction of chemical to water foreseeable—Major explosion not reasonably foreseeable—Whether damage too remote to be reasonable. **Vacwell Engineering Co Ltd v B D H Chemicals Ltd** [1969] 3 1681, QBD.

Sale of goods—Loss of profit—Payment by confirmed letter of credit—Failure to procure confirmation—Knowledge of parties that subject-matter of sale unobtainable by sellers without confirmation. **Trans Trust SPRL v Danubian Trading Co Ltd** [1952] 1 970, CA.

Series of contracts—Plaintiffs compromising claim by ultimate purchaser—Liability of original vendor to plaintiffs—Warranties added to succeeding contracts. **Biggin & Co Ltd v Permanite Ltd (Berry Wiggins & Co Ltd, Third Parties)** [1951] 2 191, CA.

Harmful publicity—

Failure to deliver goods—Goods already advertised—Loss of co-operation of advertisers. **Foaminol Laboratories Ltd v British Artid Plastics Ltd** [1941] 2 393, KBD.

Income tax. *See Income tax* (Capital or income receipts—Damages—Breach of contract).**Inconvenience, mental distress etc—**

Damages for inconvenience and discomfort only. **Bailey v Bullock** [1950] 2 1167, KBD.

Damages for mental distress not recoverable. **Cook v S** [1967] 1 99, CA.

Package holiday—Brochure representing facilities available on holiday—Facilities lacking—Plaintiff entitled to compensation for loss of entertainment and enjoyment—Damages not restricted to physical inconvenience—Vexation and disappointment relevant considerations in assessing compensation—Holiday costing £63—Plaintiff entitled to an award of £125 damages. **Jarvis v Swans Tours Ltd** [1973] 1 71, CA.

Interest. *See Interest* (Damages—Breach of contract).

CONTRACT (cont)**Damages for breach (cont)—****Loss of or damage to goods—**

Proprietary interest in goods as a prerequisite of right to claim substantial damages—Exception—Circumstances in which party to contract having no proprietary interest in goods entitled to substantial rather than nominal damages—Parties contemplating property in goods might be transferred from party to contract to third party after contract entered into and before occurrence of breach causing loss—No privity of contract between defendant and third party—Right of plaintiffs to claim substantial damages for benefit of third party. **The Albazero** [1976] 3 129, HL.

Loss of pension rights—

Allowance for income tax prospectively payable by pensioner in respect of his pension. **Re Houghton Main Colliery Co Ltd** [1956] 3 300, ChD.

Loss of profit—

Reduction of turnover—Coupons material supplied for manufacture—Failure to deliver manufactured articles. **Kliger v Sadwick** [1947] 1 840, KBD.

Loss of publicity—

Screen credit—Author of screen play. **Tolnay v Criterion Films Productions Ltd** [1936] 2 1625, KBD.

Mental distress—

Relegation of employee to position of lesser responsibility—Relegation in breach of contract—Vexation, frustration and distress suffered by employee leading to ill health—Distress in contemplation of parties as likely consequence of breach—Whether plaintiff entitled to damages for distress suffered. **Cox v Philips Industries Ltd** [1976] 3 161, QBD.

Solicitor—Circumstances in which damages for mental distress may be recovered against solicitor—Within solicitor's contemplation that mental distress likely to result from failure to perform contract with client—Solicitor employed by client to apply for injunction to protect her from molestation by man—Interim injunction obtained—Solicitor failing to enforce injunction after further breaches—Client suffering mental distress in consequence of continued molestation—Whether client entitled to recover damages for mental distress. **Heywood v Wellers (a firm)** [1976] 1 300, CA.

Mitigation. See Damages (Mitigation of loss).**Mitigation of loss—**

Controlled maximum sale price of goods—Covenant for re-sale at maximum price less depreciation—Whether damages for breach of covenant should be assessed on the basis that covenantee might buy at enhanced price in surreptitious market. **Mouatt v Betts Motors Ltd** [1958] 3 402, PC.

Expenses reasonably incurred in mitigation—Vendor of caravan warranting that it was his unencumbered property—Caravan taken by sheriff out of purchaser's possession—Claim made by purchaser at vendor's instigation to property in caravan—Interpleader by sheriff—Purchaser's claim withdrawn—Whether costs of interpleader proceedings recoverable by purchaser as damages for breach of warranty—Sale of Goods Act 1893, s 53(2). **Lloyds and Scottish Finance Ltd v Modern Cars and Caravans (Kingston) Ltd** [1964] 2 732, QBD.

Owner having sufficient other goods to satisfy demand for hirings. **Interoffice Telephones Ltd v Robert Freeman Co Ltd** [1957] 3 479, CA.

Resale to another purchaser at same price—Seller able to find purchaser for every such car that he could get from manufacturers—Sale of Goods Act 1893, s 50(2), (3). **Charter v Sullivan** [1957] 1 809, CA.

Sale of goods—Lawful rejection by buyer—Later repurchase at a profit by buyer from same seller—Whether profit accountable in mitigation—Continuous dealing between parties—Sale of Goods Act 1893, s 51(3). **R Pagnan & Fratelli v Corbisa Industrial Agropacuaría Limitada** [1971] 1 165, CA.

Vendor returning motor car to suppliers—'Available market'—Sale of Goods Act 1893, s 50(3). **W L Thompson Ltd v R Robinson (Gunmakers) Ltd** [1955] 1 154, ChD.

Palestine. See Palestine (Damages—Breach of contract).**Reinstatement—**

Old factory destroyed by fire rebuilt to new, modern design—Cost of reinstating factory proper measure—Credit for betterment not required to be given merely because old building replaced with new one of modern design. **Harbutt's Plasticine Ltd v Wayne Tank and Pump Co Ltd** [1970] 1 225, CA.

Remoteness of damage—

Conflict of laws—Law applicable to question of remoteness. **J D'Almeida Araujo Lda v Sir Frederick Becker & Co Ltd** [1953] 2 288, QBD.

Contract by defendant to form company—Agreement by plaintiff to contribute capital—Sale of shares to provide funds—Contract repudiated by defendant—Shares repurchased at enhanced cost—Recovery of excess. **Collins v Howard** [1949] 2 324, CA.

Functions of judge and jury—Direction by judge—Finding by jury—Duty of arbitrator—Devaluation of pound sterling—Delay in payment of freight—Loss on conversion into foreign currency. **Mehmet Dogan Bey v G G Abdeni & Co Ltd** [1951] 2 162, KBD.

Sale of goods—

Indemnity against claims by sub-purchaser—Failure of seller to delivery goods—Consequent inability of purchaser to deliver to sub-purchaser—Right of purchaser to indemnity against claims by sub-purchaser. **Household Machines Ltd v Cosmos Exporters Ltd** [1946] 2 622, KBD.

Loss directly and naturally resulting from breach of warranty—Purchase of second-hand typewriter—Purchaser arranging for typewriter to be overhauled—Subsequent discovery typewriter stolen—Whether cost of overhaul 'loss directly and naturally resulting...from the breach of warranty'—Sale of Goods Act 1893, s 53(2). **Mason v Burningham** [1949] 2 134, CA.

CONTRACT (cont)**Damages for breach (cont)—****Sale of goods (cont)—**

Loss of profit on resale—Failure to deliver—No available market—Goods bought with a view to resale—Measure of loss or profit—Percentage of agreed purchase price. **Household Machines Ltd v Cosmos Exporters Ltd** [1946] 2 622, KBD.

Non-acceptance—Estimated loss directly and naturally resulting from breach—Available market—Secondhand car—Sale by dealer in secondhand cars—Repudiation of contract by buyer—Subsequent sale of car at higher price—Secondhand cars unique items—No available market—Not in contemplation of buyer that in consequence of repudiation seller would sell one less car out of total sales of secondhand cars—Whether seller entitled to damages—Sale of Goods Act 1893, s 50(2)(3). **Lazenby Garages Ltd v Wright** [1976] 2 770, CA.

Sale of land. *See* **Sale of land** (Damages for breach of contract).

Special damage—

Need to plead. *See* **Pleading** (Damage—Special damage—Need to plead—Breach of contract).

Termination of contract without repudiation—

Contract terminated, by party not in breach, under option so to do. **Financings Ltd v Baldock** [1963] 1 433, CA, **Brady v St Margaret's Trust Ltd** [1963] 2 275, CA.

Third party—

Entitlement—Contract made by plaintiff for benefit of himself and third party—Loss suffered by third party in consequence of breach of contract—Plaintiff not a trustee for third party—Whether plaintiff entitled to recover damages in respect of loss suffered by third party. **Jackson v Horizon Holidays Ltd** [1975] 3 92, CA.

Trade union—

Expulsion of member. *See* **Trade union** (Expulsion of member—Damages—Action by member against union for breach of contract).

Wrongful dismissal—

Income tax—Incidence on first £5,000 of award of damages for loss of earnings of over £5,000—Liability of employer under staff pension and assurance scheme and under discretionary pension and life assurance scheme—Finance Act 1960, s 38(2). **Bold v Brough, Nicholson & Hall Ltd** [1963] 3 849, QBD.

Income tax—Lost earnings—Whether income tax on lost earnings to be taken into account in assessing damages—Finance Act 1960, s 37, s 38, Sch 4, para 13. **Parsons v BNM Laboratories Ltd** [1963] 2 658, CA.

Redundancy payment—Whether redundancy payment to be taken into account in assessing damages. **Stocks v Magna Merchants Ltd** [1973] 2 329, QBD, **Yorkshire Engineering and Welding Co Ltd v Burnham** [1973] 3 1176, NIRC.

Refusal of re-employment—Director—Managing director of subsidiary company—Control of subsidiary company acquired by another company—Offers of employment made by former parent company both before and after wrongful dismissal—Whether duty of plaintiff to accept such offers of other employment. **Shindler v Northern Raincoat Co Ltd** [1960] 2 239, Assizes.

Refusal of re-employment—Joint managing director—Whether reasonable for dismissed joint managing director to refuse re-employment at same salary as assistant managing director—Whether justified in seeking employment initially at same remuneration as previously. **Yetton v Eastwoods Froy Ltd** [1966] 3 353, QBD.

Unemployment benefit—Whether unemployment benefit to be taken into account in assessing damages. **Parsons v BNM Laboratories Ltd** [1963] 2 658, CA.

Death—**Executors and administrators—**

Liability for contractual obligations of deceased. *See* **Executor and administrator** (Contract—Liability of administrator).

Delay—

Frustration. *See* **Frustration**—Delay, *post*.

Delivery—

Sale of goods. *See* **Sale of goods** (Delivery).

Deposit—

Sale of land. *See* **Sale of land** (Deposit).

Description—**Charterparty—**

Description of vessel. *See* **Shipping** (Charterparty—Description of vessel).

Devise of benefit of contract. *See* **Administration of estates** (Devise—Benefit of contract).

Disclaimer—

Administration of deceased's estate. *See* **Administration of estates** (Contract entered into by testator—Disclaimer of contract).

Document mistakenly signed—

Non est factum. *See* **Document** (Non est factum).

Duration of contract. *See* **Time**—Duration of contract, *post*.

Duress—

Contract with body having monopoly—

Petroleum board having right to supply petrol—Conditions of contract excluding liability of board for short measure—Whether contract obtained by undue influence or duress. **Eric Gnapp Ltd v Petroleum Board** [1949] 1 980, CA.

Duress not sole reason for entering into contract—

Evidence that party would have entered into contract in absence of duress—Threats of bodily harm made by one party against other party—No burden on party threatened to show that but for threats no agreement would have been made—Agreement void unless party who made threats can show that threats contributed nothing to other party's decision to enter agreement. **Barton v Armstrong** [1975] 2 465, PC.

Election whether to affirm or not—

Breach of condition. *See* **Condition**—Breach—Election whether to affirm or not, *ante*.

CONTRACT (cont)

Electricity—

Contract for supply—

Termination—Canada. *See* **Canada** (Electricity—Power supply—Contract to supply for the mining life of a property).

Emergency legislation—

Effect on contract. *See* **Emergency legislation** (Contract).

Employment—

Generally. *See* **Master and servant** (Contract of service).Inducement to commit breach. *See* **Trade dispute** (Acts done in contemplation or furtherance of trade dispute—Inducement to commit breach of contract of employment).Period of continuous employment. *See* **Employment** (Continuity).

Enforceability—

Certainty of terms—

Acceptance subject to 'war clause'—Uncertainty as to terms of clause—Consensus ad idem. **Bishop and Baxter Ltd v Anglo Eastern Trading and Industrial Co Ltd** [1943] 2 598, CA.Agreement 'subject to force majeure conditions'—Variety of force majeure conditions in trade—No concluded agreement. **British Electrical & Associated Industries (Cardiff) Ltd v Patley Pressings Ltd, Reid Bros (Glasgow) Ltd (Third Party) Douglas Scott Ltd Fourth Party** [1953] 1 94, QBD.'Approximating to'—Agreement for payment of sum approximating to total of contributions to pension fund—Whether agreement too vague. **Edwards v Skyways Ltd** [1964] 1 494, QBD.Price to be discharged 'on hire-purchase terms'—Hire-purchase terms not settled by parties—Whether concluded agreement—Whether transaction sale of goods—Sale of Goods Act 1893, s 4. **Scammell v Ouston** [1941] 1 14, HL.Sale of land—Purchase price—Instalments—Purchase price 'to be phased' as to one-half 'upon first completion', one-quarter 12 months thereafter and balance a further 12 months thereafter—On 'each completion a proportionate part of the land' to be released to purchaser—Whether contract void for uncertainty. **Bushwall Properties Ltd v Vortex Properties Ltd** [1976] 2 283, CA.Service agreement—Agreement to work such days or part days in each week as may reasonably be required by management. **National Coal Board v Galley** [1958] 1 91, CA.Term fundamental to contract—Price—No agreed method of ascertaining price—Building contract—Price to be settled by negotiation—Agreement 'to negotiate fair and reasonable contract sums'—Whether a concluded contract. **Courtney and Fairbairn Ltd v Tolaini Brothers (Hotels) Ltd** [1975] 1 716, CA.Uncertainty—Term not void for uncertainty unless court cannot resolve ambiguity. **Fawcett Properties Ltd v Buckingham County Council** [1960] 3 503, HL.

Contract to negotiate—

Agreement that fundamental term of contract should be negotiated—Agreement supported by consideration—No agreement to refer negotiations to third party—Building contract—Price—Price to be negotiated by parties—No method of ascertaining price—No provision for failure of negotiations—Whether contract to negotiate enforceable. **Courtney and Fairbairn Ltd v Tolaini Brothers (Hotels) Ltd** [1975] 1 716, CA.

Discretion conferred on one party—

Discretion enabling party to avoid all obligations under contract—Agreement to publish for building company—Publication free of charge—Publishers freed from obligation of publishing if in their opinion insufficient advertising to justify it—Whether binding contract. **Re Brand Estates Ltd** [1936] 3 374, ChD.Illegality. *See* **Illegality**—Enforceability of contract, *post*.

Intention that no legal interest be created—

Agreement between parties—Offer by mother to maintain daughter on her undertaking legal studies—Subsequent offer to buy large house—Rents from sublettings to provide maintenance—No written terms and some undetermined. **Jones v Padavatton** [1969] 2 616, CA.Intention to create legal relationship. *See* **Intention to create legal relationship**, *post*.Persons not parties, by. *See* **Stranger to contract**, *post*.

Understanding—

No binding legal contract created—Solicitors stating in correspondence their 'understanding' that they would be employed for all legal work on development of building site. **J H Milner & Son v Percy Bilton Ltd** [1966] 2 894, QBD.

Vagueness—

Meaningless clause—Agreement that 'usual conditions of acceptance apply'—No explicit agreement on 'conditions of acceptance'—No usual conditions of acceptance—Words to be ignored as being meaningless. **Nicolene v Simmonds** [1953] 1 822, CA.Payment of solicitor's costs—Action against local government officer—Corporation undertaking to assist in paying or contributing to costs of action. **Armstrong, Taylor and Whittaker v Oldham Corp'n** [1937] 2 577, Assizes.

Want of mutuality—

Rent-controlled flat—Agreement by tenant to give up possession in return for payment by landlord—Whether agreement unenforceable for want of mutuality. **Rajbenbach v Mamon** [1955] 1 12, QBD.

Estate contract—

Land charge. *See* **Land charge** (Estate contract).

Exception clause—

Auction—

Conditions of sale. *See* **Auction** (Conditions of sale—Exclusion of liability).

CONTRACT (cont)

Exception clause (cont)—

Bailment—

'All goods left at customer's risk'—Fur coat delivered for storage—Failure to re-deliver—Coat lost—No satisfactory explanation how loss occurred. **Woolmer v Delmer Price Ltd** [1955] 1 377, QBD.

Clause exempting bailees from liability for any loss or damage however caused—Negligence of bailees but no radical breach of contract—Whether bailees protected by exemption clause. **J Spurling Ltd v Bradshaw** [1956] 2 121, CA.

Clause exempting garage proprietors from responsibility for loss or misdelivery of cars—Car delivered to person known not to be owner—Larceny by trick—Whether loss or misdelivery of car within exemption clause. **Hollins v J Davy Ltd** [1963] 1 370, QBD.

Clause limiting liability for loss—Liability only in cases of negligence—Limitation clause applicable to claim for lost articles. **Alderslade v Hendon Laundry Ltd** [1945] 1 244, CA.

Oral promise—Garaging of car—Clause exempting garage proprietors from liability for any loss or damage sustained by the vehicle, its accessories or contents—Oral promise by garage attendant that car would be locked—Car not locked—Property stolen from car—Whether loss of property within exception clause—Whether garage proprietors liable. **Mendelsohn v Normand Ltd** [1969] 2 1215, CA.

Bailment. *See* **Bailment** (Bailment for reward—Liability of bailee—Exception clause).

Carriage of goods. *See* **Carriers** (Contract—Carriage of goods—Conditions—Exception clause).

Construction. *See* **Construction**—Exception clause, *ante*.

Effect of fundamental breach on. *See* **Fundamental breach**.

Exclusion of applicability of exception clause—

Fundamental breach. *See* **Fundamental breach**—Effect on exception clause—Exclusion of applicability of exception clause, *post*.

Implied term. *See* **Implied term**—Exception clause, *post*.

Incorporation in contract—

Course of dealing. *See* **Conditions**—Incorporation in contract—Trade usage, *ante*.

Notice. *See* **Conditions**—Incorporation in contract—Notice—Exception clause, *ante*.

Innocent misrepresentation as to extent of clause—

Receipt containing exception clause—Receipt given by cleaners for wedding dress—Assistant stating clause exempted liability for damage to sequins and beads on dress—Clause exempting liability for damage 'however caused'—Whether cleaners precluded from relying on exception. **Curtis v Chemical Cleaning & Dyeing Co Ltd** [1951] 1 631, CA.

Marine insurance—

Freight. *See* **Marine insurance** (Freight—Exemption clause).

Generally. *See* **Marine insurance** (Excepted perils).

Negligence—

Express language—Exemption from liability for negligence—Lease containing clauses exempting lessor from liability for damage to property leased or goods therein and providing indemnity against claims by third parties—Need of express language to exempt from liability for negligence—Existence of other ground of damage. **Canada Steamship Lines Ltd v Regem** [1952] 1 305, PC.

Oral term in written contract—

Repugnancy—Contract incorporating printed conditions of trade—Printed conditions containing exception clause—Exception clause repugnant to oral promise rendering it illusory—Whether oral term should be treated as overriding exception clause. **J Evans & Son (Portsmouth) Ltd v Andrea Merzario Ltd** [1976] 2 930, CA.

Passenger in vehicle—

Exclusion of liability. *See* **Negligence** Volenti not fit injuria—Consent to risk of injury—Agreement to exclude liability—Passenger in vehicle).

Shipping—

Exemption of carriers from liability on goods being discharged from ship—Obligation for proper delivery—Construction of general exemption clauses. **Sze Hai Tong Bank Ltd v Rambler Cycle Co Ltd** [1959] 3 182, PC.

Passenger carriage—Passenger injured by fall of gangway—Action against captain and boatswain—Right of company's servants to claim exemption from personal liability. **Adler v Dickson** [1954] 3 397, CA.

Third party—

Benefit of exception clause—Contract constituting offer to third party. *See* **Offer and acceptance**—Acceptance—Unilateral contract—Offer to indefinite number of persons—Performance constituting acceptance—Contract to confer benefit on third party—Contract constituting offer to third party—Exemption clause, *post*.

Transport—

Omnibus—Free travel pass. *See* **Carriers** (Negligence—Exclusion of liability—Passengers—Free pass).

Wording—

Need for clear words to exempt party from liability. **Anglo-Saxon Petroleum Co Ltd v Adamastos Shipping Co Ltd** [1957] 2 311, CA.

Exchange contracts. *See* **Currency control** (Exchange control—Foreign exchange control—Bretton Woods Agreement—Exchange contracts).

Exchange contracts—

Foreign exchange control. *See* **Currency control** (Exchange control—Foreign exchange control—Bretton Woods Agreement—Exchange contracts).

Exchange of contracts—

Sale of land. *See* **Sale of land** (Exchange of contracts).

CONTRACT (cont)

Executor and administrator—

Sale of assets of estate—

Power of one of two or more personal representatives to bind estate. *See* **Executor and administrator** (Dealings with assets of estate—Power of one of two or more personal representatives to bind estate—Contract to sell assets).

Failure of consideration—

Recovery of money paid—

Illegal premium—Premium paid for grant of sub-tenancy of premises subject to the Rent Acts—Payment of premiums prohibited—Tenant a statutory tenant and so unable to sub-let—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 8(1) (2), as amended by Rent and Mortgage Interest Restrictions Act 1939, Sch I. **Gray v Southouse** [1949] 2 1019, KBD.

Sale of goods—Provision for payment against delivery order—Property in the goods remaining in the sellers—Delivery rendered impossible owing to enemy occupation of place of delivery. **Comptoir D'Achat et de Vente du Boerenbond Belge SA v Luis de Ridder Limitada** [1949] 1 269, HL.

Fitness—

Materials—

Contract for work and materials. *See* **Building contract** (Warranty—Implied warranty—Fitness or quality of materials).

F o b contract—

Sale of goods—

Confirmed letter of credit. *See* **Sale of goods** (Payment—Confirmed letter of credit—F o b contract).

Force majeure clause. *See* **Force majeure**.

Formation—

Certainty of terms. *See* **Enforceability**—Certainty of terms, *ante*.

Intention to create legal relations. *See* **Intention to create legal relationship**, *post*.

Sale of land. *See* **Sale of land** (Formation of contract).

Frustration—

Act of God—

Destruction of premises by fire—Telephone installation—Provision for transfer to other premises and for default by hirer. **New System Private Telephones (London) Ltd v Edward Hughes & Co (a firm)** [1939] 2 844, KBD.

Unexplained accident to ship—Onus of proof that accident not due to negligence—Bursting of auxiliary boiler—Accidents of navigation—Carriage of Goods by Sea Act 1924, Sch art IV, r 2(a). **Imperial Smelting Corp Ltd v Joseph Constantine Steamship Line Ltd, The Kingswood** [1941] 2 165, HL.

Building lease. *See* **Frustration**—Change of circumstances—Building lease, *post*.

Change of circumstances—

Agreement for sale of land in Hong Kong during Japanese occupation—Property subject to mortgages—Sale to be free from incumbrances—Purchase price paid in 'military yen'—Mortgages paid off in 'military yen'—Ordinance subsequently enacted whereby vendor liable to pay to mortgages sum greater than purchase price. **Hangkam Kwingtong Woo v Liu Lan Fong** [1951] 2 567, PC.

Building lease—Wartime restrictions imposed prohibiting building—Ninety-nine year lease. **Cricklewood Property and Investment Trust Ltd v Leightons Investment Trust Ltd** [1945] 1 252, HL.

Building sold for development—Building listed under planning legislation as being of special architectural or historic interest—Building included in statutory list after date of contract and before date for completion—Agreed purchase price £1,700,000—Effect of listing to reduce value to £200,000—Whether change of circumstances rendering performance of the contract radically different from what had been undertaken—Whether contract frustrated. **Amalgamated Investment and Property Co Ltd v John Walker & Sons Ltd** [1976] 3 509, CA.

Contract for personal services—Contract between manager and variety artiste—Artiste called up for army service—Contract treated by parties as still subsisting. **Morgan v Manser** [1947] 2 666, KBD.

Contract for personal services—Temporary enforced inability to perform services—Education—Special school—Contract between headmaster and local authority for education of maladjusted child—Headmaster charged with indecency—Enforced absence from school for six months in consequence of charges—Running of school continued by staff—Local authority withdrawing child from school without notice—Headmaster returning to school after dismissal of charges—Whether contract frustrated—Whether local authority liable to pay a term's fee in lieu of notice. **Mount v Oldham Corp** [1973] 1 26, CA.

Exchange restrictions—Foreign law. **Kleinwort Sons & Co v Ungarische Baumwolle Industrie Actiengesellschaft and Hungarian General Creditbank** [1939] 3 38, CA.

Export restrictions—Provision for cancellation if export prohibited—Export prohibited as from future date—Duty of sellers during intervening period. **Ross T Smyth & Co Ltd (Liverpool) v W N Lindsay Ltd (Leith)** [1953] 2 1064, QBD.

Power of court to qualify literal words of contract—Agreement to remain in force during continuance of statutory order—Order continued by different statute and for different reasons. **British Movietonews Ltd v London and District Cinemas Ltd** [1951] 2 617, HL.

Sale of goods—Government order limiting supply except under licence—Seller's refusal to accept licences—Measure of damages. **J Leavey & Co Ltd v George H Hirst & Co Ltd** [1943] 2 581, CA.

Sale of land—Agreement for sale of land in Hong Kong during Japanese occupation. *See* **Frustration**—Change of circumstances—Agreement for sale of land in Hong Kong during Japanese occupation, *ante*.

Sale of land—Compulsory purchase order relating to property made before completion. **Hillingdon Estates Co v Stonefield Estates Ltd** [1952] 1 853, ChD.

CONTRACT (cont)

Frustration (cont)—

Change of circumstances (cont)—

Scarcity of labour to fulfil building contract. **Davis Contractors Ltd v Fareham Urban District Council** [1956] 2 145, HL.

Vesting of undertaking on nationalisation of industry—Service agreement with gas company—Remuneration calculated on capital of company—Frustration of agreement as from vesting date—Gas Act 1948, s 17(3)(b). **Studholme v South Western Gas Board** [1954] 1 462, QBD.

War. *See* Frustration—War, *post*.

Charterparty. *See* Shipping (Charterparty—Frustration).

Contract of service. *See* Master and servant (Contract of service—Frustration).

Delay—

Circumstances in which delay constituted frustration—Charterparty—Delay in charterers' cargo becoming available. **Universal Cargo Carriers Corp v Citati** [1957] 3 234, CA.

Unreasonable delay—Delay not necessarily constituting frustration—Charterparty. **Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd** [1962] 1 474, CA.

Determination of lease—

Impossibility of performance—Whether doctrine of frustration applicable to demise of real property. 194820141 *See* Landlord and tenant (Determination of lease—Impossibility of performance)—Frustration—Whether doctrine of frustration applicable to demise of real property).

Force majeure—

Charterparty—Blocking of Suez Canal—Alternative longer route—Construction of charterparty—Whether charterparty frustrated by closing of canal—Basis of doctrine of frustration—Whether frustrating event must have been unforeseen at the time of the contract. **Société Franco Tunisienne D'Armement v Sidermar SPA** [1960] 2 529, QBD.

Charterparty—Blocking of Suez Canal—Alternative longer route—Time charterparty—Self-induced delay no ground for frustration—Doctrine applied on hypothetical basis, as if delay not self-induced—Basis of doctrine of frustration—Whether frustrating event must have been unforeseen at the time of contract—Whether charterparty frustrated. **Ocean Tramp Tankers Corp v V/O Sovfracht** [1964] 1 161, CA.

Charterparty—Seizure of ship by forces not recognised as belligerents. **W J Tatem Ltd v Gamboa** [1938] 3 135, KBD.

Delivery of goods 'subject to export licence'—Minimum export prices fixed in excess of contract prices. **Brauer & Co (Great Britain) Ltd v James Clark (Brush Materials) Ltd** [1952] 2 497, CA.

Sale of goods—C i f contract—Closing of Suez Canal. **Carapanayoti & Co Ltd v E T Green Ltd** [1958] 3 151, QBD.

Sale of goods—C i f contract—Closing of Suez Canal—Alternative route possible. **Albert D Gaon & Co v Société Interprofessionnelle des Oleagineux Fluides Alimentaires** [1960] 2 160, CA.

Impossibility—

Buyer's duty to obtain licence—Excuse for non-performance. **Mitchell Cotts & Co (Middle East) Ltd v Hairco Ltd** [1943] 2 552, CA.

Duration of impossibility—Boom placed across river—Ship in fact released in time to fulfil charter. **Court Line Ltd v Dant & Russell Inc** [1939] 3 314, KBD.

Restrictions on dealing with goods except under licence—Impossibility of performance of contract—Excuse for non-performance. **J W Taylor & Co v Landauer & Co** [1940] 4 335, KBD.

Judge and jury—

Respective functions in frustration cases. **Tsakiroglou & Co Ltd v Noble Thorl GmbH** [1961] 2 179, HL.

Option to purchase or lease land—

Option incidental to contract—Contract frustrated as a whole. **Denny, Mott and Dickson Ltd v James B Fraser & Co Ltd** [1944] 1 678, HL.

Performance in manner that brings other party into disrepute—

Advertising—Agreement for aerial advertising—Agreement carried out by plaintiffs in such a way as to bring discredit on defendants—Defendants released from further performance of contract. **Aerial Advertising Co v Batchelors Peas Ltd (Manchester)** [1938] 2 788, KBD.

Public policy—

Assignment of part of salary—Reduction of salary—Restrictions on employment. **King v Michael Faraday & Partners Ltd** [1939] 2 478, KBD.

War—

Bank—Effect on credit balance—Payment to Custodian of 'Absentee' Property—Right of customer to recover from bank. **Arab Bank Ltd v Barclays Bank (Dominion, Colonial and Overseas)** [1954] 2 226, HL.

Display of advertisement—Name and address of advertiser obliterated under Removal of Direction Signs Order 1940. **White and Carter Ltd v Macarbis Bay Garage Ltd** [1941] 2 633, CA.

Enemy debt to neutral country guaranteed by English company—Contract completely performed except for payment—Whether contract abrogated on outbreak of war. **Schering Ltd (in voluntary liquidation) v Stockholms Enskilda Bank Aktiebolag** [1946] 1 36, HL.

Internment as alien enemy—Doctor engaged on whole-time basis by local authority. **Unger v Preston Corp** [1942] 1 200, KBD.

Internment as alien enemy—Doctor engaged on whole-time basis by local authority. **Unger v Preston Corp** [1942] 1 200, KBD.

Sale of goods—Delivery to named port—Named port becoming enemy-occupied territory—Trading with the Enemy Act 1939, s 1(2)(a)(i). **Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd** [1942] 2 122, HL.

CONTRACT (cont)

Frustration (cont)—

War (cont)—

Ship attempting to return to enemy country in obedience to decree—Scuttling of ship. **Richards v Forestal Land, Timber and Railways Co Ltd** [1941] 3 62, HL.

Ship damaged beyond repair. **D/SA/S Gulnes v Imperial Chemical Industries Ltd, The Gulnes** [1938] 1 24, KBD.

Supply of electricity for public lighting—Black out—Contract containing composite provision for supply of current and other services—Provision for abatement in certain events, and 'from any other unavoidable cause over which the company has no control'. **Egham and Staines Electricity Co Ltd v Egham Urban District Council** [1944] 1 107, HL.

Fundamental breach—

Determination whether breach fundamental—

Installation wholly unsuitable for its purpose specified by defendants—Unsuitability not discovered until installation caused fire destroying plaintiff's factory—Specification and installation not of themselves a fundamental breach—Whether fire fundamental breach of contract. **Harbutt's Plasticine Ltd v Wayne Tank and Pump Co Ltd** [1970] 1 225, CA.

Effect on clause limiting liability—

Fundamental breach automatically ending contract—Fire destroying plaintiffs' factory—Fire caused by defendants specifying and installing equipment which was wholly unsuitable for its purpose—Defendants not entitled to rely on clause in contract limiting their liability to the contract price. **Harbutt's Plasticine Ltd v Wayne Tank and Pump Co Ltd** [1970] 1 225, CA.

Effect on exception clause—

Affirmation of contract—Consecutive voyages charterparty requiring despatch by charterers—Delay by charterers causing loss of profitability to owners—Demurrage clause—Whether owners entitled to general damages over and above demurrage payments. **Suisse Atlantique Société D'Armement Maritime SA v N V Rotterdamsche Kolen Centrale** [1966] 2 61, HL.

Affirmation of contract—Hire-purchase of motor cycle—Extensive use of motor cycle after some defects known—Repudiation of contract after further defects discovered—Defects rendering motor cycle unroadworthy—Agreement excluding conditions or warranties, express or implied. **Farnworth Finance Facilities Ltd v Attridge** [1970] 2 774, CA.

Affirmation of contract—Whether clause could be relied on to defeat affirming party's claim for damages. **Charterhouse Credit Co Ltd v Tolly** [1963] 2 432, CA.

Clause excepting liability for non-performance where circumstances beyond party's control—Contract imposing only qualified obligation on party—Whether non-performance capable of amounting to fundamental breach where due to circumstances beyond party's control. **The Angelia** [1973] 2 144, QBD.

Exclusion of applicability of exception clause—Nature of breach—Performance totally different from that contemplated by contract—Exception clause inapplicable although on true construction covering loss resulting from breach—Contract of bailment—Bailees' warehousemen storing bags of nuts for eventual redelivery to bailors—Nuts damaged by rats in warehouse—Clause excluding liability of bailees except for wilful neglect or default—Warehouse not unsuitable for storing nuts—Damage from rats due to gross and culpable carelessness of bailees—Purported performance not totally at variance with contract—Applicability of exception clause not excluded by reason of nature of breach. **Kenyon, Son & Craven Ltd v Baxter Hoare & Co Ltd** [1971] 2 708, QBD.

Hire-purchase of car—'No condition or warranty...as to its fitness for any purpose...'—Car when delivered would not go. **Karsales (Harrow) Ltd v Wallis** [1956] 2 866, CA.

Hire-purchase of motor vehicle—Warranty of fitness—Implied stipulation that motor vehicle hired should be as fit as reasonable skill and care could make it—Defects in vehicle—Whether a fundamental term of the contract entitling hire-purchaser to terminate contract—Whether able to be excluded by term of contract—Necessity for hire-purchaser to have relied on implied obligation. **Astley Industrial Trust Ltd v Grimley** [1963] 2 33, CA.

Meaning—

Breach of fundamental term distinguished. **Suisse Atlantique Société D'Armement Maritime SA v N V Rotterdamsche Kolen Centrale** [1966] 2 61, HL.

Special conditions—

Breach of fundamental term of contract—Conditions rendered ineffective. **Alexander v Railway Executive** [1951] 2 442, KBD.

Gaming or wagering. *See* **Gaming** (Contract by way of gaming or wagering).

Guarantee. *See* **Guarantee**.

Hire-purchase. *See* **Hire-purchase**.

Hiring. *See* **Hire**.

Illegality—

Arbitrator's award under illegal contract—

Jurisdiction—Setting aside award. *See* **Arbitration** (Setting aside award—Jurisdiction—Award made without jurisdiction—Illegal contract).

Bill of exchange. *See* **Bill of exchange** (Illegality).

Company—

Financial assistance for purchase of its own shares. *See* **Company** (Shares—Purchase of shares with financial assistance of company).

Deception of revenue authorities—

Excessive expenses—Service agreement—Provision for expenses at excessive figure—Calculated to deceive revenue authorities—Whether contract enforceable by employee. **Napier v National Business Agency Ltd** [1951] 2 264, CA.

Defence to claim—

Knowledge of illegality and active participation essential to defence. **Fielding and Platt Ltd v Najjar** [1969] 2 150, CA.

CONTRACT (cont)

Illegality (cont)—

Duty of court—

Illegality not pleaded—Illegality apparent from evidence—Hire-purchase agreement—Deposit less than required by statute—Duty of court not to lend its aid to enforce illegal agreement—Court bound to refuse to enforce agreement. *Snell v Unity Finance Ltd* [1963] 3 50, CA.

Enforceability of contract—

Collateral contract—Collateral contract or warranty that necessary licences would be obtained—Licences not obtained and contractors not entitled to recover cost of work done—Enforcement of collateral contract in damages. *Strongman (1945) Ltd v Sincok* [1955] 3 90, CA.

Contract affected by statute—Nexus between contract and contravention of statute—Contract for sale of land—Sale by company—Overseas company—Company carrying on business in Great Britain—Company failing to comply with statutory requirements affecting such companies—Effect of failure to comply with statutory requirements affecting such companies—Effect of failure to comply with statutory requirements on contract for sale of land—Companies Act 1948, ss 407, 416. *Curragh Investments Ltd v Cook* [1974] 3 658, ChD.

Contract involving shipment from India contrary to the law of India—Recognition of relevant Indian law. *Regazzoni v K C Sethia (1944) Ltd* [1957] 3 286, HL.

Dishonest motive of vendor—Innocence of purchaser—Sale of profit à prendre—Receipt for consideration showing money to have been paid for another purpose—Whether purchaser precluded from enforcing agreement. *Mason v Clarke* [1955] 1 914, HL.

Letter of indemnity given by shipper in consideration of shipowner's issuing clean bill of lading when claused bill should have been issued—Claim by consignee in respect of defective condition of goods met by shipowner—Ex turpi causa non oritur actio. *Brown, Jenkinson & Co Ltd v Percy Dalton (London) Ltd* [1957] 2 844, CA.

Money received by agent under illegal contract—Right of principal to recover. *Harry Parker Ltd v Mason* [1940] 4 199, CA.

Principles relating to enforceability—Claim for freight for carriage of goods in overloaded ship—Whether freight recoverable. *St John Shipping Corp v Joseph Rank Ltd* [1956] 3 683, QBD.

Rent book required by law not supplied by landlord of dwelling—Whether rent recoverable by action—Landlord and Tenant Act 1962, s 4. *Shaw v Groom* [1970] 1 702, CA.

Right of innocent party to sue on contract—Carriage of goods by road in specified vehicle—'A' licence necessary—Vehicle having 'C' licence only—Known to carrier but not to consignor—Road and Rail Traffic Act 1933, s 1(1). *Archbalds (Freightage) Ltd v S Spangle Ltd (Randall third party)* [1961] 1 417, CA.

Right of innocent party to sue on contract—Statutory statement of particulars not supplied by seller on sale of seeds—Buyer's right to sue for breach of warranty—Seeds Act 1920, s 1(1), s 8(1). *Marles v Philip Trant & Sons Ltd (Mackinnon, Third Party) (No 1)* [1953] 1 645, Assizes.

Service agreement—Provision calculated to deceive revenue authorities—Provision for expenses at excessive figure—Enforcement of provision as to salary. *Napier v National Business Agency Ltd* [1951] 2 264, CA.

Subsequent transaction—Loan to discharge obligation under illegal contract—Partial illegality—Loan by registered moneylender—Provision in agreement for payment of compound interest—Amount of loan stated in memorandum including first two instalments of interest—Interest expressed to be payable on total amount—Partial illegality so far as interest payable on interest included in total—Loan to borrowers by their solicitor to repay amount due under agreement—Solicitor's knowledge of illegality of original transaction—Whether loan tainted by illegality of original transaction—Whether partial illegality of original loan making subsequent loan wholly irrecoverable—Moneylenders Act 1927, s 7. *Spector v Ageda* [1971] 3 417, ChD.

Foreign law—

Customer's debentures deposited by foreign bank at London branch—Condition that deposits be governed by laws of place where kept—Czech laws forbidding re-delivery of debentures—Validity of demand in London. *Zivnostenska Banka National Corp v Frankman* [1949] 2 671, HL.

Gaming machine—

Guarantee of earnings. *See Gaming* (Gaming machine—Guarantee of earnings—Owner of machines agreed to let at weekly rental to club—Guaranteed that yearly earnings of the machines should be not less than £1,900).

Insurance—

Effect on foreign jurisdiction clause. *See Insurance* (Property insurance—Non-disclosure—Duty of assured to disclose material facts—Lloyd's jewellers' block policy—Foreign jurisdiction clause).

Lease of land—

Recovery of possession—Lease illegal—Eastern Africa—Land leased by African landlord to non-African without necessary consents—Recovery of possession sought by landlord—Whether landlord entitled to recover possession—Possession of Land Law, s 2(d), (k)—Land Transfer Ordinance, s 2, s 3, s 4(1). *Mistry Amar Singh v Kulubrya* [1963] 3 499, PC.

Loan secured by illegal debenture—

Guarantee of debenture—Whether guarantee enforceable. *See Guarantee* (Void contract of principal debtor—Illegal debenture charging assets of company to secure loan to purchaser of shares).

Partial illegality—

Loan to discharge obligation under partially illegal contract. *See Illegality*—Enforceability of contract—Subsequent transaction—Loan to discharge obligation under illegal contract—Partial illegality, *ante*.

CONTRACT (cont)

Illegality (cont)—

Participation in illegality by party claiming damages—

Contract of carriage—Contract by defendants to carry plaintiffs' goods—Weight of defendants' vehicle when goods loaded in excess of statutory limit—Plaintiffs' transport manager present when goods loaded—Manager raising no objections—Goods damaged in course of journey—Claim by plaintiffs for negligence and/or breach of contract—Whether plaintiffs debarred from claim by reason of illegal performance of contract. **Ashmore, Benson, Pease & Co Ltd v A V Dawson Ltd** [1973] 2 856, CA.

Parties not in *pari delicto*—

Legislation for protection of one party—Landlord and tenant—Rent restriction—Premium—Illegality—Premium paid under mistake of law—No statutory means of recovery—Tenant entitled to recover premium at common law—Uganda Rent Restriction Ordinance (Laws of Uganda 1951), s 3(2). **Kiriri Cotton Co Ltd v Dewani** [1960] 1 177, PC.

Passing of property—

Hire-purchase agreement—Agreement passing property in goods to finance company—Agreement illegal—Whether property in goods nevertheless passes. **Kingsley v Sterling Industrial Securities Ltd** [1966] 2 414, CA.

Payment to statutory tenant to give up possession. *See* **Rent restriction** (Payment to statutory tenant in return for giving up possession).

Public policy—

Future separation of husband and wife—Averment that wife at all times ready to rejoin husband—No evidence of immoral purpose. **Davies v Elmslie** [1937] 4 471, CA.

Jurisdiction of court—Exclusion—Unincorporated body—Interpretation of rules—Rule that central council to be final arbiter. **Baker v Jones** [1954] 2 553, QBD.

Jurisdiction of court—Exclusion—Lease—Lessee's covenant to contribute towards lessor's expenses—Certificate of lessor's surveyor as to lessor's expenses to be final—Whether contrary to public policy. **Re Davstone Estates Ltd's Leases** [1969] 2 849, ChD.

Undertaking not to disclose to trade union a member's wrong-doing—Damages. **Howard v Odhams Press Ltd** [1937] 2 509, CA.

Restraint of trade. *See* **Restraint of trade by agreement**.

Severability of illegal term—

False invoice—Request to describe goods misleadingly on invoice—Request not term of contract—Had request amounted to term, term severable. **Fielding and Platt Ltd v Najjar** [1969] 2 150, CA.

Specific performance—

Lease—Illegal premium. *See* **Rent Restriction** (Premium—Illegal premium—Specific performance).

Unlawful purpose—

Aircraft—Unairworthiness—Agreement to deliver and to take delivery of aircraft to be flown in unairworthy condition. **Commercial Air Hire Ltd v Wrightways Ltd** [1938] 1 89, KBD.

Exchange control—Purchase in United Kingdom of property outside scheduled territories—Agreement conditional on Treasury permission—Permission not obtained—Purchase price paid—Claim for return of purchase price—Exchange Control Act 1947, s 7(1). **Shaw v Shaw** [1965] 1 638, CA.

Hire of equipment for unlawful gaming believed by parties to be lawful—Whether contract of hiring void. **J M Allan (Merchandising) Ltd v Cloke** [1963] 2 258, CA.

Motor vehicle—Sale in unroadworthy condition—Road Traffic Act 1930, s 3(1)—Road Traffic Act 1934, s 8(1)—Motor Vehicles (Construction and Use) Regulations 1951 (SI 1951 No 2101), regs 12(1), 20, 44(1), 73. **Vinall v Howard** [1954] 1 458, CA.

Repentance by plaintiff before performance—Agreement by defendant to supply to plaintiff sum in Italian currency in contravention of exchange control regulations—Share certificate deposited by plaintiff as security for payment—Right of plaintiff to recover certificate. **Bigos v Boustead** [1951] 1 92, KBD.

Implied repudiation. *See* **Repudiation**—Implied repudiation, *post*.

Implied term—

Bank—

Implied authority to realise foreign dividend warrant in England and so rendering payee liable to United Kingdom income tax. *See* **Bank** (Duty of care—Contractual duty to customer to exercise care and skill—Collection of bills—Implied authority to realise foreign dividend warrant in England).

Carriage of goods. *See* **Carriers** (Contract—Carriage of goods—Conditions—Implied term).

Circumstances in which term should be implied—

Reasonable that term should be implied—Term unnecessary to give business efficacy to contract—Whether permissible to imply term. **Liverpool City Council v Irwin** [1976] 2 39, HL.

Continuance of state of things—

Public mourning—Band performance. **Minnevit v Café de Paris (Londres) Ltd** [1936] 1 884, KBD.

Contract of service—

Contract embodying the whole arrangements between the parties—Employer resident abroad—Services to be rendered abroad—Personal injuries sustained by employee—Whether implied term imposing duty to take care on employer. **Matthews v Kuwait Bechtel Corp** [1959] 2 345, CA.

Generally. *See* **Master and servant** (Contract of service—Implied term).

Period of notice. *See* **Implied term**—Period of notice—Contract of service, *post*.

CONTRACT (cont)

Implied term (cont)—

Contract to construct roads on building estate—

Licence to enter land to construct roadway—Contract entered into with local authority necessitating dedication—Whether implied term that licensees having no right to transfer rights in road to local authority—Whether implied term that road should be to licensor's surveyor's satisfaction. **Matthews v Hanscombe** [1936] 1 562, KBD.

Contract to pay sum to third party—

Right to intercept payment to third party—Implication of term that payment should be made as party directs. **Re Schebsman, ex parte The Official Receiver** [1943] 2 768, CA.

Contractual licence. *See* Licence (Licence to occupy land—Contractual licence—Irrevocable licence).

Driving school—

Car provided by school for driving lessons and driving test—Pupil not covered by insurance. *See* Motor insurance (Driving school—Implied duty to insure against third party risks).

Exception clause—

Clause expressly providing rights but not expressly excluding implied warranty. **Hancock v B W Brazier (Anerley) Ltd** [1966] 2 901, CA.

First refusal—

Right of pre-emption—Gift of land, the subject of the right of pre-emption, made subsequently by grantor of right—No offer of first refusal prior to gift—Claim by assignee of first refusal. **Gardner v Courtts & Co** [1967] 3 1064, ChD.

Fitness for purpose—

Supply of materials—Materials unfit for purpose for which used—Veterinary surgeons—Contract to supply toxoid and administer it to cattle—Injury to cattle—Liability of veterinary surgeons, suppliers and manufacturers. **R N Dodd and F L Dodd v Wilson and McWilliam** [1946] 2 691, Assizes.

Hire-purchase agreement. *See* Hire-purchase (Implied condition).

Hospital—

House physician—Obligation to reside in near-by hostel—Theft of personal effects from bedroom—Whether hospital management committee liable. **Edwards v West Herts Group Hospital Management Committee** [1957] 1 541, CA.

Implication by usage—

Education—Contract between parent and headmaster for education of child—Notice by parents of intention to withdraw child from school—Payment in lieu of notice—Usage of profession—Payment of term's fee in lieu of notice. **Mount v Oldham Corp'n** [1973] 1 26, CA.

Implication necessary to give business efficacy to contract—

Building contract—Work to be carried out in phases—Date for commencement of third phase fixed by reference to date of completion of first phase—Third phase to be completed by specified date—Delay in completing first phase leaving unreasonably short time to complete third phase by specified date—Whether term to be implied extending date for completion of third phase. **Trollope & Colls Ltd v North West Metropolitan Regional Hospital Board** [1973] 2 260, HL.

Car repair—Contract between car owner and repairers to repair damage to car—Owner having comprehensive insurance policy—Insurance company liable to owner for cost of repairs in excess of £25—Document stating estimate for cost of repairs agreed between insurance company and repairers—Document stating that repairers to collect from owner £25 'excess' for which owner liable under insurance policy—Insurance company authorising repairers to proceed—Contract between insurance company and repairers whereby insurance company liable for main cost of repairs—Insurance company failing before any payment made to repairers—Whether implied term of contract between repairers and owner that owner liable for main cost of repairs in addition to £25 excess. **Brown & Davis Ltd v Galbraith** [1972] 3 31, CA.

Implication to give business efficacy to contract—

Broker's contract—Sale of fruit by agent—Advance to grower by agent—Shipment unsound on arrival and unsaleable in market—Implied term that fruit on arrival to be of merchantable quality. **Broome v Pardess Co-operative Society of Orange Growers (Established 1900) Ltd** [1939] 3 978, KBD.

Lease—

Contribution by tenant to landlord's costs of maintaining building. *See* Landlord and tenant (Contribution by tenant to landlord's costs of maintaining building—Implied term).

Legality of performance—

Shipment of jute from India to Italy—Export permitted only under licence and subject to quota—Contract not expressed to be subject to quota—Conditions governing sellers' ability to perform contract under quota system known to both parties. **Partabmull Rameshwar v K C Sethia (1944) Ltd** [1951] 2 352, HL.

Licence—

Copyright—Architect's building plans. *See* Copyright (Licence—Implied licence—Architect's building plans).

Licence necessary for export—

Warranty by sellers to obtain licence—Whether warranty to be implied. **Peter Cassidy Seed Co Ltd v Osuustukkukauppa I L** [1957] 1 484, QBD.

Performance of work and supply of materials—

Purpose made known to contractor—Reliance on skill and judgment—Execution by sub-contractor contemplated—Contractor's advice on materials and sub-contractor accepted—Contractor's liability for unsuitable materials and sub-contractor's faulty work. **Stewart v Reavell's Garage** [1952] 1 1191, QBD.

CONTRACT (cont)

Implied term (cont)—

Performance within reasonable time—

Repair of motor car at request of car owner—Estimate approved and permission to commence repairs given to repairers by owner's insurers—Agreement by insurers with repairers to pay for repairs—Liability of repairers to owner for failure to carry out repairs within reasonable time. **Charnock v Liverpool Corp** [1968] 3 473, CA.

Period of notice—

Contract of service—Implication of term as to reasonable notice of termination of contract where memorandum insufficient—Statute of Frauds 1677, s 4. **James v Thomas H Kent & Co Ltd** [1960] 2 1099, CA.

Personal service—

Confidence—Management of pop group—Personal manager engaged by contractual managers—Personal manager no longer acceptable to entertainers—Whether implied term concerning loss of confidence. **Denmark Productions Ltd v Boscobel Productions Ltd** [1968] 3 513, CA.

Question of law—

Appeal—Question whether term to be implied a question of law open to review on appeal. **O'Brien v Associated Fire Alarms Ltd** [1969] 1 93, CA.

Reasonable that term should be implied—

Term unnecessary to give business efficacy to contract—Whether permissible to imply term. **Liverpool City Council v Irvin** [1975] 3 658, CA.

Reasonable time—

Requirement to re-purchase. *See* **Hire-purchase** (Recourse agreement—Obligation to re-purchase goods if hire-purchase agreement terminated—Reasonable time).

Reconditioned goods—

Certificate by third party. *See* **Sale of goods** (Condition—Reconditioned goods—Certificate by third party).

Retail price maintenance—

Petrol filling station—Sole agreement—Whether term for continuance and enforcement of retail price maintenance implied. **Esso Petroleum Co Ltd v Harper's Garage (Stourport) Ltd** [1966] 1 725, CA.

Sale of goods—

Contract for sale of future goods. *See* **Sale of goods** (Delivery—Implied condition—Contract for sale of future goods).

Fitness. *See* **Sale of goods** (Implied condition as to fitness).

Trade usage—

Continuity of dealings subject to usage—Usage known only to purchaser—No continuity of dealings proved—Usage not binding on seller. **Lord Forres v Scottish Flax Co Ltd** [1943] 2 366, CA.

Undertaking to vote as required—

Transfer of shares—Breach of contract—Whether contract binding on transferees with notice. **Greenhalgh v Mallard** [1943] 2 234, CA.

Warranty of fitness—

Dentist making dentures—Whether any implied condition of fitness for purpose intended. **Samuels v Davis** [1943] 2 3, CA.

Latent defect—Hire-purchase of car—Exception clause—Fundamental breach of implied condition of fitness—Whether lender protected by clause. **Yeoman Credit Ltd v Apps** [1961] 2 281, CA.

Latent defect—Sale of food stuffs—Exception clause—Implied warranty of fitness not excluded. **Henry Kendall & Sons v William Lillico & Sons Ltd** [1968] 2 444, HL.

Warranty that contract not illegal—

Letter by solicitor on behalf of client inviting addressee to enter into illegal contract with client—Whether warranty as to legality. **Sheridan v Dickson** [1970] 3 1049, CA.

Work to be done in safe manner—

Carpet taken up for cleaning—Floor left in dangerous condition. **Kimber v William Willett Ltd** [1947] 1 361, CA.

Impossibility of performance—

Frustration. *See* **Frustration**—Impossibility, *ante*.

Income tax—

Personal debt on obligation by virtue of contract. *See* **Income tax** (Annual payment—Personal debt on obligation by virtue of contract).

Incorporation of terms—

Conditions. *See* **Conditions**—Incorporation in contract, *ante*.

Express oral terms—

Incorporation in written contract—Oral promise—Representation or contractual term—Shipment of goods—Agreement between importers and forwarding agents—Course of dealing on standard conditions of forwarding trade—Goods previously shipped in crates—Forwarding agents proposing changeover to shipment in containers—Importers agreeing to changeover following assurance by forwarding agents that containers would be shipped under deck—Standard conditions giving forwarding agents complete freedom over means and procedure to be followed in transportation of goods subject to express written instructions—Whether oral assurance a term of the contract. **J Evans & Son (Portsmouth) Ltd v Andrea Merzario Ltd** [1976] 2 930, CA.

Indemnity. *See* **Indemnity**.

Inducement of breach—

Unfair industrial practice. *See* **Industrial relations** (Unfair industrial practice—Inducement or threat to induce breach of contract).

Infant's contract. *See* **Minor** (Contract).

Injunction—

Breach of contract. *See* **Injunction** (Breach of contract).

Insurance. *See* **Insurance** (Contract of insurance).

CONTRACT (cont)

Intention to create legal relationship—

Ex gratia payment—

Oral negotiations on redundancy of employees—Employing company agreeing to make 'ex gratia' payment to redundant employees—Consideration given by employees—Company subsequently rescinding agreement—Whether agreement legally binding. **Edwards v Skyways Ltd** [1964] 1 494, QBD.

Inference or intention from circumstances—

Business operation—Sales promotion scheme—Offer by suppliers to give coins to purchasers of suppliers' goods—Coins bearing likenesses of members of English World Cup soccer team—Coins produced by petrol suppliers for distribution by proprietors of petrol stations to motorists buying suppliers' petrol—Posters advertising gift of one coin for every four gallons of petrol purchased—Whether intention of suppliers, proprietors or customers that proprietors should enter into contractual obligation to supply coins to customers. **Eso Petroleum Ltd v Comrs of Customs and Excise** [1976] 1 117, HL.

Presumption against intention—

Presumption inapplicable—Husband and wife not living in amity—Evidence disclosing intention to create legal relationship—Agreement after separation—Husband providing for wife—Wife paying off mortgage on matrimonial home—Husband to transfer home to wife after mortgage redeemed. **Merritt v Merritt** [1970] 2 760, CA.

Promise—

Enforcement—Unequivocal acceptance of liability—Intention that promisee will act on promise—Promise acted on. **Combe v Combe** [1951] 1 767, CA.

Public policy—

Exclusion of legal liability—Football pool—Action in respect of successful coupon—Whether clause exempting promoters from legal liability contrary to public policy. **Jones v Vernon's Pools Ltd** [1938] 2 626, KBD, **Appleson v H Littlewood Ltd** [1939] 1 464, CA.

Sharing home—

Agreement by plaintiffs, a married couple, to give up their own home and share home of defendants, an elderly couple—Agreement by defendants to make will leaving their house to female plaintiff and her relatives—Whether intention to make an agreement binding in law—Duration of contract to share home. **Parker v Clark** [1960] 1 93, Assizes.

Syndicate entry in newspaper competition—

Successful entry coupon made out in name of one person, but containing forecasts by three persons—Competitors living together as a family—Whether each was entitled to share of prize. **Simpkins v Pays** [1955] 3 10, Assizes.

Trade union—

Agreement between employer and union. *See* **Trade union** (Collective agreement—Joint negotiating committee of employer and unions).

Travel to work—

Contribution to cost of petrol incurred by friend in driving plaintiff on journey by car—Whether giving rise to legal contract. **Buckpitt v Oates** [1968] 1 1145, Assizes.

Daily carriage of one workman by another to work on payment of weekly sum. **Coward v Motor Insurers Bureau** [1962] 1 531, CA.

Understanding. *See* **Enforceability—Understanding, ante.**

Interference with contractual relations—

Tort. *See* **Tort** (Interference with contractual relations).

Joint contractor—

Plaintiffs—

All joint contractors should be parties to action. *See* **Practice** (Parties—Joinder of parties—Joint contractors).

Joint debtors—

Release of one—

Release by operation of law—Effect of. **Re Garner Motors Ltd** [1937] 1 671, ChD.

Joint liability—

Principal debtor and guarantor. *See* **Guarantee** (Surety—Liability of surety—Joint and several liability).

Judgment—

Payment of sum of money—

Foreign currency. *See* **Judgment** (Payment of sum of money—Foreign currency—Jurisdiction to order payment of sum expressed in foreign currency—Contract).

Land—

Sale of land—

Option to purchase land—Specific performance. *See* **Specific performance** (Option to purchase land).

Lease. *See* **Landlord and tenant** (Agreement for lease).

Legal relations—

Intention to create. *See* **Intention to create legal relationship, ante.**

Legality—

Contract of service. *See* **Master and servant** (Contract of service—Legality).

Letter of credit—

Proper law. *See* **Conflict of laws** (Contract—Proper law—Commercial credit).

Licence—

Contractual licence to occupy land. *See* **Licence** (Licence to occupy land—Contractual licence).

Free travel pass—

Whether contract or mere licence. *See* **Carriers** (Negligence—Exclusion of liability—Passengers—Free pass—Contractual animus, not merely a licence).

Limitation of liability—

Air transport. *See* **Carriage by air** (Carriage of goods—International carriage—Consignment note—Limitation of carriers' liability).

Bill of lading. *See* **Shipping** (Bill of lading—Limitation of Liability).

Local authority. *See* **Local authority** (Contract).

CONTRACT (cont)

Lump sum contract—

Substantial compliance with contract—

Defects and omissions—Right to repudiate—Waiver—Contract to furnish flat—'Net cash as work proceeds and balance on completion'—Use of furniture. **Hoenig v Isaacs** [1952] 2 176, CA.

Test of substantial compliance—Defects—Nature of defects—Cost of remedying defects—Test not whether defects so trifling as to fall within de minimis rule—Contract for installation of central heating system in defendant's house—Central heating as installed failing to heat house adequately—Fumes making use of rooms uncomfortable—Contract price £560—Cost of remedying defects £174—No substantial performance of contract. **Bolton v Mahadeva** [1972] 1 1322, CA.

Master and servant. *See* **Master and servant** (Contract of service).

Medicine or drug—

Supply—

Contract for services. *See* **National Health Service** (Pharmaceutical services—Supply of medicine or drug—Contractual relationship between chemist and National Health Service executive council that of contract for services).

Memorandum or note—

Contract not to be performed within a year—

Contract to procure employment at yearly salary—Statute of Frauds 1677, s 4. **Vernon v Findlay** [1939] 2 716, CA.

Contract of service—

'Consultant'—Need to specify nature of duties—Minute of company directors' meeting—Statute of Frauds 1677, s 4. **Pocock v A D A C Ltd** [1952] 1 294, KBD.

Letter by defendant to his solicitor—

Privilege—Sufficiency as memorandum—Law of Property Act 1925, s 40. **Smith-Bird v Blower** [1939] 2 406, ChD.

Minutes of company meeting—

Whether sufficient memorandum for Law of Property Act 1925, s 53(1)(a). **Re Strathblaine Estates Ltd** [1948] 1 162, ChD.

Offer—

Letter containing all terms of agreement and offer to contract—Sufficiency—Law of Property Act 1925, s 40 (1). **Parker v Clark** [1960] 1 93, Assizes.

Purchase of three lots at auction—

No authority to combine purchases—Memorandum of one contract—Law of Property Act 1925, s 40. **Smith v MacGowan** [1938] 3 447, ChD.

Sale of goods. *See* **Sale of goods** (Note or memorandum in writing).Sale of land. *See* **Sale of land** (Memorandum of contract).

Variation of original contract—

Need for variation to be in writing—Mere forbearance to insist on actual terms—Instalment deliveries under a contract for the sale of goods—Sale of Goods Act 1893, s 4. **Bessier, Waechter, Glover & Co v South Derwent Coal Co Ltd** [1937] 4 552, KBD.

Merger—

Simple contract to repay bank overdraft—

Subsequent agricultural charge under seal—Covenant to pay 'all moneys now or hereafter due'—Agricultural Credits Act 1928, s 5(1). **Barclays Bank Ltd v Beck** [1952] 1 549, CA.

Minor—

Contract. *See* **Minor** (Contract).Liability in tort for act founded on contract. *See* **Minor** (Tort—Tort founded on contract).

Whether contract for minor's benefit—

Assignment of copyright. *See* **Minor** (Assignment of property—Copyright).

Misrepresentation. *See* **Misrepresentation**.

Mistake—

Common mistake—

Existence of mistake at date of contract—Building sold for development—Belief of parties at date of contract that building not listed under planning legislation as being of special architectural or historic interest—Provisional list prepared by officials for approval of Secretary of State—Building unconditionally included in provisional list before date of contract—List given legal effect shortly after date of contract—Whether purchaser entitled to rescission of contract on ground of common mistake. **Amalgamated Investment and Property Co Ltd v John Walker & Sons Ltd** [1976] 3 509, CA.

Identity of party—

Deception as to identity—Oral offer of car for sale—Purchaser present in person—Payment by cheque—Mistaken belief by seller that purchaser was another person of standing—Belief fraudulently induced by purchaser—Cheque accepted on basis of mistake—Whether contract formed. **Ingram v Little** [1960] 3 332, CA.

Deception as to identity—Oral offer of car for sale—Purchaser present in person—Payment by cheque—Mistaken belief by seller that purchaser was another person of standing—Belief fraudulently induced by purchaser—Cheque accepted on basis of mistake—Whether mistake rendering contract void or voidable—Whether seller offering to sell car to purchaser present before him. **Lewis v Averay** [1971] 3 907, CA.

Mistake. *See* **Mistake**.

Money paid—

Recovery—

Initial payment under contract of hire—Hire rent payable by initial deposit and monthly rentals—Clauses enabling owners, on default by hirer, to repossess property and retain payments already made—Default in payment of rentals—Repossession by owners—Contract assumed by hirer to be for hire-purchase—Whether hirer had any right to recover whole or part of initial payment. **Galbraith v Mitchenall Estates Ltd** [1964] 2 653, QBD.

CONTRACT (cont)**Moneylender—****Agreement of loan—**

Provision for payment of compound interest. *See* **Illegality—Enforceability of contract—**
 Subsequent transaction—Loan to discharge obligation under illegal contract—Partial
 illegality—Loan by registered moneylender, *ante*.

Negotiations—**Negligent statement—**

Liability for statement. *See* **Negligence** (Information or advice—Pre-contract negotiations).

Non est factum. *See* Document (Non est factum).**Notice—**

Termination. *See* **Termination—Notice, post**.

Notice to terminate—

Contract of service. *See* **Master and servant** (Contract of service—Notice to terminate
 contract).

Novation—**Contract of service—**

Ancillary terms of original contract not incorporated in new contract—Contract containing
 clause in restraint of trade. **S W Strange Ltd v Mann** [1965] 1 1069, ChD.

Debt—

Conflict of laws. *See* **Conflict of laws** (Contract—Discharge of contract—Novation—Debt—
 Whether proper law of contract applicable).

Extent—Whether extending to liability of borrower as constructive trustee in relation to
 moneys lent. **Selangor United Rubber Estates Ltd v Cradock (A Bankrupt) (No 3)** [1968]
 2 1073, ChD.

Occupier's liability. *See* Occupier's liability (Common duty of care—Liability in contract).**Offer and acceptance—****Acceptance—**

Acceptance by post—Mode of acceptance prescribed—Notice in writing to offeror—Option—
 Option to purchase freehold property—Notice—Option 'exercisable by notice in writing to'
 vendor within prescribed period—Purchaser writing letter to vendor giving notice of
 exercise of option—Letter sent by ordinary post—Letter never delivered to vendor—
 Whether option validly exercised—Law of Property Act 1925, s 196. **Holwell Securities**
Ltd v Hughes [1974] 1 161, CA.

Acceptance by silence—Offer by defendant to plaintiffs—Novation of contract—Offer by
 defendant to take over third party's contract with plaintiffs—Acquiescence but no response
 to offer by plaintiffs—Whether defendant bound by contract—Whether defendant liable for
 breach. **Fairline Shipping Corp v Adamson** [1974] 2 967, QBD.

Implied acceptance—Incorporation of terms. *See* **Conditions—Incorporation in contract,**
ante.

Mode of acceptance prescribed—Acceptance to be by letter to address given in tender—
 Communication of acceptance to offeror's surveyor at different address—Prescribed mode
 of acceptance not exclusive—Effective communication of acceptance to offeror.
Manchester Diocesan Council for Education v Commercial and General Investments
Ltd [1969] 3 1593, ChD.

Retrospective acceptance—Building contract—Implication of terms—Work done before
 conclusion of contract at request of offeree—Tender incorporating clause authorising
 variations in work specified in tender—Changes in work before offer was accepted—
 Acceptance of tender—Whether such acceptance effected a contract applicable
 retrospectively to work previously done in variation of initial specification. **Trollope & Colls**
Ltd and Holland & Hannen and Cubitts Ltd, trading as Nuclear Civil Constructors (a
firm) v Atomic Power Constructors Ltd [1962] 3 1035, QBD.

Unilateral contract—Offer to indefinite number of persons—Performance constituting
 acceptance—Contract to confer benefit on third party—Contract constituting offer to third
 party—Exemption clause—Undertaking by promisor to promisee to confer benefit of
 exemption clause on third party—Benefit to be conferred on any third party employed by
 promisee as an independent contractor to discharge contract—Promisee contracting as
 agent for third party—Contract constituting offer to third party capable of acceptance by
 third party by acting on behalf of promisee—Contract of carriage by sea—Bill of lading—
 Clause conferring immunities and exceptions in respect of negligence—Whether stevedore
 employed by carrier entitled to rely on clause to exclude liability for negligence in unloading
 cargo. **The New Zealand Shipping Co Ltd v A M Satterthwaite & Co Ltd** [1974] 1 1015,
 PC.

Offer—

Conditional offer—Hire-purchase of car—Implied condition that car should be in same
 condition substantially when offer accepted by finance company as when examined by
 hirer—Car damaged before acceptance of offer—Offer thereafter incapable of acceptance.
Financings Ltd v Stimson [1962] 3 386, CA.

Lapse of offer—Lapse by reason of time—Whether lapse of time indicated refusal of offer by
 offeree. **Manchester Diocesan Council for Education v Commercial and General**
Investments Ltd [1969] 3 1593, ChD.

Revocation—Dealer's authority to receive communication of revocation—Clause providing
 that hire-purchase agreement binding only after signature of finance company—Motor car
 returned to dealer before agreement signed by finance company—Whether offer by hirer
 revoked. **Financings Ltd v Stimson** [1962] 3 386, CA.

Sale of land—Letter by proposed vendor—'I am prepared to offer you my estate for £600,
 000'—Reference to need for time to prepare a 'Schedule of Completion'—Whether letter
 amounting to an offer. **Clifton v Palumbo** [1944] 2 497, CA.

Sale of land—Letter by proposed vendor—'For a quick sale I would accept £26,000'—
 Whether constituting an offer. **Bigg v Boyd Gibbins Ltd** [1971] 2 183, CA.

CONTRACT (cont)

Offer for sale—

Distinction between offer for sale and invitation to treat—

Advertisement of Bramblefinch hens at 25s each in periodical—Whether offer for sale. *See Animal (Protection—Bird—Restriction on sale or offer for sale of live wild bird—'Offer for sale')*.Option. *See Option.*

Part performance—

Oral contract that plaintiff should have deceased's house after his death—

Plaintiff gave up her flat and lived with deceased, looking after him and his house—Specific performance of oral contract decreed after deceased's death—Question of relief where it would have been fraudulent for deceased to repudiate contract for want of writing—Law of Property Act 1925, s 40. *Wakeham v MacKenzie* [1968] 2 783, ChD.

Parties—

Company not registered—

Contract signed in company's name with prospective director's signature—Contract a nullity. *Newborne v Sensolid (Great Britain) Ltd* [1953] 1 708, CA.

Corporation—

Seal—Contract not under seal, but made in accordance with corporation's standing orders—Value of contract over £700—Whether contract enforceable against corporation—Law of Property Act 1925, s 74(2)—Local Government Act 1933, s 266(2). *A R Wright & Son Ltd v Romford Corpn* [1956] 3 785, QBD.

Insurers—

Car repairs—Agreement by insurers with repairers to pay for car repairs—Whether repairers liable to owner for failure to carry out repairs within a reasonable time. *Charnock v Liverpool Corpn* [1968] 3 473, CA.

Trade protection association—

Covenant by purchasers not to re-sell at more than specified price—Purchase of article at higher price—Trade interest—Damages—Right of non-trading body to maintain action. *British Motor Trade Association v Salvadori* [1949] 1 208, ChD.Vendor inaccurately described in conveyance. *See Specific performance* (Sale of land—Land belonging to company—Vendor company inaccurately described in conveyance).Whether local education authority party to contract between teacher and school. *See Education* (Teacher—Contract of service—Aided voluntary school—Employment by governors—Whether local education authority also party to contract).

Payment—

Appropriation—

Payment by debtor of a lesser sum than that due on two separate debts—Necessity for communication to the creditor. *Leeson v Leeson* [1936] 2 133, CA.Statute-barred debt—Implied appropriation by debtor—Charges for removal of refuse. *Stepney Corpn v Ososky* [1937] 3 289, CA.

Commission—

Estate agent. *See Estate agent* (Commission).

Instalments—

One instalment the delivery of specified articles—Balance of original sum to become due on default—Admissibility of evidence of value of specified articles—Penalty clause. *Latter v Colwill* [1937] 1 442, CA.

Place of payment—

Contract made in Germany—Barter transaction enabling German national to purchase land in Brazil from British company—Purchase money to be paid into company's blocked account in Germany and used by company in payment for German railway material for Brazil—Provision in contract between German national and company for 'refund of marks to amount paid in' by German national, should delivery of railway material become impossible 'by means of force majeure'—Performance of contract impossible and illegal owing to outbreak of war—Whether obligation to refund limited to refunding in Germany. *Re Parana Plantations Ltd* [1946] 2 214, CA.

Penalty—

Forfeiture clause—

Purchase price payable by instalments—Clause enabling vendor, on default by purchaser, to rescind and retain instalments paid—Default in payment—Rescission of contract by vendor—Right of purchaser to recover instalments. *Stockloser v Johnson* [1954] 1 630, CA.Hire-purchase agreement. *See Hire-purchase* (Penalty).Hiring agreement. *See Hire* (Damages for breach of contract of hiring—Repudiation of contract by hirer—Agreed damages percentage of outstanding rentals—Whether penalty).

Insurance—

Football—Sum payable if accident made it impossible for insured to resume employment as professional football player—Payment made 'subject to a penalty of the amount paid' if insured again took part in playing professional football—Whether repayment a penalty—Whether recoverable. *Alder v Moore* [1961] 1 1, CA.

Invoicing back clause—

Seller in default—Invoicing back price to include 'penalty of not less than two per cent, not more than ten per cent' over estimated market value—Whether imposing penalty in law—General Produce Brokers Association of London form of sale contract, condition 33(a). *Robert Stewart & Sons Ltd v Carapanayoti & Co Ltd* [1962] 1 418, QBD.

Licence to make and use patented material—

Compensation payable to licensor on sale or use of more than quota—Expiration of patents—Compensation remaining payable. *Tool Metal Manufacturing Co Ltd v Tungsten Electric Co Ltd* [1955] 2 657, HL.

Performance—

Mode—Contract between brothers to provide for families—Death of one brother—Whether survivor can insist on paying allowances to members of brother's family and must pay brother's executors. *Re Stapleton-Bretherton* [1941] 3 5, ChD.

CONTRACT (cont)

Penalty (cont)—

Prevention—

Need for breach of term of contract—Implied condition to co-operate—Misunderstanding not removed—Obstruction by defendants' agent—Liability of defendants. **Mona Oil Equipment & Supply Co Ltd v Rhodesia Railways Ltd** [1949] 2 1014, KBD.

Relief against penalty—

Contract for sale of land. *See* **Equity** (Penalty—Relief against penalty—Contract for sale of land).

Performance—

Lump sum contract. *See* **Lump sum contract, ante**.

Part-performance. *See* **Part performance, ante**.

Personal contract—

Personal skill and care—

Storage of furniture for reward. **Edwards v Newland (E Burchett Ltd, Third Parties)** [1950] 1 1072, CA.

Right to sub-contract—

Cleaner and dyer—Garment lost by sub-contractor—'Whilst every care is exercised in cleaning and dyeing the proprietors' liability for loss is limited'—Contractor not entitled to sub-contract. **Davies v Collins** [1945] 1 247, CA.

Personal injuries—

Master and servant—

Liability to servant in contract or tort. *See* **Master and servant** (Liability of master—Contract or tort).

Personal services—

Frustration—

Change of circumstances. *See* **Frustration**—Change of circumstances—Contract for personal services, *ante*.

Pre-contract negotiations—

Negligence—

Information or advice given in course of negotiations. *See* **Negligence** (Information or advice—Pre-contract negotiations).

Privy of contract—

Building contract. *See* **Building contract** (Privy of contract).

Generally. *See* **Stranger to contract, post**.

Procuring breach of contract. *See* **Tort** (Inducement to commit breach of contract).

Promise—

Intention to create legal relationship. *See* **Intention to create legal relationship**—Promise, *ante*.

Representation distinguished—

Acknowledgment made in clause of contract—Whether it had contractual force. **Lowe v Lombank Ltd** [1960] 1 611, CA.

Proper law. *See* **Conflict of laws** (Contract—Proper law of contract).

Publishing agreement—

Specific performance. *See* **Specific performance** (Publishing agreement).

Quantum meruit—

Existing contract—

Additional work—Need for implication of new contract and thus to get rid of old contract—Contract by surveyor to arrange, supervise, etc specified building work estimated to cost £600 for fee of £30—Additional work bringing cost to £2,283 ordered by building owner and supervised by surveyor—No request by surveyor for increasing fee until after work completed—Whether surveyor entitled to more than £30 agreed fee. **Gibson & Partners (A Firm) v Knight** [1968] 2 248, CA.

Additional work—Work of estimating, exceeding the normal, done by building contractor after submitting tender in expectation of receiving contract—Estimates used for extraneous purposes—No contract concluded—Right to remuneration, as on a quantum meruit. **William Lacey (Hounslow) Ltd v Davis** [1957] 2 712, QBD.

Frustration of contract—

Charterparty—Blocking of Suez Canal—Goods carried in shipowners' vessel via Cape of Good Hope with consent of charterers—Shipowners entitled to a reasonable remuneration for carrying goods via Cape. **Société Franco Tunisienne D'Armement v Sidermar S P A** [1960] 2 529, QBD.

Implied promise for payment—

Contract to erect shop windows—Wife's premises apparently owned by husband—Contract with husband partly guaranteed by wife—Request by wife to complete work—Whether wife liable for rest of contract price. **Edmonds & Co Ltd v Fagin** [1939] 3 974, KBD.

Request to police to send fire brigade—Brigade sent—Premises situate in area of another fire brigade—Liability of owner of premises. **Upton-on-Severn Rural District Council v Powell** [1942] 1 220, CA.

Work done under contract not binding on parties—Whether inference of fact or inference imposed by rule of law. **Craven-Ellis v Canons Ltd** [1936] 2 1066, CA.

Remuneration additional to salary—

Bonus on net profits. **Powell v Braun** [1954] 1 484, CA.

Quasi-contract—

Money had and received. *See* **Money** (Money had and received).

CONTRACT (cont)

Quasi-contract (cont)—

Money paid by one person under compulsion of law—

Payee receiving wages during illness—Illness caused by negligence of third party—

Recoverability of wages from third party. **Metropolitan Police District Receiver v Croydon Corpn Monmouthshire County Council v Smith** [1957] 1 78, CA.

Rectification—

Written contract—

Antecedent expressed accord on particular point—No concluded binding agreement prior to written contract—Whether rectification available. **Joscelyne v Nissen** [1970] 1 1213, CA.

Contract correctly stating terms agreed orally—Mutual error as to meaning of expression used. **Frederick E Rose (London) Ltd v Wm H Pim, Junr & Co Ltd** [1953] 2 739, CA.

Reference—

Rent tribunal. *See* **Rent tribunal** (Reference of contract).

Rejection of goods. *See* **Sale of goods** (Rejection of goods).

Representation—

Warranty—

Representation giving rise to warranty. *See* **Warranty—Representation**, post.

Repudiation—

Acceptance of repudiation—

Termination of contract—Repudiation not itself discharging contract—Contract not discharged until repudiation accepted by other party. **Decro-Wall International S A v Practitioners in Marketing Ltd** [1971] 2 216, CA.

Anticipatory breach—

Charterparty—Option to cancel if vessel not available at specified date—Construction—Vessel obviously not going to be available at specified date—Whether charterers entitled to cancel before specified date. **Maredelanto Compania Naviera S A v Bergbau-Handel G m b H** [1970] 3 125, HL.

Contract with corporation for removal of refuse—Undertaking by contractors to observe bye-laws—Sealing of new bye-laws—Substantial additional burden on contractors. **William Cory & Son Ltd v City of London Corpn** [1951] 2 85, CA.

Refusal by sellers' agent to deliver part of goods sold. **Peter Dumenil & Co Ltd v James Ruddin Ltd** [1953] 2 294, CA.

Charterparty—

Undertaking by owners as to expected readiness of vessel—Owners unable to provide vessel at expected date—Whether expected readiness clause condition of contract so as to entitle charterers to repudiate. **Maredelanto Compania Naviera S A v Bergbau-Handel G m b H** [1970] 3 125, HL.

Contract of service—

Teacher. *See* **Education** (Teacher—Contract of service—Repudiation).

Election not to accept repudiation—

Effect—Contract remains fully effective—Innocent party entitled to perform contract and enforce contractual rights—Contract for advertisements to be exhibited over three years commencing at a future date—Advertiser expressly repudiated contract on the day on which it was made—Contractor published advertisements in accordance with contract and claimed payment in full—No step taken to minimise loss to advertiser—Whether contractor entitled to recover payment. **White & Carter (Councils) Ltd v McGregor** [1961] 3 1178, HL.

Election whether to accept repudiation—

Contract not discharged until repudiation accepted by other party. *See* **Repudiation—Acceptance of repudiation—Termination of contract**, post.

Writ issued claiming declaration that contract valid and claiming damages for its breach—Writ not served—Whether election to accept repudiation. **Garnac Grain Co Inc v H M F Faure & Fairclough Ltd and Bunge Corpn** [1967] 2 353, HL.

Fundamental breach for. *See* **Fundamental breach**, ante.

Implied repudiation—

Repudiation implied from breach—Breach going to root of contract—Breach of term as to time of payment—Continual delays in meeting 90 day bills of exchange—Likelihood of similar delays in future—Time of payment not stated to be of essence of contract—Whether delays in payment going to root of contract—Whether delays entitling injured party to treat contract as at an end. **Decro-Wall International S A v Practitioners in Marketing Ltd** [1971] 2 216, CA.

Lease. *See* **Landlord and tenant** (Lease—Repudiation).

Publisher and author—

Alteration of manuscript—Contract for publication of signed article in magazine—Article written to enhance author's reputation as connoisseur of jade—Changes on manuscript in the course of editing it—Refusal of author to consent to changes—Refusal to permit publication in amended form—Whether contract repudiated—Whether publishers liable for breach of contract. **Joseph v National Magazine Co Ltd** [1958] 3 52, ChD.

Repudiation by principal debtor—

Liability of guarantor. *See* **Guarantee** (Discharge of guarantee—Repudiation of contract by principal debtor).

Sale of goods. *See* **Sale of goods** (Repudiation of contract).

Sale of land. *See* **Sale of land** (Repudiation of contract).

Test—

Agreement for lease—Refusal to accept draft lease—Bona fide contention that draft not in accordance with agreement. **Sweet & Maxwell Ltd v Universal News Services Ltd** [1964] 3 30, CA.

Rescission—

Fraud—

Undisclosed principal. *See* **Agent** (Contract—Undisclosed principal—Fraud of principal—Rescission of contract made with innocent agent for fraud of undisclosed principal).

CONTRACT (cont)**Rescission (cont)—****Rescission for wrong reason—**

Whether rescission can be justified by reliance on events occurring after rescission.
Universal Cargo Carriers Corp'n v Citati [1957] 3 234, CA.

Sale of goods—

Generally. *See* **Sale of goods** (Rescission of contract).

Resale on buyer's default. *See* **Sale of goods** (Unpaid seller—Resale—Effect as rescission of contract of sale).

Sale of land. *See* **Sale of land (Rescission of contract).****Restraint of trade. *See* **Restraint of trade by agreement.******Sale—****Conditions of sale—**

Auction. *See* **Auction** (Conditions of sale).

Sale of goods—

Generally. *See* **Sale of goods**.

Specific performance. *See* **Specific performance** (Sale of goods).

Sale of land. *See* **Sale of land (Contract of sale).****Seal—**

Local authority. *See* **Local authority** (Contract—Seal).

Series of contracts—**Damages for breach—**

Foreseeable consequences of breach. *See* **Damages for breach—Foreseeable consequence of breach—Series of contracts, ante.**

Service—

Coal mine. *See* **Coal mining** (Contract of service).

Company director—

Governing director. *See* **Company** (Director—Governing director—Contract of service).

Generally. *See* **Master and servant** (Contract of service).

Implied term—

Duty to take care. *See* **Implied term—Contract of service, ante.**

Period of notice. *See* **Implied term—Period of notice—Contract of service, ante.**

Income tax—

Employment—Emoluments from employment. *See* **Income tax** (Emoluments from office or employment—Employment—Contract of service).

Novation. *See* **Novation—Contract of service, ante.**

Specific performance. *See* **Specific performance** (Service agreement).

Teacher. *See* **Education** (Teacher—Contract of service).

Work made in course of author's employment under a contract of service—

Copyright—Ownership. *See* **Copyright** (Ownership—Work made in course of author's employment under a contract of service).

Services—**Contract partly for sale of goods and partly for rendering of services—**

Implied condition as to fitness. *See* **Sale of goods** (Implied condition as to fitness—Contract partly for sale of goods and partly for rendering of services).

Signature—**Agent for account of principal—**

Sale of goods. *See* **Sale of goods** (Agent—Sale by agent—Signature to contract 'for account of our [disclosed] principal').

Solicitor—**Action for negligence—**

Cause of action. *See* **Solicitor** (Negligence—Cause of action—Contract or tort).

Specific performance. *See* **Specific performance.****Statute—**

Contractual rights taken away. *See* **Statute** (Contract—Contractual rights taken away).

Effect of agreement confirmed by statute. *See* **Statute** (Contract—Agreement confirmed by statute).

Statutory powers—**Agreement not to exercise—**

Invalidity. *See* **Public authority** (Statutory powers—Contract not to exercise).

Fettering statutory powers by contract. *See* **Public authority** (Statutory powers—Contract not to exercise).

Stranger to contract—**Annuitant—**

Widow of deceased owner of business—Sale of business by deceased on terms under which widow was to be paid weekly sum—Charge on business ancillary to other clauses of contract—No trust declared—Widow not party to contract—Death of deceased—Widow obtained letters of administration—Whether widow entitled to maintain action for annuity or specifically to enforce the agreement as regards the annuity—Law of Property Act 1925, s 56. **Beswick v Beswick** [1967] 2 1197, HL.

CONTRACT (cont)

Stranger to contract (cont)—

Benefit of contract—

Agreement between creditors of stranger—Agreement to forfeit loans in specified circumstances—Action by one of creditors to enforce debt against stranger after loan forfeited under agreement—All parties before court in proceedings to enforce debt—Stay of proceedings—Dismissal of action—Company—Plaintiff, as director, owed sum on loan account by company—Loan by finance company to company—Covenant by plaintiff and co-directors not to reduce respective loans to company until loan repaid to finance company—Separate agreement between plaintiff and co-directors that if any of them voluntarily resigned before loan repaid to finance company moneys due to him from company would be forfeited—Company not a party to agreement—Plaintiff voluntarily resigning—Plaintiff claiming from company sum owing to him—Co-directors joined as defendants claiming declaration that plaintiff's loan forfeited—Co-directors entitled to judgment—Stay of proceedings against company—Dismissal of plaintiff's action against company—Supreme Court of Judicature (Consolidation) Act 1925, s 41. **Snelling v John G Snelling Ltd** [1972] 1 79, QBD.

Contract constituting offer to third party—Unilateral contract—Acceptance by performance.

See Offer and acceptance—Acceptance—Unilateral contract—Offer to indefinite number of persons—Performance constituting acceptance—Contract to confer benefit on third party, *ante*.

Sub-contract—

Incorporation of clauses from head contract—

Building contract. *See* **Building contract** (Sub-contract—Incorporation of clauses from head contract).

Power to sub-contract—

Carriage of goods—Valuable load, easy to steal—Oral contract including conditions of carriage of Road Haulage Association Ltd. **Garnham, Harris & Elton Ltd v Alfred W Ellis (Transport) Ltd** [1967] 2 940, QBD.

Right to sub-contract—

Personal contract. *See* Personal contract—Right to sub-contract, *ante*.

Termination—

Breach of condition. *See* Condition—Breach—Effect—Right of either party to terminate contract forthwith, *ante*.

Contract of service. *See* **Master and servant** (Contract of service—Termination).

Damages—

Termination of contract without repudiation. *See* Damages for breach—Termination of contract without repudiation, *ante*.

Notice—

Contract of service—Repudiation by purported acceptance of alleged repudiation—Repudiation breach of contract—Whether repudiation constituting notice to terminate. **Decro-Wall International S A v Practitioners in Marketing Ltd** [1971] 2 216, CA.

Reasonable notice—Concessionaire agreement. *See* Time—Duration of contract—Reasonable notice—Concessionaire agreement, *post*.

Third parties—

Whether contract enforceable, by. *See* Stranger to contract, *ante*.

Threat to break or frustrate—

Industrial dispute. *See* **Industrial relations** (Industrial dispute—Acts done in contemplation or furtherance of industrial dispute—Act not actionable in tort or specified grounds—Act not actionable if consisting of inducement or threat of breach of cont

Time—

Duration of contract—

Reasonable notice—Concessionaire agreement—Expenditure and work incurred by party to whom notice given in carrying out agreement—Whether 12 months' notice reasonable. **Decro-Wall International S A v Practitioners in Marketing Ltd** [1971] 2 216, CA.

Whether determinable by reasonable notice—Commercial contract, of unspecified duration, involving trust and confidence—Licence to Canadian company to manufacture, and sell in America, products invented by managing director of English company—Agency contract containing provision for termination summarily in certain events—Length of notice. **Martin-Baker Aircraft Co Ltd v Canadian Flight Equipment Ltd** [1955] 2 722, QBD.

Whether determinable by reasonable notice—Contract regulating the discharge of trade effluent into the public sewer. **Re Spensborough Urban District Council's Agreement** [1967] 1 959, ChD.

Whether determinable by reasonable notice—Length of notice—Agreement by trading companies not to employ persons employed by each other within previous five years. **Kores Manufacturing Co Ltd v Kolok Manufacturing Co Ltd** [1958] 2 65, CA.

Non-performance within a reasonable time—

Act inconsistent with continuance of contract. **G W Fisher Ltd v Eastwoods Ltd** [1936] 1 421, KBD.

Offer—

Lapse of offer by reason of time. *See* Offer and acceptance—Offer—Lapse of offer—Lapse by reason of time, *ante*.

Performance within reasonable time—

Implied term. *See* Implied term—Performance within reasonable time, *ante*.

Time of the essence—

Option for repurchase of shares—Time limits—Separate times for election and payment—Both of essence of contract. **Hare v Nicoll** [1966] 1 285, CA.

Waiver—Original condition in regard to time waived—Subsequent notice fixing time for completion—Reasonableness—Conduct amounting to waiver. **Charles Rickards Ltd v Oppenheim** [1950] 1 420, CA.

CONTRACT (cont)

Trade union—

Procuring breach of contract—

Right to sue. *See* **Trade union** (Legal proceedings—Right of union to sue—Right to sue for procurement of breach of contract).

Uncertainty of terms—

Husband and wife—

Maintenance. *See* **Husband and wife** (Maintenance—Agreement—Uncertainty of terms).

Sale of land—

Agreement not to bid at auction. *See* **Specific performance** (Uncertainty as to terms—Agreement not to bid at auction).

Generally. *See* **Sale of land** (uncertainty of contract).

Undisclosed principal. *See* **Agent** (Contract—Undisclosed principal).

Undue influence—

Equity. *See* **Equity** (Undue influence).

Third party—

Contract by limited company—Suggested prosecution of brother of director—Effect on father's health. **Mutual Finance Ltd v John Wetton & Sons Ltd** [1937] 2 657, KBD.

Unenforceable contract—

Restraint of trade. *See* **Restraint of trade by agreement**.

Unilateral contract—

Acceptance. *See* **Offer and acceptance**—Acceptance—Unilateral contract, *ante*.

Unincorporated society—

Contract to test fowls—

Negligently carried out by servant—Liability of executive committee of society. **Bradley Egg Farm Ltd v Clifford** [1943] 2 378, CA.

Unlawful purpose—

Illegality. *See* **Illegality**—Unlawful purpose, *ante*.

Vagueness—

Enforceability. *See* **Enforceability**—Vagueness, *ante*.

Validity—

Made on Sunday. *See* **Sunday observance** (Prohibition on transaction of business by tradesman on Sunday—Transaction of business—Control business—Contract between limited companies made on Sunday).

Valuation—

Purchase price—

Price to be determined by valuer—Mistaken valuation. *See* **Valuer** (Valuation—Mistake—Validity—Contractual purchase price).

Variation—

Contract for sale of goods—

Stipulation as to payment—Currency of account—Confirmed irrevocable letter of credit—Credit not conforming with contract—Contractual currency of account Kenya shillings—Credit expressed to be payable in sterling—Notification by bank to sellers of non-conforming letter of credit—Effect of notification an offer to vary terms of contract as to currency of account—Sellers drawing on credit in part payment—Sellers thereby accepting the offer to vary—Confirming bank and buyers thereafter bound by terms of offer—Bank and buyers incurring legal obligations—Subsequent devaluation of sterling—Sellers not entitled to claim difference between sterling price and original contract price in Kenya shillings. **W J Alan & Co Ltd v El Nasr Export & Import Co** [1972] 2 127, CA.

Currency of payment—

Letter varying terms of contract—Estoppel. *See* **Estoppel** (Representation—Ambiguity—Meaning to be given to representation—Representation must be clear and unequivocal to found estoppel—Not sufficient that meaning put on it by representee reasonably appeared to him to be clear and unequivocal—Contract for sale of goods—Price and money of payment expressed in Nigerian pounds).

Memorandum or note. *See* **Contract** (Memorandum or note—Variation of original contract).

Temporary suspension of payments—

Notice required before resumption of payments—Form of notice—Counterclaim in previous action denying suspension—Counterclaim constituting notice. **Tool Metal Manufacturing Co Ltd v Tungsten Electric Co Ltd** [1955] 2 657, HL.

Variation implied by conduct—

Contract of employment—Working hours. *See* **Redundancy** (Calculation of amount of payment—Employment for which normal working hours—Express term of contract as to number of working hours—Consensual variation).

Written contract—

Variation by oral evidence—Sale of business—Construction. **Hutton v Watling** [1948] 1 803, CA.

Breach of contract. *See* **Breach**—Waiver, *ante*.

Waiver—

Condition—

Sale of land. *See* **Sale of land** (Contract—Condition—Waiver of condition).

Want of mutuality. *See* **Enforceability**—Want of mutuality, *ante*.

Warranty—

Breach—

Damages—Loss directly and naturally resulting from breach. *See* **Damages for breach**—Sale of goods—Loss directly and naturally resulting from breach of warranty, *ante*.

CONTRACT (cont)

Warranty (cont)—

Collateral warranty—

Breach—Third-party purchasing goods—Constituents of goods warranted to plaintiffs—Purchase effected by third party at plaintiff's request—No knowledge by vendor that purchase was for re-sale to plaintiffs—Whether vendor to third party liable to plaintiffs for breach of warranty. **Wells (Merstham) Ltd v Buckland Sand and Silica Co Ltd** [1964] 1 41, QBD.

Consideration—Third party caused to enter into contract with warrantor. **Shanklin Pier Ltd v Detel Products Ltd** [1951] 2 471, KBD.

Fitness—

Fundamental breach—Effect of exception clause—Exception clause excluding warranty for fitness—Hire-purchase of car—Car when delivered not safe or roadworthy—Latent defects—Fundamental breach of contract—Whether exception clause effective. **Yeoman Credit Ltd v Apps** [1961] 2 281, CA.

Implied term. *See* Implied term—Warranty of fitness, *ante*.

Misrepresentation distinguished—

Sale of goods. *See* **Sale of goods** (Warranty—Misrepresentation distinguished).

Representation—

Pre-contract negotiations—Expression of opinion—Forecast—Warranty that forecast sound—Forecast made by party having special knowledge or skill in relation to subject-matter of negotiations—Forecast intended to induce other party to enter into contract—Company engaged in distribution of petrol—Negotiations by company to let new petrol station—Forecast by company of prospective petrol sales from station—Forecast inducing tenant to enter into tenancy agreement—Forecast inaccurate and made without reasonable care or skill—Whether company in breach of warranty that forecast sound. **Esso Petroleum Co Ltd v Mardon** [1976] 2 5, CA.

Wife—

Contract by wife. *See* **Husband and wife** (Contract by wife).

Will—

Contract to make disposition by will—

Family provision. *See* **Family provision** (Will—Contract to make disposition by will).

Writing—

Sale of land. *See* **sale of land** (Memorandum of contract).

CONTRACTOR

Building contract. *See* **Building contract** (Contractor).

Defective premises—

Liability in negligence. *See* **Negligence** (Defective premises—Contractor's liability).

Safe system of working. *See* **Safe system of working** (Reasonable care not to expose employee to unnecessary risk—Acts of independent contractors).

CONTRIBUTION

Joint tortfeasors—

Generally. *See* **Tort** (Contribution between joint tortfeasors).

Limitation period. *See* **Limitation of action** (When time begins to run—Joint tortfeasors—Contribution).

National insurance. *See* **National insurance** (Contributions).

CONTRIBUTORY

Company—

Petition by contributory for winding-up of company. *See* **Company** (Compulsory winding-up—Petition by contributory).

CONTRIBUTORY NEGLIGENCE

Child. *See* **Child** (Negligence—Contributory negligence).

Fatal accident—

Deduction from damages. *See* **Fatal accident** (Damages—Deduction from damages—Contributory negligence).

Generally. *See* **Negligence** (Contributory negligence).

CONTROL OF BUILDING

See **Building control**.

CONTROL OF GOODS

Supply of controlled goods—

Quota—

Supply in excess of quota—Agreement by registered person to sell goods to quota holder and then to sell goods of quota holder—Goods supplied in excess of quota 'supply'—Whether registered person 'supplier' of goods under agreement—Limitation of Supplies (Miscellaneous) Order 1940 (SR & O 1940 No 874), art 2. **R v Sorsky Bresler and H Bresler & Sons Ltd** [1944] 2 333, CCA.

Supply of utility goods by manufacturer pursuant to contract of sale—

Manufacturer's duty to furnish customer with invoice containing specified particulars—'Manufacturer'—for sale of non-utility jackets—Utility jackets supplied—Omission to furnish invoice containing specified particulars—Effect—Contract rendered illegal—Utility Mark and Apparel and Textiles (General Provisions) Order 1947 (SR & O 1947 No 2642), art 10(1). **B and B Viennese Fashions v Losane** [1952] 1 909, CA.

CONTROL OF GOODS (cont)

Supply of goods for export only—

'Supply'—

Delivery to agent—Declaration signed by agent in name of principal and undated—Validity—
 Proof of delivery in contravention of declaration—Knitted Goods (Manufacture and Supply)
 Order 1948 (SI 1948 No 316), art 3(2) (as substituted by art 1(a) of the Knitted Goods
 (Manufacture and Supply) (Amendment) (No 2) Order 1948 (SI 1948 No 994), art 3a(1) (as
 added by art 1(b) of the amending Order)—Utility Mark and Apparel and Textiles (General
 Provisions) Order 1947 (SR & O 1947 No 2642), art 16(1)(b), art 18(4). *Patel v Willis* [1951]
 1 470, KBD.

CONTROL OF UNDERTAKING—

Necessity for control—

Control where it appears to the competent authority that in the interests of public safety—

Jurisdiction to question decision—Bona fide decision within authority delegated to the
 Minister cannot be questioned in the courts—Defence (General) Regulations 1939, reg
 55(4). *Point of Ayr Collieries Ltd v Lloyd-George* [1943] 2 546, CA.

CONTROL ORDER

Sale of goods—

Effect of order—

Failure to deliver goods. *See* **Sale of goods** (Delivery—Defence to action for failure to
 deliver—Purported compliance with control order).

CONVENTION

Ratification—

Conflict with statute law. *See* **Conflict of laws** (International convention—Ratified by executive—
 Implemented by statute—Conflict between convention and statute).

Statute effecting international convention—

Construction of statute. *See* **Statute** (Construction—Convention given effect by legislation).**CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS**

Convention adopted by United Kingdom. *See* **Statute** (Construction—Convention impinging on
 English law).

CONVERSION

Action based on fraud—

Concealment by right of action by fraud. *See* **Limitation of action** (Concealment of right of action
 by fraud—Conversion—Action based on fraud).

Acts amounting to conversion—

Adverse detention of chattel—

Refusal to allow entry on land to recover property—Bees swarming and escaping on to
 defendant's land—Liability of defendant in conversion. *Kearry v Pattinson* [1939] 1 65,
 CA.

Illegal user—

Putting uncustomed watches in borrowed vehicle—Forfeiture of vehicle by customs
 authorities—Borrower's presumed intention of natural and probable consequence of act.
Moorgate Mercantile Co Ltd v Finch [1962] 2 467, CA.

Cheque. *See* **Bank** (Cheque—Conversion).

Conversion by agent after termination of authority—

Sale to third party acquiring in good faith—

Liability of third party to owner. *Jerome v Bentley & Co* [1952] 2 114, QBD.

Copyright—

Infringing copy—

Damages. *See* **Copyright** (Infringement—Damages—Conversion).

Remedy of copyright owner. *See* **Copyright** (Infringement—Remedy—Remedy of copyright
 owner against possessor of infringing copy—Action for conversion or detainue).

Damages—

Measure of damages—

Conversion of hay—Trespass to farm—Income and profits taxes in relation to assessing
 damages. *Hall & Co Ltd v Pearlberg* [1956] 1 297, QBD.

Hire-purchase—Sale of goods by hirer. *See* **Hire-purchase** (Damages—Sale of goods by
 hirer—Measure of damages in conversion).

Sale of goods by bailee—Gratuitous bailee—Notification of bailor of intention to terminate
 bailment—Instructions unobtainable—Sale without instructions—Value of goods—Date at
 which assessable—Knowledge or supposed knowledge of bailor. *Sachs v Miklos* [1948]
 1 67, CA.

Sale of goods by bailee—Gratuitous bailee—Instructions of owner of goods unobtainable—
 Sale without instructions—Date at which damages assessable—Expenditure by bailee on
 goods. *Munro v Willmott* [1948] 2 983, KBD.

Sale of goods by bailee—Materials used in experimental work left in bailee's possession sold
 as scrap. *J & E Hall Ltd v Barclay* [1937] 3 620, CA.

Fraudulent. *See* **Criminal law** (Fraudulent conversion).

House—

Conversion of house into several tenements—

Power of court to authorise conversion. *See* **Housing** (Conversion of house into several
 tenements—Power of court to authorise conversion).

Partnership property. *See* **Partnership** (Partnership property—Conversion).

Pleading—

Particulars—

Unidentified goods. *See* **Pleading** (Particulars—Conversion).

CONVERSION (cont)

Possession—

Actual or constructive possession—

Lorries let on hire-purchase—Special 'A' licences held in respect of the lorries—Lorries wrongfully sold by hirer to third parties, details of lorries being deleted from licences and licences irretrievably lost—Lorries re-transferred to hirer—Lorries throughout in physical possession of hirer—Whether actual or constructive possession of lorries by defendants necessary to establish tort of conversion—Denial of rights by removal of licences. **Douglas Valley Finance Co Ltd v S Hughes (Hirers) Ltd** [1966] 3 214, QBD.

Right to immediate possession—

Hire-purchase owner—Hire-purchase agreement providing—'Owners may terminate hiring on default of hirer—Default in payment by hirer—Owner's right to immediate possession of chattel hired—Need of notice. **North Central Wagon and Finance Co Ltd v Graham** [1960] 1 780, CA.

CONVEYANCE

Boundary—

Parcels vague. *See* **Boundary** (Conveyance—Conveyance of plot of land—Parcels vague).

Seashore. *See* **Boundary** (Seashore—Conveyance of land).

Construction. *See* **Sale of land** (Conveyance—Construction).

Covenant—

Breach of covenant—

Mandatory injunction. *See* **Injunction** (Mandatory injunction—Discretion over grant of remedy—Breach of covenant in conveyance).

Equitable interest—

Writing. *See* **Equity** (Disposition of equitable interest or trust—Writing).

Escrow—

Delivery of conveyance as escrow—

Implied condition. *See* **Deed** (Escrow—Condition—Implied condition—Conveyance executed in anticipation of sale).

Implied condition. *See* **Deed** (Escrow—Condition—Implied condition—Conveyance executed in anticipation of sale).

Fraud. *See* **Fraudulent conveyance**.

Places of worship sites. *See* **Ecclesiastical Law** (Conveyance—Conveyance under Places of Worship Sites Act 1873).

Preparation—

Unqualified person. *See* **Solicitor** (Unqualified person—Preparation of documents).

Rectification. *See* **Deed** (Rectification—Conveyance).

Registered land—

Canada. *See* **Canada** (Registered land—Conveyance).

Reservation of right of way. *See* **Easement** (Right of way—Reservation in conveyance).

Restrictive covenant. *See* **Restrictive covenant affecting land**.

Sale of land. *See* **Sale of land** (Conveyance).

School sites. *See* **Education** (School—Conveyance under School Sites Acts).

Solicitor—

Costs. *See* **Costs** (Taxation—Solicitor—Non-contentious business—Fair and reasonable sum in circumstances—Factors to be considered—Conveyancing).

Negligence—

Damages. *See* **Solicitor** (Negligence—Damages—Conveyance of building).

Stamp duty—

Conveyance or transfer operating as voluntary disposition. *See* **Stamp duty** (Voluntary disposition inter vivos—Inadequate consideration—Conveyance or transfer operating as voluntary disposition).

Generally. *See* **Stamp duty** (Conveyance on sale).

Inadequate consideration. *See* **Stamp duty** (Voluntary disposition inter vivos—Inadequate consideration—Conveyance or transfer operating as a voluntary disposition).

See **Stamp duty** (Voluntary disposition inter vivos—Inadequate consideration—Conveyance or transfer operating as a voluntary disposition).

CONVICTION

Appeal—

Court of Appeal—

Jurisdiction. *See* **Criminal law** (Court of Appeal—Jurisdiction—Appeal against conviction).

Generally. *See* **Criminal law** (Appeal).

Certiorari to quash. *See* **Certiorari** (Conviction—Quashing).

Disqualification for holding driving licence—

Severable from conviction. *See* **Road traffic** (Disqualification for holding licence—Severable from conviction).

Evidence—

Admission as evidence in civil proceedings. *See* **Evidence** (Conviction—Admission as evidence in civil proceedings).

Evidence in subsequent civil proceedings—

Burden of proof. *See* **Burden of proof** (Civil action—Conviction as evidence).

Foreign—

Extraditable offence—

Power of magistrate to refuse to commit. *See* **Extradition** (Committal—Power of magistrate to refuse to commit fugitive).

Previous conviction—

Evidence in criminal proceedings. *See* **Criminal evidence** (Character of accused—Previous conviction).

Procedure—

Magistrates. *See* **Magistrates** (Procedure—Conviction).

CONVICTION (cont)

Quarter sessions—

Appeal to quarter sessions against conviction. *See* **Quarter sessions** (Appeal to—Appeal against conviction).

CO-OPERATIVE SOCIETY

Income tax—

Exemption. *See* **Income tax** (Exemption—Co-operative society).

Sale of produce to members—

Mutuality principle. *See* **Income tax** (Profits—Mutuality principle—Society—Sale of produce to members).

COPYRIGHT

Artistic work—

Architectural work—

Building erected on basis of one architect's plans—Subsequent extension of building—Another architect employed for extension of building—Extension incorporating features of original building—Copyright in building—Ownership of copyright—Right to reproduce plans of original building in extension—Copyright Act 1911, s 35(1). *Meikle v Maufe* [1941] 3 144, ChD.

Infringement of copyright. *See* **Infringement**—Artistic work, *post*.

Work of artistic craftsmanship—

Authorship—Sketch of dress—Dress itself—Reproduction—Whether dress original work of artistic craftsmanship—Copyright Act 1911, s 22. *Burke v Spicer's Dress Designs* [1936] 1 99, ChD.

Work of artistic craftsmanship—

Meaning of artistic—Plaintiffs manufacturing suites of chairs and settees—Plaintiffs producing prototype for new type of suite—Prototype consisting of frame nailed together and upholstered—Prototype used as model and then destroyed when suites in production—Defendants selling copies of plaintiffs' new suite under another name—Plaintiffs alleging defendants infringing their copyright in prototype—Whether prototype qualifying as 'work of artistic craftsmanship'—Copyright Act 1956, s 3(1)(c). *George Hensher Ltd v Restawile Upholstery (Lancs) Ltd* [1974] 2 420, HL.

Assignment—

Equitable assignment of future contingent rights—

American renewal copyright—English contract assigning 'full copyright for all countries in the musical composition... including the title, words and music thereof in all countries for the period of copyright as far as it is assignable by law, together with all rights therein which he now has or may hereafter become entitled to...'—Composition acquired copyright protection in USA—Two periods of American copyright—Second period contingent on author's being alive in twenty-eighth year of first period—Whether assignment carried benefit of renewal period. *Campbell Connelly & Co Ltd v Noble* [1963] 1 237, ChD.

Future copyright—

Agreement that publishers should have exclusive right of publishing book—Book not yet written—Effect of contract as assignment of copyright in future work—Effect as exclusive licence—Copyright Act 1956, s 19(1), s 37(1). *Chaplin v Leslie Frewin (Publishers) Ltd* [1965] 3 764, CA.

Income tax—

Capital or income receipts. *See* **Income tax** (Capital or income receipts—Copyright—Assignment).

Licence—

Exclusive licence assignable only with author's consent—Death of author—Whether consent to assignment could be given by his assigns. *Board of Governors of the Hospital for Sick Children v Walt Disney Productions Inc* [1967] 1 1005, CA.

Partial assignment—

Author agreeing to grant to plaintiffs exclusive right to print and publish an original work in volume form—Publication by defendants of same work in weekly magazine—Infringement—Right of plaintiffs to sue alone—Copyright Act 1911, s 5(2), (3). *Jonathan Cape Ltd v Consolidated Press Ltd* [1954] 3 253, QBD.

Rights of assignee—

Rights during extension of terms of copyright—Nature of rights—Assignment before July 1, 1912, for whole term of copyright—Extension of terms of copyright by Copyright Act 1911—Notice requiring assignment of statutory extension not given—Rights of assignee during statutory extension—Whether exclusive rights—Copyright Act 1911, s 24(1), proviso (a) (ii). *Loew's Incorporated v Littler* [1958] 2 200, CA.

Statutory limitation on operation of assignment to 25 years from author's death—

Assignment of copyright by composer on Mar 11, 1912, subsequent to passing of the Copyright Act 1911, but prior to time when the Act came into operation—Whether copyright passed for the whole term of its existence—Copyright Act 1842—Interpretation Act 1889—Copyright Act 1911, ss 5(2), 24. *Coleridge-Taylor v Novello & Co Ltd* [1938] 3 506, CA.

Validity—

Undue influence—Inequality of bargaining power. *See* **Equity** (Undue influence—Inequality of bargaining power—Assignment of copyright).

Canada. *See* **Canada** (Copyright).

Co-ownership—

Action—

Parties—Co-owners should be parties as such. *Chaplin v Leslie Frewin (Publishers) Ltd* [1965] 3 764, CA.

Enemy owner of copyright. *See* **Trading with the enemy** (Transfer of chose in action by enemy—English copyright owned by enemy).

Fair dealing. *See* **Infringement**—Defence—Fair dealing, *post*.

COPYRIGHT (cont)

False attribution of authorship—

Attribution—

Newspaper article—Article about well-known professional singer—Article based on interview with singer—Article written by reporter on basis of notes taken during interview—Published article stated to be 'by' the singer 'talking to' the reporter—Article in first person singular—Normal practice for reporters of newspapers to put words into mouths of individuals—Whether constituting attribution of authorship to singer—Whether action for false attribution available to persons other than professional authors—Copyright Act 1956, s 43(2), (8). **Moore v News of the World Ltd** [1972] 1 915, CA.

Damages—

Damages for false attribution to be taken into account in assessing damages in other proceedings arising out of same transaction—Newspaper article—Damages for libel in respect of same article—Damages for false attribution not precluded in proper case—Article concerning plaintiff's former marriage to well-known actor—Article purporting to consist of words spoken by plaintiff—Innuendo that plaintiff ready to 'wash her dirty linen' in public and lend herself to such an article for money—Plaintiff awarded libel damages £4,300—Proper case to award additional damages of £100 for false attribution of authorship—Copyright Act 1956, s 43(10). **Moore v News of the World Ltd** [1972] 1 915, CA.

Future copyright—

Assignment. *See* Assignment—Future copyright, *ante*.

Infringement—

Architect's building plans—

Implied licence to use. *See* Licence—Implied licence—Architect's building plans, *post*.

Artistic work—

Boat plans—Plans for constructing dinghy and parts of dinghy—Design not registered—Dinghies and parts built without consent of owner of copyright—Plans artistic works—Reproduction in three-dimensional form—Whether reproduction constituted infringement of copyright—Photographs of three-dimensional form—Whether infringement of copyright—Registered Designs Act 1949, ss 1(3), 7(1)—Copyright Act 1956, ss 9(8), 10(2) (3), 48(1), 49(1)—Designs Rules 1949 (SI 1949 No 2368), r 26(3). **Dorling v Honnor Marine Ltd** [1964] 1 241, CA.

Drawing—Publication—Reproduction in three-dimensional form—Issue of reproductions to public—Drawing of electric light fitting—Light fitting made from drawing—Light fittings sold to public—Whether light fittings reproduction of drawing—Whether drawing published work—Copyright Act 1956, ss 3(3), 49(2)(c). **Merchant Adventurers Ltd v M Grew & Co Ltd** [1971] 2 657, ChD.

Bar to remedy. *See* Infringement—Remedy—Bar, *post*.

Damages—

Additional damages—Statutory provision for additional damages precluding claim for aggravated or punitive damages—Circumstances in which additional damages may be awarded—Effective relief available in another cause of action—Copyright Act 1956, s 17(3). **Beloff v Pressdram Ltd** [1973] 1 241, ChD.

Conversion—Limitation period—Copyright Act 1911, s 10. **Sutherland Publishing Co Ltd v Caxton Publishing Co Ltd (No 2)** [1938] 4 389, HL.

Damages for infringement and conversion—Cumulative or alternative—Copyright Act 1911, ss 6, 7. **Sutherland Publishing Co Ltd v Caxton Publishing Co Ltd** [1938] 4 389, HL.

Exemplary damages. *See* Damages (Exemplary damages—Copyright—Infringement).

Measure of damages—Architect's building plans—Plans prepared for purpose of building owners obtaining planning permission—Licence by architect to use plans for planning permission purposes only—Plans including distinctive feature—Distinctive feature in plans used by owners for purpose of erecting building—Damages assessed on basis of fair remuneration owners would have paid for licence to use plans for erecting building. **Stovin-Bradford v Volpoint Properties Ltd** [1971] 3 570, CA.

Measure of damages—Conversion. **Ash v Dickie** [1936] 2 71, CA. **Sutherland Publishing Co Ltd v Caxton Publishing Co Ltd (No 2)** [1938] 4 389, HL.

Defence—

Crown copyright—Bible—New translation of the New Testament in contemporary English—Queen's printers subsequently publishing copy of the translation of one Gospel—Claim of title so to do under royal patent—Whether royal prerogative in relation to the printing of books extended to authorise a breach of copyright. **Oxford University and Cambridge University v Eyre & Spottiswoode Ltd** [1963] 3 289, ChD.

Defendant unaware of existence of copyright in work—Scope of defence—Copyright Act 1911, s 8. **John Lane, The Bodley Head Ltd v Associated Newspapers Ltd** [1936] 1 379, KBD.

Fair dealing—Fair dealing for purpose of criticism or review—Motive for publication—Football pools—Mathematical tables published in copyright works—Reproduction of one of the tables in a letter written to defendants—Publication by defendants of the letter and its contents—Whether publication in course of fair criticism of plaintiff's work—Copyright Act 1911, ss 1(2), 2(1). **Johnstone v Bernard Jones Publications Ltd** [1938] 2 37, ChD.

Fair dealing—Fair dealing for purposes of criticism or review—Scope of defence—Not limited to criticism of literary style—Defence extending to criticism of doctrine or philosophy expounded in work—Work not published to world at large—Defence available where unpublished work has had wide circulation—Copyright Act 1956, s 6(2). **Hubbard v Vosper** [1972] 1 1023, CA.

Fair dealing—Fairness—Unpublished literary work—Internal office memorandum—Memorandum not intended for publication—Memorandum written by plaintiff in course of employment by newspaper—Contents of memorandum leaked by member of staff to contributor of another journal—Memorandum published in other journal for purposes of criticism—Memorandum known to have been leaked—Leak constituting a 'dealing' with memorandum—Whether dealing 'fair'—Copyright Act 1956, s 6. **Beloff v Pressdram Ltd** [1973] 1 241, ChD.

COPYRIGHT (cont)

Infringement (cont)—

Defence (cont)—

Fair dealing—Interlocutory injunction. *See* Injunction (Interlocutory—Copyright—Defence of fair dealing).

Public interest in publication—Scope of public interest—Defence not extending beyond misdeeds of a serious nature clearly recognisable as such. *Beloff v Pressdram Ltd* [1973] 1 241, ChD.

Statute precluding right of action for breach of copyright—Design capable of being registered under Patents and Designs Act 1907—Cartoons depicting sailor—Reproduction in form of brooches and toys—Whether cartoon designs capable of being registered under Patents and Designs Acts 1907—1938—Copyright Act 1911, ss 1(2), 22, 25—Patents and Designs Acts 1907—1938, s 93—Designs Rules 1920 (S R & O 1920 No 337), r 89. *King Features Syndicate Inc and Segar v O and M Kleemann Ltd* [1941] 2 403, HL.

Statute precluding right of action for breach of copyright—Design capable of registration under Patents and Designs Act 1907—Wall plaque produced before Jan 1, 1950—Capable of registration under Patents and Designs Act 1907—Exclusion from registration after Jan 1, 1950—Whether plaque subject of copyright—Copyright Act 1911, s 22(1)—Registered Designs Act 1949, s 1(4)—Designs Rules 1949 (SI 1949 No 2368), r 26(2). *Usher v Barlow* [1952] 1 205, CA.

Evidence—

Similar facts—Admissibility. *See* Evidence (Similar facts—Circumstances in which similar fact evidence admissible—Probative weight—Prejudice to defendant—Rebuttal of defence—Action for infringement of copyright).

Film—

Song—Screen credit—Song sold by author to film company—Authorship ascribed to third party in screen credit—Whether infringement of copyright. *Miller v Cecil Film Ltd* [1937] 2 464, ChD.

Public performance—

Criterion to be applied in determining whether performances 'public'—Copyright Act 1911, s 1(2). *Jennings v Stephens* [1936] 1 409, CA.

Diffusion of broadcast programme in factory—Diffusion of gramophone records—Whether 'public performance'—Copyright Act 1911, s 1(2), s 2(1). *Ernest Turner Electrical Instruments Ltd v Performing Right Society Ltd, Performing Right Society Ltd v Gillette Industries Ltd* [1943] 1 413, CA.

Performance in private room adjoining public restaurant—Performance audible in restaurant—Whether public performance. *Performing Right Society Ltd v Camelo* [1936] 3 557, ChD.

Remedy—

Bar—Previous action against author—Judgment for infringement only—Action against publishers for infringement and conversion—Whether publishers and authors joint tortfeasors—Whether judgment against author bar to relief against publishers. *Ash v Hutchinson & Co (Publishers) Ltd* [1936] 2 1496, CA.

Remedy of copyright owner against possessor of infringing copy—Action for conversion or detinue—Innocent possessor—Possessor unaware that copy in his possession infringing copy—Whether cause of action in conversion or detinue against innocent possessor—Copyright Act 1956, s 18(1)(2). *WEA Records Ltd v Benson King (Sales) Ltd (Birkin, Third Party)* [1974] 3 81, ChD.

Reproduction—

Pleading—Reproduction of substantial parts of work infringed. *Oliver v Dickinson* [1936] 2 1004, ChD.

Pleading—Reproduction of substantial parts of work infringed. *Oliver v Dickinson* [1936] 2 1004, ChD.

Reproduction of literary work—Essential elements similarity and causal connexion—Objective and subjective questions, but of fact—No irrebuttable presumption of causal connexion—Subconscious copying as possible infringement—Copyright Act 1956, s 2(5). *Francis Day & Hunter Ltd v Bron (trading as Delmar Publishing Co)* [1963] 2 16, CA.

Reproduction of literary work—Plan of shop-front—Erection of shop-front—Tracing of plan used—Whether infringement of copyright—Whether plan a 'design'—Copyright Act 1911, s 22. *Chabot v Davies* [1936] 3 221, ChD.

Reproduction of literary work—Reproduction of substantial part of literary work—Book included copying from shorthand transcript of proceedings at certain trials, with editorial comment—Second book, published over thirty years later, included unedited copying from first book's account of the proceedings at the trials—Film script made subsequently by another containing matter drawn from unedited copying in second book—Whether a substantial part of the literary work taken—Whether infringement of copyright in either book—Copyright Act 1956, s 2(5), s 49(1). *Warwick Film Productions Ltd v Elisinger* [1967] 3 367, ChD.

Reproduction of literary work—Reproduction of substantial part of literary work—Parody of words of song—Test to be applied in considering whether parody an infringement—Colourable imitation not a relevant consideration—Disclosure necessary on requesting permission for parody—Copyright Act 1956, s 18(3), s 49(1). *Joy Music Ltd v Sunday Pictorial Newspapers (1920) Ltd* [1960] 1 703, QBD.

Right of action—

Person having limited interest in copyright—Partial assignment of copyright. *See* Assignment—Partial assignment—Author agreeing to grant to plaintiff exclusive right to print and publish an original work in volume form—Publication of same work in weekly magazine—Infringement, *ante*.

COPYRIGHT (cont)

Infringement (cont)—

Test of infringement—

Drawing—Infringement of copyright in drawing by three-dimensional object—Object appearing to non-expert to be a reproduction of drawing—Series of drawings—Legends on drawings—Non-expert able to form picture of object by looking at whole series and reading legends—Drawings sufficiently clear to enable man of average intelligence to picture three-dimensional object in his mind—Drawings design for electric light fittings—Possibility of visualising fittings from drawings—Copyright Act 1956, s 9(8). **Merchant Adventurers Ltd v M Grew & Co Ltd** [1971] 2 657, ChD.

Interlocutory injunction. *See* Injunction (Interlocutory—Copyright).

Licence—

Assignment. *See* Assignment—Licence, *ante*.

Exclusive licence—

Exclusive licence to produce author's literary and dramatic works in cinematograph or moving picture films—Licence granted in 1919—Sound track films not then produced commercially—Whether licence extended to sound motion pictures or only to silent films. **Board of Governors of the Hospital for Sick Children v Walt Disney Productions Inc** [1967] 1 1005, CA.

Grant—

Grant to non-enemy subject licence to exercise copyright owned by enemy—Non-exclusive licence—Action by licensee for infringement—Rights of licensee—Joinder of owner—Dispensation—Discretion of court—Onus of proof that owner an enemy alien—Evidence—Existence of licence—Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939, s 2(1), (5). **Novello & Co Ltd v Ernst Eulenburg Ltd** [1950] 1 44, CA.

Grant to non-enemy subject licence to exercise copyright owned by enemy—Power of comptroller—Right of owner, after shedding enemy character, to exercise copyright subject to rights of statutory licensee—Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939, s 2(1). **Novello & Co Ltd v Hinrichsen Edition Ltd** [1951] 2 457, CA.

Implied licence—

Architect's building plans—Architect employed to prepare plans for purpose of obtaining planning permission—Contract incorporating RIBA Conditions of Engagement—Implied licence to allow use of plans for all purposes connected with the building—Use of plans by purchasers of site and purchasers' surveyors—Use in preparing further plans required for approval under building regulations—Whether infringement of copyright. **Blair v Alan S Tomkins and Frank Osborne** [1971] 1 468, CA.

Architect's building plans—Architect employed to prepare plans for purpose of obtaining planning permission—Nominal fee—Oral contract with building owners—Architect's fee much less than RIBA scale fee for preparing plans—Architect subsequently sending in account charging nominal sum—Account stating that copyright in plans remained in architect and owners not to reproduce plans without his consent—Planning permission obtained on basis of plans—Architect withdrawing from project—Owners making use of principal feature of plans in erection of building—Whether infringement of copyright. **Stovin-Bradford v Volpoint Properties Ltd** [1971] 3 570, CA.

Rights of licensee—

Right to make alterations—Licensee has right to make alterations except insofar as licence expressly or impliedly excludes right—BBC licensed by plaintiff, member of Screenwriters' Guild, to televise his play—Right of BBC to make alterations not expressly excluded by licence—Agreement by BBC with Screenwriters' Guild not to make structural alterations of script without prior consent of author—BBC claimed right to excise two words from line—Whether agreement applied to licence—Whether proposed alteration structural—Whether interlocutory injunction should be granted. **Frisby v British Broadcasting Corpn** [1967] 2 106, ChD.

Scope of licence—

Music stated by owners of copyright to be free for public performance—Public performance by broadcast—Whether licence including broadcasting—Copyright Act 1911, ss 1, 2, Sch 1—Australian Copyright Act 1912 (No 20 of 1912), s 8. **Mellor v Australian Broadcasting Commission** [1940] 2 20, PC.

What constitutes a licence—

Grant of exclusive right to televise performance of play once during limited period for fee—Whether licence or partial assignment. **Frisby v British Broadcasting Corpn** [1967] 2 106, ChD.

Literary work—

Compilation—

Originality—Approach to determining whether copyright exists—Compilation regarded as a whole—Skill, labour and judgment involved—Football betting coupon—Wagers listed in coupon selected from a very great variety of possible Wagers—Work of selecting wagers to be taken into account when assessing originality—Work of presentation of chosen wagers to the eye of the customer by means of the coupon also involving skill, labour and judgment—Coupon an original literary work within Copyright Act 1956, s 2(1) and s 48(1). **Ladbroke (Football) Ltd v William Hill (Football) Ltd** [1964] 1 465, HL.

Originality—Chronological list of football matches—Weekly partial reproduction by football pool promoters—Distinction between a compilation requiring skill and the giving of information—Weekly reproductions of part amounting to reproduction of the compilation. **Football League Ltd v Littlewoods Pools Ltd** [1959] 2 546, ChD.

Originality—Tables contained in diary—Knowledge labour and judgment involved—Copyright Act 1911, ss 6(3), 8. **Frank Smythson Ltd v G A Cramp & Sons Ltd and Surrey Manufacturing Co** [1944] 2 92, HL.

Ownership—

Presumption. *See* Ownership—Presumption of ownership of copyright—Literary work, *post*.

COPYRIGHT (cont)

Literary work (cont)—

Reproduction of literary work—

Infringement of copyright. *See* Infringement—Reproduction—Reproduction of literary work, *ante*.

Musical work—

Exception from protection—

Making of record by manufacturer for sale by retail—Notice to owner of copyright—Notice of ordinary retail selling price—Manufacture of records for chocolate manufacturers' advertising campaign—Records to be sold by chocolate manufacturers each for sum of money to a purchaser tendering three wrappers from manufacturers' chocolate bars—Sales at that price showed profit—Whether sale by 'retail'—Whether price 'ordinary retail selling price' as defined—Copyright Act 1956, s 8(1), (2)—Copyright Royalty System (Records) Regulations 1957 (S I 1957 No 866), reg 1(1)(f), reg 3. **Chappell & Co Ltd v The Nestlé Co Ltd** [1959] 2 701, HL.

Radio or gramophone performance in place other than theatre—

Gramophone performance in restaurant—Owners or users exempted from payment of fees—Canadian Copyright Act 1921, (R S C 1927, c 32)—Canadian Copyright Amendment Act 1931, ss 10, 10A, 10B (1), (6)(a), (7), (8), (9) (as amended by c 28 of 1936, s 2 and c 27 of 1938, s 4). **Vigneux v Canadian Performing Right Society Ltd** [1945] 1 432, PC.

Studio broadcast—Broadcast of gramophone records—Whether a 'public performance by means of...gramophone'—Copyright Amendment Act 1931, s 10B, as amended by Copyright Amendment Act 1936, s 1, and Copyright Amendment Act 1938, s 4. **Associated Broadcasting Co Ltd v Composers, Authors and Publishers Assn of Canada Ltd** [1954] 3 708, PC.

Owner—

Rights. *See* Rights of owner of copyright, *post*.

Ownership—

Architectural work—

Building—Extension of building. *See* Artistic work—Architectural work—Building erected on basis of one architect's plans—Subsequent extension of building, *ante*.

Presumption of ownership of copyright—

Literary work—Selection of copied material and original matter—Books including accounts of the trials of Oscar Wilde—One book published anonymously in 1911 or 1912, much of it based on a shorthand note of the proceedings—Another book published in 1948 containing some unedited copying from account of proceedings in first book and some original matter and editing—Presumption of ownership of copyright in publishers of first book—Whether each book a literary work entitled to copyright—Copyright Act 1956, s 20(4). **Warwick Film Productions Ltd v Eisinger** [1967] 3 367, ChD.

Proof of ownership—

Newspaper articles—Information supplied by one person, articles written by another—Onus of proof—Copyright Act 1911, s 6(3). **Donoghue v Allied Newspapers Ltd** [1937] 3 503, ChD.

Work made in course of author's employment under a contract of service—

Contract of service—Test whether employment a contract of service or for services—Whether employee employed as part of business and work an integral part of business—Journalist employed by newspaper—Journalist political and lobby correspondent of paper—No written contract of employment—Journalist also writing articles for other papers and broadcasting—Journalist active member of editorial staff in effect working full-time for paper and receiving substantial salary—Whether employed under a contract of service—Copyright Act 1956, s4(4). **Beloff v Pressdram Ltd** [1973] 1 241, ChD.

Performance of dramatic or musical works—

Knowingly making record of performance without consent of performers—

Meaning of 'knowingly'—No written consent of each performer—Whether offence committed—Dramatic and Musical Performers' Protection Act 1925, s 1(a). **Gaumont British Distributors Ltd v Henry** [1939] 2 808, KBD.

Registered design. *See* Design.

Rights of owner of copyright—

Rights in title of work—

Play—Film unconnected with play—Same title—Rights of owner of copyright in play. **O'Gorman v Paramount Film Service Ltd** [1937] 2 113, ChD.

Sale—

Trading for tax purposes. *See* Income tax (Trade—Adventure in the nature of trade—Isolated transaction—Sale of copyright).

Sole rights of copyright—

Transfer—

Agreement for sale of sole rights in opera—Proviso for reverter of rights on failure of purchaser to produce as stipulated—Opera produced as stipulated—Whether rights transferred by agreement personal to purchaser or transferable rights. **Loew's Incorporated v Littler** [1958] 2 200, CA.

Sound recordings—

Causing the recording to be heard in public—

Transmission of recordings at holiday camp—Assignees of copyright in sound recordings sued proprietors of holiday camp for alleged infringement—Sound recordings transmitted through loudspeakers throughout the camp—Whether so transmitted at premises where persons resided or slept—Whether transmitted as part of the amenities provided exclusively or mainly for residents therein—Copyright Act 1956, s 12(7). **Phonographic Performance Ltd v Pontin's Ltd** [1967] 3 736, ChD.

Title of song—

Copyright in song—

Action by owners of copyright in song for infringement—Words and theme of song not used in film—Whether copying sufficiently substantial to constitute infringement. **Francis Day and Hunter Ltd v Twentieth Century Fox Corp Ltd** [1939] 4 192, PC.

CORN RENTS

Assessment—

Assessment based on price of wheat in 1799—

Periodical review of rents according to average price of wheat—'Price'—Whether price included payments under Cereals (Deficiency Payments) Order 1955 (S I 1955 No 962), art 4(1). **Re Scremby Corn Rents** [1960] 3 462, CA.

CORONER

Inquest—

Custody of body—

Adjournment of inquest sine die—Criminal proceedings pending—Coroner's right to detain body until completion of inquest—Power to order release of body before completion of inquest—Coroners (Amendment) Act 1926, s 14(2). **R v Bristol Coroner, Ex parte Kerr** [1974] 2 719, QBD.

Suicide—

Evidence—Presumption—No other likely explanation of deceased's death—Suicide not proved by the evidence—Whether presumption of suicide legitimate—Whether open to coroner to return a verdict of suicide. **R v HM Coroner for the City of London, Ex parte Barber** [1975] 3 538, QBD.

Verdict of suicide—Application for certiorari to quash. *See* Inquest—Verdict of suicide—Application for certiorari to quash, *post*.

Verdict of suicide—

Application for certiorari to quash—Insufficient evidence of suicidal intent—Further evidence sought to be called—Whether new inquest should be ordered. **R v Cardiff Coroner, ex parte Thomas** [1970] 3 469, QBD.

Application for certiorari to quash—Insufficient evidence to support verdict—Need for proof of suicidal intent—Inquisition quashed—Fresh inquest ordered before another coroner—Coroners Act 1887, s 6(1)(b), (2)—Coroners (Amendment) Act 1926, s 19. **R v Huntbach, Ex parte Lockley** [1944] 2 453, KBD.

Application for certiorari to quash—Probability of different verdict at a new inquest must be shown—Coroners Act 1887, s 6(1). **Re Davis (decd)** [1967] 1 688, CA.

Proceedings—

Defamation—

Privilege. *See* Libel and slander (Privilege—Judicial proceedings—Coroner's court).

CORPORATE TRUSTEE

See Trust and trustee (Corporate trustee).

CORPORATION

Appointment as receiver of property of company. *See* Company (Receiver—Appointment—Appointment of body corporate).

Bye-laws—

Amendment—

Proposed amendment to be confirmed by majority of fellows entitled to vote—Whether 'majority' meant the majority present, personally or by proxy, at the particular meeting—Society incorporated by charter. **Knowles v Zoological Society of London** [1959] 2 595, CA.

Charity—

Investments—

Trustee range. *See* Charity (Chartered corporation—Investments).

Corporate personality. *See* Company (Corporate personality).

Corporation sole—

Land—

Acquisition under Limitation Act. *See* Limitation of action (Land—Adverse possession—Tenancy not in writing).

Criminal liability. *See* Criminal law (Company).

Foreign—

Alter ego of foreign government—

Immunity from suit. *See* Constitutional law (Foreign sovereign state—Immunity from suit—Corporation).

Litigation—

Description of parties. *See* Practice (Parties—Description of parties—Corporate body).

Opposition to grant of new tenancy of business premises—

Intention to demolish or reconstruct. *See* Landlord and tenant (Opposition to grant of new tenancy of business premises—Intention of landlord to demolish or reconstruct premises comprised in holding—Local authority landlord).

Trust corporation—

Share capital of trust corporation acquired by another company on amalgamation—

Transfer of business of acting as personal representative. *See* Trust and trustee (Trust corporation—Share capital of trust corporation acquired by another company on amalgamation).

CORPORATION PROFITS TAX

Hong Kong. *See* Hong Kong (Corporation profits tax).

CORPORATION SOLE

Resulting trust. *See* Trust and trustee (Corporation sole—Trust imposed on corporation sole).

CORPORATION TAX

See Income tax (Corporation tax).

CORPSE

Conspiracy to prevent burial of corpse. *See* Criminal law (Conspiracy—Burial—Prevention).

Coroner's power to detain. *See* Coroner (Inquest—Custody of body).

CORRECTION

Enforcement notice. *See* **Town and country planning** (Enforcement notice—Correction of informality, defect or error).

Judgments and orders—

Accidental slip or omission. *See* **Judgment** (Order—Correction—Accidental slip or omission).

CORROBORATION

Abortion. *See* **Criminal law** (Abortion—Corroboration).

Affiliation proceedings. *See* **Affiliation** (Evidence—Corroboration of mother's evidence).

Child—

Evidence. *See* **Criminal evidence** (Child—Corroboration).

Evidence in criminal proceedings. *See* **Criminal evidence** (Corroboration).

Matrimonial cases—

Magistrates' courts. *See* **Husband and wife** (Summary proceedings—Corroboration).

CORRUPTION

Agent—

Secret commission. *See* **Agent** (Secret commission—Bribe—Payment to agent—Presumption of corrupt motive).

Corrupt bargain—

Conspiracy. *See* **Criminal law** (Conspiracy—Corrupt bargain).

See **Criminal law** (Corruption).

Criminal offence.

See **Criminal law** (Corruption).

Public morals—

Conspiracy. *See* **Criminal law** (Conspiracy—Corruption of public morals).

COSTERMONGER

Costermonger's barrow—

Retail trading elsewhere than in shop—

Closing hours. *See* **Shop** (Hours of trading—Retail trading elsewhere than in shop—Place where retail trade or business carried on—Costermonger's barrow).

COSTS

Acquittal—

Criminal proceedings. *See* **Criminal law** (Costs—Acquittal).

Action—

Several defendants. *See* **Apportionment**—Action—Several defendants, *post*.

Admiralty—

Generally.

See **Admiralty** (Costs).

Prize law. *See* **Prize law** (Costs).

Allocation—

Form—

Expression of sums of money—Decimalisation—Decimal Currency Act 1969, Sch 1. **Practice Direction** [1970] 3 441.

Allocatur for costs. *See* **Taxation**—Allocatur, *post*.

Appeal—

Appeal to Court of Appeal. *See* **Appeal to Court of Appeal**, *post*.

Appeal to quarter sessions—

Licensing appeal. *See* **Licensing** (Costs—Appeal to quarter sessions).

Bankruptcy. *See* **Bankruptcy** (Appeal—Costs).

Divorce. *See* **Divorce** (Appeal—Costs).

Interlocutory appeal—

Form of order for costs. *See* **Order for costs**—Interlocutory appeal, *post*.

Order for costs. *See* **Order for costs**—Costs of appeal, *post*.

Security for costs. *See* **Security for costs**—Appeal, *post*.

Stay of order for costs of appeal—

Order for new trial—Costs of original trial not paid—Plaintiff insolvent—Order for stay of costs of appeal until after second trial. **Stevens v Economic House Builders Ltd** [1938] 1 654, CA.

Appeal to Court of Appeal—

Collision actions—

Practice. *See* **Order for costs**—Practice—Court of Appeal—Action for limitation of liability in case of collision, *post*.

Leave—

Requirement of leave—Appeal as to costs only—Appeal as to costs without leave of the trial judge—Genuine appeal on several matters including costs—Appeal unsuccessful on all matters except costs—Whether appeal as to costs only within Supreme Court of Judicature (Consolidation) Act 1925, s 31(1)(h). **Wheeler v Somerfield** [1966] 2 305, CA.

Requirement of leave—Appeal as to costs only—Appeal as to costs without leave of trial judge—Costs in discretion of trial judge—Jurisdiction of Court of Appeal to entertain appeal—Circumstances in which appeal lies without leave—Supreme Court of Judicature (Consolidation) Act 1925, s 31(1)(h), s 50(1)—RSC Ord 65, r 1. **Baylis Baxter Ltd v Sabath** [1958] 2 209, CA.

Requirement of leave—Appeal as to costs only—Appeal without leave of trial judge—Matrimonial property dispute—Appellant assisted person whose contribution was assessed at nil—Jurisdiction of Court of Appeal to entertain appeal—Whether an appeal as to costs only—Supreme Court of Judicature (Consolidation) Act 1925, s 31(1)(h)—Legal Aid and Advice Act 1949, s 2(2)(e). **Crystall v Crystall** [1963] 2 330, CA.

COSTS (cont)

Appeal to Court of Appeal (cont)—

Leave (cont)—

Requirement of leave—Order of High Court or judge thereof—Order as to costs only—Costs in discretion of judge—Leave of judge making order—Joint defendants—Point of law decided against defendants—Substantive order against one defendant—Order for costs against both defendants—Appeal by second defendant—Central point of law wrongly decided by judge—No material on which to exercise discretion that defendants should pay costs—No leave required by second defendant to appeal against order as to costs—Supreme Court of Judicature (Consolidation) Act 1925, s 31(1)(h). **Hellyer v Sheriff of Yorkshire** [1974] 2 712, CA.

Shorthand transcript of evidence at trial—

Cost of transcript—When allowed—RSC Ord 58, rr 4 11. **Greaves v Drysdale** [1936] 2 470, CA.

Apportionment—

Action—

Several defendants—Alternative claims against one defendant or against the others—Election by plaintiff after decision to take remedy against first defendant. **Du Sautoy v Symes** [1967] 1 25, ChD.

Several actions—

No order for consolidation—Agreement that evidence in one action deemed to be taken in two others—Judgment in first action and adjournment by consent of second and third. **Boguslawski v Gdynia Ameryka Linie** [1951] 2 113, CA.

Arbitration—

Workmen's compensation. *See* **Workmen's compensation** (Costs of arbitration and proceedings connected therewith).

Assessment in chambers—

Chancery Division—

Assessment by master—Monetary limit. **Practice Direction** [1963] 1 912, ChD, **Practice Direction** [1975] 3 224, ChD.

Bankruptcy—

Appeal. *See* **Bankruptcy** (Appeal—Costs).Generally. *See* **Bankruptcy** (Costs).

Bill of costs—

Form—

Legal aid. *See* **Legal aid** (Bill of costs—Form).

Lodgment—

Divorce—Legal aid. *See* **Legal aid** (Bill of costs—Lodgment).

Taxation. *See* **Taxation**—Bill of costs, *post*.

Bullock order—

Appropriateness—

Defendants reasonably joined—Plaintiff succeeding against one defendant, but not against others—Costs of successful defendants awarded against plaintiff—Whether unsuccessful defendant should be ordered to pay costs awarded against plaintiff. **Donovan v Cammell Laird & Co** [1949] 2 82, Assizes.

No dilemma—Pedestrian's injury caused by collision of motor vehicle with telephone wires—Wires on road due to negligent tree-felling by independent contractor—Action succeeding against driver and tree-feller, failing against tree-owner. **Salisbury v Woodland** [1969] 3 863, CA.

Not appropriate where question only one of law. **Du Sautoy v Symes** [1967] 1 25, ChD.

Plaintiff having different causes of action against two defendants—Action against one successful—Action against other unsuccessful—Whether Bullock order appropriate—RSC Ord 16, r 7. **Mulready v J H & W Bell Ltd** [1953] 2 215, CA.

Forms of order—

Discretion of judge—Circumstances to be taken into account—Bankruptcy of unsuccessful defendant—Whether any principle of law that where unsuccessful defendant bankrupt costs of successful defendants should be given directly against him. **Mayer v Harte** [1960] 2 840, CA.

Plaintiff's right to order—

Discretion of judge—RSC Ord 16, r 7. **Hong v A & R Brown Ltd** [1948] 1 185, CA.

Certiorari. *See* **Certiorari** (Costs).

Charging order—

Unascertained sum. *See* **Execution** (Charging order—Charge for securing payment of moneys due or to become due under judgment or order—Unascertained sum—Costs).

Charity—

Generally. *See* **Charity** (Costs).

Right to costs—

Costs out of estate of deceased—Gift by will to non-existent charity—Claims by various charities—Construction of will—Right to costs out of the estate. **Re Preston (dec'd)** [1951] 2 421, ChD.

Claim—

Counterclaim—

Claim and counterclaim both successful—Claim admitted before trial—Tender by defendant—Lesser sum found to be due to plaintiff—Defendant's right to costs of action. **Childs v Blacker, Same v Gibson** [1954] 2 243, CA.

Claim and counterclaim both successful—Claim admitted before trial—Costs in respect of claim—No costs on claim except for setting down. **N V Amsterdamsche Lucifersfabrieken v H & H Trading Agencies Ltd** [1940] 1 587, CA.

Claim and counterclaim both successful—Lesser sum found to be due to plaintiff—Items in counterclaim in the nature of set-off—Defendant's right to costs on claim and counterclaim. **Hanak v Green** [1958] 2 141, CA.

COSTS (cont)

Claim (cont)—

Counterclaim (cont)—

Recovery by plaintiff of larger sum on claim than that recovered by defendant on counterclaim—Form of judgment—Amount of costs recoverable by plaintiff. **Chell Engineering Ltd v Unit Tool and Engineering Co Ltd** [1950] 1 378, CA.

Committal—

Contempt of court. *See* **Contempt of court** (Committal—Costs).

Company—

Application to have dissolution of company declared void. *See* **Company** (Dissolution—Application to have dissolution declared void—Costs).

Compulsory winding-up. *See* **Company** (Compulsory winding-up—Costs).

Winding-up. *See* **Company** (Winding-up—Costs).

Compulsory purchase. *See* **Compulsory purchase** (Costs).

Consolidated actions—

Payment into court—

Actions consolidated by defendant—First plaintiff recovering more and the other less than his apportioned part of money paid into court—Whether defendant liable for whole costs of first plaintiff. **The Bosworth (No 2)** [1960] 1 729, CA.

Contempt of court—

Committal. *See* **Contempt of court** (Committal—Costs).

Contingency fee—

Solicitor. *See* **Solicitor** (Costs—Contingency fee).

Contributory negligence—

Cross-claims. *See* **Negligence** (Contributory negligence—Cross-claims).

Co-respondent—

Divorce. *See* **Divorce** (Costs—Co-respondent).

County court. *See* **County court** (Costs).

County court scale—

High Court action—

Recovery of less than prescribed amount—Costs of the action—Whether costs of counterclaim and of negotiation of compromise costs of action—County Courts Act 1959, s 47(1)(a). **Colton v McCaughey** [1969] 3 1460, ChD.

Recovery of less than prescribed amount—Reasonable ground for supposing amount recoverable exceeded prescribed amount—Action for an account—Insurance company—Renewal premiums collected by brokers on behalf of company—Brokers denying that they owed anything to company—List of old policies indicating that over £1,000 might have been payable in ordinary course of events on renewal—Company issuing writ in High Court—Subsequent examination of accounts disclosing that sum less than prescribed amount in fact owed—Company obtaining judgment for that sum—Whether company entitled to costs on High Court scale—County Courts Act 1959, s 47(1)(as amended by the Administration of Justice Act 1969, s 4). **Vehicle and General Insurance Co Ltd (in liquidation) v H & W Christie Ltd** [1976] 1 747, QBD.

Recovery of less than prescribed amount—Time at which to determine whether reasonable grounds existed for supposing that the amount recoverable would exceed £400—County Courts Act 1934, s 47(1), as substituted by County Courts Act 1955, s 1(2). **Hopkins v Rees & Kirby Ltd** [1959] 2 352, Assizes.

Recovery of less than prescribed amount—£250 paid in settlement under compromise agreement—Whether £250 recovered—County Courts Act 1959, s 47(1)(a). **Colton v McCaughey** [1969] 3 1460, ChD.

Court of Appeal—

Appeal from county court. *See* **County court** (Appeal—Costs).

Jurisdiction—

Divorce. *See* **Divorce** (Costs—Appeal—Jurisdiction of Court of Appeal).

Taxation—

Order. *See* **Taxation—Order—Court of Appeal, post**.

Court-martial—

Appeal—

Reference by Secretary of State. *See* **Court-martial** (Appeal—Reference of cases by authorities—Costs).

Criminal cases—

Appeal from Crown Court.

See **Crown Court** (Appeal from Crown Court—Costs).

Compensation. *See* **Sentence** (Compensation—Loss or damage resulting from offence—Costs incurred in civil proceedings against accused).

Difference between costs in civil and criminal cases—

Whether defendant's costs in criminal cases awarded to indemnify defendants—Whether difference between costs incurred and costs awarded constitute special damage for action for malicious prosecution. **Berry v British Transport Commission** [1961] 3 65, CA.

Generally. *See* **Criminal Law** (Costs).

Police prosecutor. *See* **Police** (Prosecution—Costs).

Decimalisation—

Expression of sums of money—

Allocation of costs. *See* **Allocation—Form—Expression of sums of money—Decimalisation, ante**.

Bill of costs. *See* **Taxation—Bill of costs—Form—Expression of sums of money—Decimalisation, post**.

Declaration—

Legitimacy, of. *See* **Legitimacy** (Declaration of legitimacy—Costs).

Discretion—

Order that successful defendant pay costs of proceedings. *See* **Order for costs—Discretion of judge—Successful defendant—Order that successful defendant pay cost of proceedings, post**.

COSTS (cont)

Discretion (cont)—

Taxation. *See* Taxation—Discretion, *post*.

Dismissed petition—

Winding-up of company. *See* Company (Compulsory winding-up—Costs—Dismissed petition).

Divorce—

Generally. *See* Divorce (Costs).

Intervention—

King's Proctor. *See* Divorce (Intervention—King's Proctor showing cause why decree nisi should not be made absolute).Queen's Proctor. *See* Divorce (Intervention—Queen's Proctor showing cause why a decree nisi should not be made absolute—Costs).

Separation—

Five year separation. *See* Divorce (Separation—Five year separation—Costs).Expert witness. *See* Evidence (Expert witness—Costs).Faculty. *See* Ecclesiastical law (Faculty—Costs).

Fixed costs—

County court. *See* County court (Costs—Fixed costs).

Taxation—

Divorce. *See* Divorce (Costs—Taxation—Fixed costs).

Garnishee proceedings—

Discretion of court—

Unsuccessful garnishee proceedings—Power of court to award costs against judgment debtor—Factors to be considered by court when considering who should bear costs of unsuccessful garnishee proceedings—Supreme Court of Judicature (Consolidation) Act 1925, s 50. *T Wright & Son (Hull) Ltd v Westoby* [1972] 3 1078, CA.House of Lords. *See* House of Lords (Costs).

Income tax—

Deduction of costs of legal proceedings. *See* Income tax (Deduction in computing profits—Legal costs).

Indemnity—

Company—

Minority shareholder—Action on behalf of company. *See* Company (Minority shareholder—Representative action—Costs—Indemnity).

Interest on costs—

Divorce. *See* Divorce (Costs—Interest on costs).

Interlocutory appeal—

Form of order. *See* Order for costs—Interlocutory appeal, *post*.

Joint tortfeasors—

Contribution—

Offer before trial by one defendant to contribute proportion of damages and costs—Notional payment into court—Liability for costs after payment in—RSC Ord 16a, r 12a. *Bragg v Crosville Motor Services Ltd* [1959] 1 613, CA.Offer before trial by one defendant to contribute proportion of damages and costs—Notional payment into court—Liability for costs after payment in—RSC Ord 30, r 2(2)(j). *Basted v Cozens & Sutcliffe Ltd* [1954] 2 735, QBD.Offer before trial by one defendant to contribute twenty-five per cent of damages—Offer not accepted—Offeror found twenty per cent to blame—Liability for costs—RSC Ord 16a, r 12a. *Clarke v E R Wright & Son* [1957] 3 486, CA.

Jurisdiction—

Costs of and incidental to all proceedings in the Supreme Court—

Incidental to—Reference of question for determination by Secretary of State—Costs of enquiry before Secretary of State—Reference required by statute—Jurisdiction of court to determine question excluded—National insurance—Contributions—Action by Department of Health and Social Security against employer for unpaid contributions—Employer raising issue that persons in question not employees—Issue referred to Secretary of State as required by statute—Secretary of State determining that persons in question not employees—Whether costs of enquiry before Secretary of State 'incidental to' court proceedings—Whether court having jurisdiction to award costs of enquiry to employer—Supreme Court of Judicature (Consolidation) Act 1925, s 50(1)—National Insurance Act 1965, ss 64(1), 97. *Department of Health and Social Security v Envoy Farmers Ltd* [1976] 2 173, QBD.

Landlord and tenant—

Recovery of possession—

High Court action. *See* Landlord and tenant (Recovery of possession—Costs—Action in High Court).Lands Tribunal. *See* Lands Tribunal (Costs).Legal aid. *See* Legal aid (Costs).

Licensing—

Appeal to quarter sessions. *See* Licensing (Costs—Appeal to quarter sessions).

Magistrates—

Payment by justices. *See* Mandamus (Costs—Payment by justices).

Magistrates' court—

Criminal proceedings. *See* Criminal law (Costs—Magistrates' court).

Matrimonial home—

Registration of land charge. *See* Husband and wife (Matrimonial home—Land charge—Registration—Cost of registration allowed).

Mining application—

Application in respect of working facilities—

Application for rights including right to let down surface—Compensation for subsidence in future years—Award of costs—Discretion—Mines (Working Facilities and Support) Act 1923 (c 20), s 6(1), (5)—RSC, Ord r 12. *Re an Application by the National Coal Board* [1959] 3 58, ChD.

COSTS (cont)

Minority shareholder—

Representative action. *See* **Company** (Minority shareholder—Representative action—Costs).

Mortgage. *See* **Mortgage**.

New tenancy—

Proceedings—

Business premises. *See* **Landlord and tenant** (Business premises—Costs of proceedings for new tenancy).

Non-contentious business—

Solicitor. *See* **Solicitor** (Costs—Non-contentious business).

Nuisance—

Claim for injunction and damages—

Motion for interlocutory injunction—Claim for damages satisfied by payment in—Claim for injunction abandoned—Liability for costs of motion and application for costs at hearing of action—RSC Ord 22, r 2(1), (3). **Wiltshire Bacon Co Ltd v Associated Cinema Properties Ltd** [1937] 4 80, CA.

Nullity suit—

Security for costs. *See* **Nullity** (Costs).

Order for costs—

Bullock order. *See* **Bullock order**, *ante*.

Correction of order—

Omission from order on appeal as drawn up—Correction of order under slip rule—Costs of application to correct order—RSC Ord 20, r 11. **Re H (infants) (No 2)** [1970] 1 287, CA.

Costs of appeal—

Order in favour of party not served with notice of appeal—Company—Directors—Shareholders' action against directors and company alleging vacation of directorship—Appeal—Company not served with notice of appeal—Whether order would be made for company's costs of appearing on appeal. **Holmes v Keyes (Lord)** [1958] 2 129, CA.

Discretion—

Order in House of Lords for costs in the cause when granting interim injunction—Neither party wishing to continue action—Leave to plaintiffs to discontinue action—Order that each party pay own costs. **J T Stratford & Son Ltd v Lindley (No 2)** [1969] 3 1122, CA.

Disallowing costs of successful plaintiff—Breach of contract—Goods supplied alleged to be valueless—Full purchase price claimed—Statement of claim amended by leave during trial to cover cost of remedying trivial defect in goods—Plaintiffs unsuccessful on main claim, but successful on amendment—Right of defendants to costs. **Anglo-Cyprian Trade Agencies Ltd v Paphos Wine Industries Ltd** [1951] 1 873, KBD.

Disallowing costs of successful plaintiff—Evidence of plaintiff's witness rejected—Evidence of defendant also rejected—Plaintiff a company—Discretion of trial judge to make no order as to costs—Jurisdiction of Court of Appeal to entertain appeal—Supreme Court of Judicature (Consolidation) Act 1925, s 31(1)(h), s 50(1)—RSC Ord 65, r 1. **Baylis Baxter Ltd v Sabath** [1958] 2 209, CA.

Disallowing costs of successful plaintiff—Misconduct or neglect—Medical report—Question of liability settled—Refusal to disclose plaintiff's medical report until just before trial—Supreme Court Costs Rules 1959, r 7. **Vose v Barr** [1966] 2 226, Assizes.

Disallowing costs of successful defendant—Point of law not raised as separate preliminary issue—Alleged breach of contract—Defendants successful on appeal on issue of construction of contract—Adverse findings at trial on all disputed issues of fact—Issues of fact occupying substantial part of time of trial. **Gold v Patman and Fotheringham Ltd** [1958] 2 497, CA.

Matter relevant to be taken into account—Action for damages for negligence—Plaintiff's van damaged by dock board's lorry driver's negligent driving—Driver not acting in course of employment—Driver liable but board not liable—Driver unlikely to be able to pay costs—Lax system of control of vehicles—Whether ground for refusing board costs as against plaintiff—Supreme Court of Judicature (Consolidation) Act 1925, s 31(1)(h)—Liverpool Corporation Act 1921, s 260. **Jones v Mckie and Mersey Docks and Harbour Board** [1964] 2 842, CA.

Successful defendant—Order that successful defendant pay costs of proceedings—Jurisdiction to make order—Exercise of discretion—Committal proceedings for contempt—Exceptional circumstances—Circumstances justifying order to pay plaintiff's costs in launching unsuccessful motion to commit. **Knight v Clifton** [1971] 2 37, CA.

Successful plaintiff—Disallowing costs of successful plaintiff. *See* **Order for costs**—Discretion of judge—Disallowing costs of successful plaintiff, *ante*.

Successful plaintiff—No order as to costs—Trial with jury—Award of one farthing damages—RSC Ord 22, r 1(2). **Emcee Ltd v Sunday Pictorial Newspapers (1920) Ltd** [1939] 2 384, KBD.

Divisional Court—

Order as to costs in court below—Case stated by magistrates' court—Successful appeal to Divisional Court. **Turner & Son Ltd v Owen** [1955] 3 565, QBD.

Enforceability—

Costs of preliminary issue—Action subsequently dismissed for want of prosecution. *See* **Preliminary issue**—Plaintiffs successful on trial of preliminary issue—Order for costs in favour of plaintiffs—Action subsequently dismissed for want of prosecution, *post*.

Ex parte proceedings—

Motion for injunction—Presence of respondent at hearing—Presence at invitation of applicant—Presence to assist court at hearing—Dismissal of application—Power of court to order applicant to pay costs of successful respondent. **Pickwick International Inc (GB) Ltd v Multiple Sound Distributors Ltd** [1972] 3 384, ChD.

COSTS (cont)

Order for costs (cont)—

Interlocutory appeal—

Order for costs 'to be taxed', without stating 'forthwith', 'forthwith' confers right to immediate taxation—Costs 'in any event' distinguished as not conferring such a right pending trial of the action—Correction of order under slip rule—RSC Ord 62, r 4—RSC Ord 20, r 11. **Adam & Harvey Ltd v International Maritime Supplies Co Ltd** [1967] 1 533, CA.

Jurisdiction—

Court of Appeal—Compensation appeal—Statutory power to award costs reasonably incurred in connection with application to court—Application to court to determine manner in which compensation for acquisition of interest in coal mine to be held and disposed of—Scheme for disposal of compensation rejected—Appeal—Jurisdiction to order National Coal Board to pay costs of appeal—Coal Act 1938, Sch III, Pt IV, para 22(1). **Williams v Sharpe** [1949] 2 102, CA.

Master—Order disallowing costs of successful plaintiff—Writ issued without previous application five days after rent due—Costs awarded to defendant—RSC Ord 65, r 1—RSC Ord 70, r 1. **Cromwell Property Investment Co Ltd v Hucks** [1939] 3 257, CA.

Motion—Action for infringement of design—Defence of invalidity—Motion to expunge intended as auxiliary to defence—Action discontinued—Motion withdrawn—Jurisdiction to order plaintiff to pay costs of motion. **Re Margolin's Registered Design** [1936] 3 347, CA.

Order in favour of party not represented by counsel—Company—Jurisdiction to award costs. **Re An Application by Marley Laboratory Ltd** [1952] 1 1057, CA.

Separate actions by different plaintiffs against same defendant arising out of same transactions—Actions listed and tried together—Defendant successful in one action only—Jurisdiction to order unsuccessful plaintiff to pay defendant's costs of both actions—RSC Ord 65, r 1. **John Fairfax & Sons Pty Ltd v E C De Witt & Co (Australia) Pty Ltd** [1957] 3 410, CA.

Order where award of nominal damages—

Defendant failing on issue of liability but succeeding on the issue of damage—Nominal damages awarded—What order for costs. **Selangor United Rubber Estates Ltd v Cradock (A Bankrupt) (No 4)** [1969] 3 965, ChD.

Practice—

Court of Appeal—Action for limitation of liability in case of collision. **The Empire Jamaica** [1955] 3 60, CA.

Sanderson order. *See* Sanderson order, *post*.

Several parties—

Several parties with same interests and same arguments—Allowance of only one set of costs. **Re Gillson (decd)** [1948] 2 990, CA.

Stay—

Appeal. *See* Appeal—Stay of order for costs of appeal, *ante*.

Suspended order for possession against agricultural employee—

Special reasons for making order as to costs. *See* **Agriculture** (Agricultural worker—Tied cottage—Possession—Suspended order for possession—Costs).

Originating summons—

Unnecessary parties—

Right to costs. **Re Amory (decd)** [1951] 2 947, ChD.

Payment into court—

Acceptance—

Plaintiff awarded costs in original action—Appeal—New trial ordered as to damages only and costs of first trial reserved to trial of issue of damages—Payment into court by defendants (made after new trial ordered on damages) accepted by plaintiff before commencement of trial on damages issue—Application by plaintiff, after acceptance of sum paid in, for costs of original trial to be taxed—Jurisdiction of court to award the costs of first trial—Stay of proceedings limited to proceedings to enforce cause of action—RSC Ord 22, r 3(2)—Supreme Court Costs Rules 1959, r 10(1). **Rookes v Barnard** [1965] 3 549, Vacation Ct.

Consolidated actions. *See* Consolidated actions—Payment into court, *ante*.

Costs after payment in—

Admission of liability—Sum awarded equalling sum paid in—Defendants' right to costs subsequent to payment in—Review by Court of Appeal—No materials for exercise of discretion—Supreme Court of Judicature (Consolidation) Act 1925, s 31(1)(h)—RSC Ord 22, r 6. **Wagman v Vare Motors Ltd** [1959] 3 326, CA.

Claim and counterclaim—Award on claim more than payment in—Award reduced by set-off to less than payment in—Discretion of court—No costs after payment in—RSC Ord 22, r 6. **Cullinane British 'Rema' v Manufacturing Co Ltd** [1953] 2 1257, CA.

Denial of liability—Lesser amount recovered at trial—Costs after payment in—RSC Ord 22. **Willcox v Kettell** [1937] 1 222, ChD.

Denial of liability—Liability established but lesser amount recovered at trial—Costs of issue of liability subsequent to time of payment in—RSC Ord 22, r 6. **Hultquist v Universal Pattern & Precision Engineering Co Ltd** [1960] 2 266, CA.

Denial of liability—Money left in court until day of trial—Application for leave to take money out of court—Whether defendant entitled to his costs after date of payment in—RSC Ord 22, r 3. **Griggs v Petts** [1939] 4 39, CA.

Joint tortfeasors. *See* Joint tortfeasors—Contribution—Offer before trial by one defendant to contribute proportion of damages and costs—Notional payment into court—Liability for costs after payment in, *ante*.

Running-down action—Admission of negligence—Denial of liability—Costs after date of payment into court—Discretion of court—RSC Ord 22, r 6—RSC Ord 65, r 1. **Brown v New Empress Saloons Ltd** [1937] 2 133, CA.

Sum awarded less than sum paid into court—Right of defendants to costs after date of payment in—Discretion of court—RSC Ord 22. **Findlay v Railway Executive** [1950] 2 969, CA.

COSTS (cont)

Payment into court (cont)—

Notice—

Several causes of action—Negligence or breach of statutory duty—Claim for damages for personal injuries—Notice of payment in not specifying whether payment in respect of common law negligence or breach of statutory duty—Damages awarded less than sum paid in—Costs—RSC Ord 22, r 1(2). *Graham v C E Heinke & Co Ltd* [1958] 3 650, CA.

Practice. *See Practice* (Payment into court).

Poor person—

Burden on solicitor—

Proportion of profit costs—RSC Ord 16, r 31b. *Rousou v Photi (Gort Estates Co, Third Party)* [1939] 4 616, KBD.

Divorce. *See Divorce* (Costs—Poor person).

Plaintiff poor person—

Defendant to pay costs—Part of damages to be paid to plaintiff as costs—RSC Ord 16, r 31. *Burfitt v A & E Kille* [1939] 2 372, KBD.

Preliminary issue—

Plaintiffs successful on trial of preliminary issue—

Order for costs in favour of plaintiffs—Action subsequently dismissed for want of prosecution—Whether order for costs enforceable after dismissal of action. *Teheran-Europe Co Ltd v S T Belton (Tractors) Ltd (No 2)* [1971] 2 1121, CA.

Privy Council. *See Privy Council* (Costs).Prize law. *See Prize law* (Costs).Probate. *See Probate* (Costs).

Prohibition—

Motion for prohibition to Industrial Disputes Tribunal—

Unnecessary for both Minister and trade union to be represented—Costs to be allowed only for one of them. *R v Industrial Disputes Tribunal, Ex parte American Express Co Inc* [1954] 2 764, QBD.

Prosecution costs. *See Criminal law* (Costs—Prosecution costs).Quarter sessions. *See Quarter sessions* (Costs).

Recovery of possession—

Landlord and tenant—

High Court action. *See Landlord and tenant* (Recovery of possession—Costs—Action in High Court).

Registered land—

Transfer of registered land on sale. *See Land registration* (Costs—Transfer of registered land on sale).

Remitted action—

Scale of costs—

High Court action remitted to county court—Claim reduced in High Court by giving credit for sums of money paid—No judgment in High Court—Exercise of discretion—Appropriate scale of costs—County Courts Act 1919, ss 11, 12. *Hardman v Causton* [1936] 1 61, CA.

High Court action remitted to county court—Costs up to remission costs in cause—Whether on High Court scale—Whether county court judge having jurisdiction to vary order—County Courts Act 1934, s 73. *Simmons & Son Ltd v Wiltshire* [1938] 3 403, CA.

Restrictive covenant—

Enforceability. *See Restrictive covenant affecting land* (Declaration whether covenant affecting land or enforceable—Costs of High Court action).

Review of taxation. *See Taxation*—Review of taxation, *post*.

Sale of land—

Purchaser's lien—

Whether purchaser's lien covering costs of suit. *See Sale of land* (Purchaser's lien—Costs of suit).

Specific performance. *See Specific performance* (Sale of land—Costs of action).

Sanderson order—

Discretion—

Discretion to make in lieu of Bullock order. *Mayer v Harte* [1960] 2 840, CA.

Security for costs—

Amount of security—

Cross-claim by defendant for sum in excess of plaintiff's claim—Cross-claim treated as defence to claim insofar as not exceeding amount of claim—Plaintiff in position of defendant insofar as cross-claim exceeding amount of claim—Amount of security to be determined on basis defendant having put forward defence to whole of plaintiff's claim. *Sloyan (T) & Sons (Builders) Ltd v Brothers of Christian Instruction* [1974] 3 715, QBD.

Appeal—

Appeal by third party. *Asphalt & Public Works Ltd v Indemnity Guarantee Trust Ltd (Campbell, Third Parties)* [1968] 3 509, CA.

Bankruptcy. *See Bankruptcy* (Appeal—Security for costs).

Company—Appeal against winding-up order. *See Company* (Compulsory winding-up—Security for costs—Appeal by company against winding-up order).

Inability to give security—Common law action by workman against employer—Workman unable to give security—Effect, if order made, on right to workmen's compensation—Whether order should be made—RSC Ord 58, r 15. *Hill v Harland and Wolff Ltd* [1944] 2 219, CA.

Arbitration proceedings. *See Arbitration* (Costs—Security for costs).

COSTS (cont)

Security for costs (cont)—

Company—

Limited company as plaintiff—Company likely to be unable to pay costs of defendant if successful in defence—Interpleader proceedings—Issue directed—Parties in substance both claimants—Discretion of court to order security—Circumstances in which exercisable—Companies Act 1948, s 447. *Tudor Furnishers Ltd v Montague & Co and Finer Production Co Ltd* [1950] 1 65, ChD.

Limited company as plaintiff—Company likely to be unable to pay costs of defendant if successful in his defence—Co-plaintiff with company—Plaintiff company in liquidation and alleged to be hopelessly insolvent—Second plaintiff a secured creditor of plaintiff company—Overlap of plaintiffs' claims comparatively small—Whether presence of second plaintiff justifying refusal of order for security for costs—Companies Act 1948, s 447. *John Bishop (Caterers) Ltd v National Union Bank Ltd* [1973] 1 707, ChD.

Limited company as plaintiff—Company likely to be unable to pay costs of defendant if successful in his defence—Discretion of court whether or not to order security—Exercise of discretion—Circumstances to be taken into account—Claim bona fide—Payment into court by defendant—Lateness of application by defendant—Companies Act 1948, s 447. *Sir Lindsay Parkinson & Co Ltd v Triplan Ltd* [1973] 2 273, QBD & CA.

Company in liquidation as plaintiff—

Action begun by Board of Trade in plaintiff company's name consequent on inspector's report. *See Company* (Investigation by Board of Trade—Action begun by Board of Trade in plaintiff company's name consequent on inspector's report—Security for costs sought by defendant banks).

County court. *See County court* (Security for costs).

Defendant resident out of jurisdiction—

Plaintiff and defendant out of jurisdiction—Plaintiff ordered to give security—Whether corresponding order should be made against defendant. *Naamlooze Vennootschap Beleggings Compagnie 'Uranus' v Bank of England* [1948] 1 465, CA.

Divorce—

Poor person. *See Divorce* (Costs—Poor person—Security for costs).

Security for wife's costs. *See Divorce* (Costs—Security for wife's costs).

House of Lords. *See House of Lords* (Costs—Security for costs).

Nominal plaintiff—

Insolvency of plaintiff—Charge by plaintiff on fruits of the action—Amount secured by charge exceeding amount claimed in action—Whether plaintiff a nominal plaintiff suing for the benefit of some other person, viz, the chargee—RSC Ord 23, r 1(1)(b). *Semler v Murphy* [1967] 2 185, CA.

Nullity suit. *See Nullity* (Costs).

Person in position of plaintiff—

Custody proceedings—Interlocutory motion by respondent father, living in France, to vary order for custody made in favour of mother—Proceedings for custody originated by mother—Application by mother for security for costs of father's motion—Jurisdiction to order security for costs—Whether father 'in the position of plaintiff'—RSC Ord 23, r 1. *Re B (infants)* [1965] 2 651, ChD.

Preliminary point of law—Domicile of deceased raised by way of defence—Trial of preliminary issue—Appeal against order that defendant resident abroad give security for costs—Whether defendant in position of plaintiff for purposes of interlocutory application—Matrimonial Causes Act 1965, s 26—RSC Ord 23, r 1. *Visco v Minter* [1969] 2 714, Prob.

Probate proceedings—Caveator—Executor issuing writ to establish will—Caveator joined as defendant to writ—Caveator resident abroad—Beneficiary under will joining at own election as second defendant—Caveator alleging undue influence against second defendant—Burden of upsetting will on caveator—Whether caveator 'in the position of plaintiff'—RSC Ord 23, r 1(3). *Rose v Epstein* [1974] 3 745, CA.

Petition for winding up of company by court—

Petition by contingent or prospective creditor. *See Company* (Compulsory winding-up—Petition by creditor—Statutory requirement that petition not to be heard until security for costs given and prima facie case established).

Plaintiff ordinarily resident out of the jurisdiction—

Action for breach of promise of marriage—Plaintiff a Ghanaian national resident in England since 1956—Plaintiff stated intention to return to Ghana if suitable employment available—Security sought on re-trial of action—Court not satisfied that plaintiff 'ordinarily resident out of jurisdiction'—RSC Ord 23, r 1(1)(a). *Appah v Monseu* [1967] 2 583, QBD.

Action for damages for breach of contract—Stipulation in contract that litigation to be conducted in English courts—Discretion of court to order security—RSC Ord 23, r 1. *Aeronave SPA v Westland Charters Ltd* [1971] 3 531, CA.

Plaintiff legally aided with nil contribution—Plaintiff to amend pleadings to widen claim which would swell costs likely to be incurred—RSC Ord 23, r 1(1)(a). *Caldwell v Sumpters (a firm)* [1971] 3 892, ChD.

Plaintiff resident in Palestine—Whether order for security for costs should be made—Judgments Extension Act 1968—Administration of Justice Act 1920—Foreign Judgments (Reciprocal Enforcement) Act 1933. *Kohn v Rinson and Stafford (Brod) Ltd* [1947] 2 839, KBD.

Plaintiff temporarily resident within jurisdiction—Meaning of 'temporarily'—RSC Ord 65, r 6a. *Jelic v Co-operative Press Ltd* [1947] 2 767, CA.

Poor person—

Divorce. *See Divorce* (Costs—Poor person—Security for costs).

COSTS (cont)

Security for costs (cont)—

Wife—

Legally-aided wife—Husband's appeal against order awarding wife periodical payments—Whether legally aided wife entitled to security for costs—Basis of award of costs on appeal—Matrimonial Causes Act 1965, s 22. **Norris v Norris** [1969] 3 134, CA.

Set off—

Same proceedings—

Proceedings commenced in arbitration and proceeding to Court of Appeal—Right to set-off costs of appeal against costs awarded by arbitrator—Whether 'same proceedings'—Whether right to set-off affected by solicitor's lien—RSC Ord 65, r 14. **Welch v Royal Exchange Assurance** [1939] 3 305, KBD.

Separate proceedings—

Bankruptcy petition by judgment creditors dismissed with costs—Judgment debt unpaid—Jurisdiction to order stay of execution of order for costs. **Re A Debtor (No 21 of 1950), Ex parte The Petitioning Creditors v The Debtor** [1951] 1 600, ChD.

Shipping—

Collision action. *See* **Shipping** (Collision—Costs).Slander of woman. *See* **Libel and slander** (Costs—Slander of woman).

Solicitor—

Generally. *See* **Solicitor** (Costs).

Liability for costs—

Payment of costs by solicitor personally. *See* **Solicitor** (Payment of costs by solicitor personally).

Specific performance—

Contract for sale of land—

Completion of contract after issue of writ—Whether purchaser entitled to costs. **Horton v Kurzke** [1971] 2 577, ChD.

Contract completed soon after issue of writ—Costs of action—Time not of the essence. **Marks v Lilley** [1959] 2 647, ChD.

Stay of order for costs of appeal. *See* **Appeal**—Stay of order for costs of appeal, *ante*.

Successful defendant—

Disallowing costs of. *See* **Order for costs**—Discretion—Disallowing costs of successful defendant, *ante*.

Order to pay costs of proceedings. *See* **Order for costs**—Discretion—Successful defendant—Order that successful defendant pay cost of proceedings, *ante*.

Taxation—

Admiralty. *See* **Admiralty** (Costs—Taxation).

Allocatur—

Allocatur indorsed on or written at the foot of bill of costs—Whether necessary for allocatur to be separate document—Whether allocatur bad because taxing fee not paid before it is given. **R v District Registrar, Kingston-upon-Hull, Ex parte Norton** [1944] 1 546, KBD.

Allowance of costs—

Shorthand writer's fees—Payment by trustee according to published and accepted scale—Allowance on taxation. **Re Robertson (decd)** [1949] 1 1042, ChD.

Witness fee—Married woman not gainfully employed—Amount of costs. **Reed v Gray** [1952] 1 241, ChD.

Apportionment—

Jurisdiction—County court—Application to the registrar by an insurer to apportion costs as between himself and a party to an action—Jurisdiction to make apportionment—County Courts Act 1888, s 118—County Court Rules 1903—1935, Ord 53, r 46. **Re Taxation of Costs, Re T A M, a Solicitor** [1937] 3 113, CA.

Practice—Practice since repeal of RSC Ord 65, r 2. **Adamson v Birkenhead Corp'n** [1937] 2 221, ChD.

Practice—Practice since repeal of RSC Ord 65, r 2—Defendants awarded costs on the issue of damages after the date of payment into court—Division of items common to both issues—Distinction between division and apportionment. **Cinema Press Ltd v Pictures and Pleasures Ltd** [1945] 1 440, CA.

Arbitration. *See* **Arbitration** (Costs—Taxation).Bankruptcy costs. *See* **Bankruptcy** (Costs—Taxation).

Bill of costs—

Form—Bills lodged after Jan 1, 1960—Rules of the Supreme Court (No 3) 1959 (SI 1959 No 1958), Sch 2, Appendix 2. **Practice Direction** [1960] 1 401.

Form—Expression of sums of money—Decimalisation—Decimal Currency Act 1969, Sch 1. **Practice Direction** [1970] 3 441.

Form—Probate, Divorce and Admiralty Division—Item numbers to be shown—Rules of the Supreme Court (No 3) 1959 (SI 1959 No 1958), Sch 2, Appendix 2. **Practice Direction** [1960] 1 347, Div.

Lodgment—Attendance—Procedure in Divorce Division. **Practice Direction** [1962] 3 465, Div.

Lodgment—Issue of receipt. **Practice Direction** [1968] 3 784.

Lodgment—Lodgment when reference taken—Procedure—RSC Ord 62, rr 21, 23. **Practice Direction** [1973] 1 52, [1974] 2 1248.

Vouching. *See* **Vouching bills of costs, post**.

Certificate—

Copies—Delivery by post of office copy to solicitors concerned. **Practice Direction** [1964] 2 690, QBD.

Form—Expression of sums of money—Decimalisation—Decimal Currency Act 1969, Sch 1. **Practice Direction** [1971] 1 511.

Signing certificate—Bar to review of taxation. *See* **Taxation**—Review of taxation—Certificate of taxation—Signing certificate may bar review of taxation, *post*.

COSTS (cont)

Taxation (cont)—

Certificate (cont)—

Signing certificate—District registry—Certificate should not be signed by district registrar immediately after taxation unless parties consent—RSC Ord 62, r 33. **Brown v Youde** [1967] 3 1070, QBD.

Common fund basis—

Meaning—Next friend of infant successful as plaintiff in action for personal injuries to infant—Costs to be taxed on 'common fund basis'—That basis the same as former solicitor and client costs—Plaintiff legally assisted during part of action—Supreme Court Costs Rules 1959 (Sch 2 to SI 1959 No 1958), r 28(3), (4). **Layzell v British Portland Cement Manufacturers Ltd** [1961] 1 244, QBD.

Vetting of solicitor's bills of costs—Client giving notice to act in person and seeking to vet solicitor's bills before lodgment for taxation—Lien of solicitor for costs—Probate action—Client a defendant in action—Fund held by plaintiffs for defendant client's costs—Form of order—Solicitor's Act 1957, s 72. **Re Fuld (decd)** [1967] 2 649, Prob.

Company—

Restoration to register—Application. *See* **Company** (Restoration to register—Application—Costs—Taxation).

'Costs of and incidental to negotiations'—

Costs incurred before negotiations—Whether costs incurred before negotiations are incidental to the negotiations. **Re Fahy's Will Trusts** [1962] 1 73, ChD.

Counsel's fees—

Fee on appeal—Allowance of fee less than that allowed at first instance. **Sunnucks v Smith** [1950] 1 550, ChD.

Fees of counsel for trustees or executors on hearing of originating summons on construction of will. **Re Bennett (decd)** [1950] 1 435, ChD.

House of Lords. *See* **House of Lords (Costs—Taxation—Counsel's fees)**.

Leading counsel—Measure for estimating fee—Allowance determined by knowledge and experience of taxing master and, on review, of judge—Factors to be taken into consideration and factors to be disregarded—Fee allowed by taxing master upheld, although part only of the like fee on appeal to the House of Lords was allowed by Clerk of the Parliaments—Supreme Court Costs Rules 1959, r 28(2). **Simpsons Motor Sales (London) Ltd v Hendon Corpn** [1964] 3 833, ChD.

Leading counsel—Party and party taxation—Action for damages for personal injuries—Leading and junior counsel—Liability admitted—Amount of damages in issue—Fee of leading counsel disallowed. **Gorfin v Odhams Press Ltd** [1958] 1 578, CA.

Refresher fees—Calculation—Total time occupied by trial—Midday adjournment—Inclusion—RSC Ord 65, r 27(48). **Wright v Bennett** [1947] 2 61, KBD.

Refresher fees—Calculation—Total time occupied by the trial—Time spent by counsel with judge in private room and discussing settlement—RSC Ord 65, r 27(48). **Lawson v Tiger** [1953] 1 698, ChD.

Refresher fees—Privy Council. **Practice Note** [1959] 1 733, PC.

Special fees—Fee of circuit counsel briefed as junior to counsel appearing on circuit to which he does not belong—Whether allowable—RSC Ord 65, r 27(29). **Payne v Schmidt** [1949] 2 741, CA.

Voucher—Receipt—Signature of counsel—RSC Ord 62, App 2, Pt X, para 2. **Practice Direction** [1973] 2 1135.

Disallowance of unnecessary costs—

Copying of whole of shorthand transcript of evidence at trial—Necessity of considering whether copying of whole of transcript essential—Copy of part of transcript often sufficient. **Dixon v City Veneering Mills Ltd** [1953] 2 1112, CA.

Discontinued action—

Costs recoverable—Action for infringement of copyright—Writ issued but no statement of claim delivered—Action dismissed for want of prosecution—Costs of preparing defence—Whether such costs properly recoverable on taxation—RSC Ord 65, r 27(9), (29). **Scheff v Columbia Pictures Corpn Ltd** [1938] 4 318, CA.

Discretion—

Allowance of amount in excess of maximum prescribed by scale of costs—Allowance for solicitor attending court or chambers—Admiralty actions—RSC Ord 62, r 32(4). **Practice Direction** [1972] 2 768, QBD.

Allowance of amount in excess of maximum prescribed by scale of costs—Allowance for solicitor attending court or chambers—RSC Ord 62, r 32(1). **Practice Direction** [1972] 2 352.

Allowance of amount in excess of maximum prescribed by scale of costs—Preparation of case by solicitors—Such sum as is fair and reasonable not exceeding £45—Discretion of taxing officer to allow sum exceeding £45—Principles on which discretion should be exercised—Matrimonial Causes (Costs) Rules 1971 (SI 1971 No 987), r 6, Appendix, item 6(a)(b). **Dwyer v Dwyer** [1976] 2 1, Div CC.

Divorce. *See* **Divorce** (Costs—Taxation).

Documents—

Allowance—Copies of documents supplied to counsel holding noting brief at trial—Same copies supplied to junior counsel on appeal—Refresher fees—Counsel holding noting brief—Shorthand note of proceedings taken—Unnecessary attendance of witness. **Wright v Bennett** [1948] 1 410, CA.

Preparation of affidavit of documents—Relevancy of documents—Necessity for master to see and consider documents. **British United Shoe Manufacturing Co Ltd v Holdfast Boots Ltd** [1936] 3 717, ChD.

System of charging—Page basis method—International Standards Organisation paper sizes—RSC Ord 62, App 2. **Practice Direction** [1970] 3 464.

COSTS (cont)

Taxation (cont)—

Expenses—

Allowance—Administration expenses—Action by administrator under Law Reform (Miscellaneous Provisions) Act 1934—Grant of administration obtained solely for purpose of action—Administration expenses, incidental to increased value of estate, incurred after judgment—RSC Ord 65, r 27(29). **Thomas v Cunard White Star Ltd, The Queen Mary** [1950] 2 1157, Adm.

Expert witness. *See Evidence* (Expert witness—Costs—Discretion of taxing master).

Finality of taxation—

Probate action—Order for payment by defendant of plaintiff's costs—Subsequent taxation of costs of administrator pendente lite—Accounts of administrator—Right of plaintiff to further order for payment of administrator's costs and accounts. In **the Estate of Segalov (decd)** [1952] 2 107, Prob.

House of Lords. *See House of Lords* (Costs—Taxation).

Immediate right to taxation—

Form of order. *See Order for costs*—Interlocutory appeal—Order for costs to be taxed without stating 'forthwith', *ante*.

Judicature fee—

Payment—Method of payment. **Practice Direction** [1971] 1 575.

Litigant appearing in person—

Claim for costs for expenditure of time in preparing case—Whether recoverable. **Buckland v Watts** [1969] 2 985, CA.

Order—

Court of Appeal—High Court order for costs in courts below 'to be taxed'—Costs in Court of Appeal included—Proper officer to undertake taxation—Whether order of Court of Appeal necessary. **Barnes (an infant) v Hampshire County Council (No 2)** [1971] 2 1299, CA.

Form of order—Chancery Division—Application for construction of document, or variation of trusts, or similar application. **Practice Direction** [1960] 1 401, ChD.

Party and party—

Costs chargeable—Infant plaintiff—Settlement by deed of trust of damages awarded—Whether costs of preparing and approving settlement chargeable to defendant as costs of the action—Supreme Court Costs Rules 1959, r 28(2). **Morey v Woodfield (No 2)** [1963] 3 584, QBD.

Expert witness. *See Evidence* (Expert witness—Costs—Recoverable as damages but not claimed).

Patent action. *See Taxation*—Patent action—Party and party costs, *post*.

Proper costs—Solicitor's expenses—Country solicitor attending hearing in London—Travelling expenses incurred in attending hearing—Solicitor deciding to attend in person rather than instruct London agent—Appeal heard in Court of Appeal—Personal injuries action—Appeal against quantum of damages—Plaintiff's solicitor having been personally concerned in case for number of years—Plaintiff's solicitor deciding to attend in person in case of last minute offer—Whether expenses of travelling to London properly incurred—RSC Ord 62, r 28(2). **Garthwaite v Sherwood** [1976] 2 1015, QBD.

Patent action—

Party and party costs—Action withdrawn after delivery of defence—No summons for directions—Research and experiments carried out by corporation's own staff—Mode of assessment of costs—RSC Ord 103, r 26(2)(f). **Re Nossen's Patent** [1969] 1 775, ChD.

Postal facilities. *See Taxation*—Procedure—Postal facilities, *post*.

Probate. *See Probate* (Costs—Taxation).

Procedure—

Postal facilities—References balloted—Sitting Master cases—Documents to be sent—Receipts. **Practice Direction** [1969] 2 320.

Review of taxation. *See Taxation*—Review of taxation—Procedure, *post*.

Proper costs—

Party and party basis. *See Taxation*—Party and party—Proper costs, *ante*.

Review of taxation—

Certificate of taxation—Signing certificate may bar review of taxation. **Brown v Youde** [1967] 3 1070, QBD.

Costs between parties in Crown Court—Review of decision of taxing authority—Procedure—Crown Court Rules 1971 (SI 1971 No 1292), r 14. **Practice Direction** [1972] 2 985.

Jurisdiction—Objection as to quantum—No error by master in principle. **Coon v Diamond Tread Co (1938) Ltd** [1950] 2 385, ChD, [1956] 1 609, ChD.

Jurisdiction—Objection as to quantum—Fee for instructions on brief reduced on taxation from £630 to £210—Attendances of country solicitor in London. **Theocharides v Joannou** [1955] 1 615, ChD.

Jurisdiction—Power to vary quantum. **White v Altrincham Urban District Council** [1936] 1 923, CA.

Jurisdiction—Taxing master's certificate—Objections carried in to master's direction to lodge itemised bill—Objections answered and disallowed—Certificate signed by master to enable court to determine principle on which bill should be taxed—Whether 'certificate of taxation'—Whether court having jurisdiction to review—RSC Ord 65, r 27(41). **Re Fraser (decd)** [1958] 1 26, ChD.

Procedure—Chancery Division—Rules of the Supreme Court (No 3) 1959 (SI 1959 No 1958), Sch 2, r 35. **Practice Direction** [1960] 3 499, ChD, [1962] 2 128, ChD.

Procedure—Chancery Division—RSC Ord 62, r 35. **Practice Direction** [1968] 2 635, ChD.

Procedure—Divorce. *See Divorce* (Costs—Taxation—Review of taxation—Procedure).

Procedure—Probate, Divorce and Admiralty Division—Rules of the Supreme Court (No 3) 1959 (SI 1959 No 1958), Sch 2, r 35. **Practice Direction** [1960] 3 414, PDA.

Procedure—Queen's Bench Division—Rules of the Supreme Court (No 3) 1959 (SI 1959 No 1958), Sch 2, r 35. **Practice Direction** [1960] 3 448, QBD.

COSTS (cont)

Taxation (cont)—

Review of taxation (cont)—

Stating of decisions on objections and reasons therefor—Reason for taxing officer's decisions on objection should be fully stated—RSC Ord 65, r 27(40). **Eaves v Eaves** [1955] 3 849, Div.

Several defendants jointly represented—

Eight defendants jointly represented and seven successful—Two distinct issues—Main issue against one defendant only—Separate defences—Plaintiff successful on main issue—Action against other defendants dismissed with costs—Claim by successful defendants to be paid seven-eighths of fee for instructions for brief and counsel's fees. **Korner v H Korner & Co Ltd** [1950] 2 451, CA.

Solicitor—

Bill of costs for contentious business—Gross sum bill—Power of party chargeable to require solicitor to deliver to him in lieu thereof bill containing detailed items—Three month time limit—Solicitor delivering to client gross sum bill—Client seeking taxation of costs—Client asking for bill to be prepared and lodged for taxation four months after delivery of original bill—Solicitor delivering detailed bill of costs—Detailed bill for large amount than original bill—Whether client 'required' solicitor to deliver bill containing detailed items—Whether three month time limit can be waived by solicitor—Solicitors Act 1957, s 64, proviso (a). **Carlton v Theodore Goddard & Co** [1973] 2 877, ChD.

'Costs due to a solicitor'—Counsel's fees not paid before delivery of bill—Costs disallowed for want of retainer—Solicitors Act 1932, ss 65(1), 81(1)—RSC Ord 65, r 27(29a). **Re Taxation of Costs, Re A Solicitor** [1936] 1 491, CA.

Fee—Non-jury action—Trial—Fixed date—Settlement or withdrawal of action—Fee allowable on taxation for informing Clerk of the Lists of settlement or withdrawal of action. **Practice Direction** [1957] 1 219, QBD.

Non-contentious business—Fair and reasonable sum in circumstances—Factors to be considered—Conveyancing—Value of the property—Application of regressive scale—Commercial property of substantial value—Straightforward transaction involving relatively small amount of time and labour—Compulsory purchase transaction—Government department acquiring property in central London under compulsory purchase order—Property worth £2,250,000—London solicitor employed by vendor of property—Method of assessing solicitor's remuneration—Solicitors' Remuneration Order 1972 (SI 1972 No 1139), art 2. **Property and Reversionary Investment Corporation Ltd v Secretary of State for the Environment** [1975] 2 436, QBD.

Official Solicitor—Guardian ad litem—Wardship application—Injunction against infant's association or marriage with named man—Marriage of infant and named man in foreign jurisdiction—Whether Official Solicitor entitled to his costs incurred as guardian ad litem—Supreme Court Costs Rules 1959, r 2(5), r 3(2). **Re P C (an infant)** [1961] 2 308, ChD.

Official Solicitor—Guardian ad litem—Proceedings relating to settled property in which infant beneficially interested—Application by trustees of settlement—Infant beneficially interested in trust fund—Application concerning trust property—Costs of Official Solicitor as infant's guardian ad litem on indemnity basis—Supreme Court Costs Rules 1959, r 28(5). **Re C (CA) (an infant)** [1964] 2 478, ChD.

Paid bill—Jurisdiction of court to order taxation—Time limits—Application for taxation by third party—Payment—Deduction of costs by solicitor from cash in hand—Deduction with knowledge and consent of third party as party chargeable constituting payment—Application for taxation by third party—Bill paid by deduction from cash in hand by mortgagee's solicitors with consent of mortgagor—Application by mortgagor for order more than 12 months after payment—Whether statutory time limit applicable—Solicitors Act 1957, ss 69(1), (2), 70(1). **Forsinard Estates Ltd v Dykes** [1971] 1 1018, ChD.

Paid bill—Jurisdiction of court to order taxation—Time limits—Special circumstances—Bill paid less than twelve months before application for taxation but more than twelve months before hearing—Inherent jurisdiction of court—Taxation of one item directed under inherent jurisdiction—Solicitors Act 1957, s 69(2), proviso (ii). **Re A Solicitor** [1961] 2 321, ChD.

Paid bill—Jurisdiction of court to order taxation—Time limits—Special circumstances—Reservation of right to taxation—Evidence of overcharging and other irregularities in bills—Whether sufficient to constitute special circumstances—Solicitors Act 1957, s 69(2). **Sanders v Isaacs** [1971] 1 755, ChD.

Profit costs—Employed solicitor—Solicitor in employment of litigant—Solicitor paid fixed salary—Costs recoverable by litigant—Discretionary item—Method of taxing profit costs—Indemnity principle—Costs assessed on time basis—Whether profit element of profit costs should be taxed off—Whether bill should be taxed on same basis as bill of costs of solicitor in private practice. **Re Eastwood (decd)** [1974] 3 603, CA.

Profit costs—Employed solicitor—Solicitor in employment of litigant—Solicitor town clerk and clerk to assessment committee—Litigation between assessment committee and ratepayer—Fees paid to corporation—Right to recover profit costs. **R v Burnley Recorder, Ex parte New Empire (Burnley) Ltd (No 2)** [1941] 1 549, CA.

Vetting of bills of costs before lodgment for taxation—Taxation on common fund basis. *See Taxation—Common fund basis—Vetting of solicitor's bills of costs, ante.*

Withdrawal and redelivery of bill—Jurisdiction of court to permit—Unpaid disbursements entered as paid. **Re A Solicitor, Re Taxation of Costs** [1943] 1 157, ChD.

Withdrawal and redelivery of bill—Jurisdiction of court to permit—Counsel's fees not paid before delivery of bill—Unpaid fees shown as paid—Bona fide mistake. **Polak v Winchester (Marchioness)** [1956] 2 660, CA.

Withdrawal and redelivery of bill—Jurisdiction of court to permit—Counsel's fees not paid before delivery of bill—Unpaid fees not set out under separate heading—Fees paid by solicitor before taxation—Discretion of court to permit withdrawal and redelivery—RSC Ord 65, r 27(29a). **Re A Solicitor** [1951] 1 592, ChD.

COSTS (cont)

Taxation (cont)—

Solicitor and client—

Allowance of costs—Costs not limited to what was necessary as distinct from what was proper—RSC Ord 65, r 27(29). **Re Mercury Model Aircraft Supplies Ltd** [1956] 2 885, ChD.

Contentious business—Standard to be adopted—Solicitor-plaintiff consulting London agents—RSC Ord 65, r 27(29). **Reed v Gray** [1952] 1 241, ChD.

Contentious business—Standard to be adopted—Contempt of court—Motion for committal or attachment—Applicants' costs of motion—RSC Ord 65, r 27(29). **Morgan v Carmarthen Corp'n** [1957] 2 232, CA.

Taxation as between solicitor and client—Meaning—RSC Ord 22, r 14(11). **Goodwin v Storrar** [1947] 1 203, KBD.

Solicitor and own client—

Special circumstances. **Harris v Yarm** [1959] 3 618, ChD.

Taxing fees—

Payment—Method of payment. **Practice Direction** [1972] 3 255, FamD.

Value added tax—

Civil proceedings and non-contentious business—Bills lodged for taxation which include charge for work done or services rendered—Request for certificate—Form of fee note or bill of costs—Procedure where government department involved. **Practice Direction** [1973] 1 974, [1974] 1 847.

Civil proceedings and non-contentious business—Rate of value added tax—Change in rate—Date from which change effective. **Practice Direction** [1974] 3 177.

Crown Court—Bills lodged for taxation which include charge for work done or services rendered—Request for certificate—Form of fee note or bill of costs—Procedure where government department involved. **Practice Direction** [1974] 1 848.

Crown Court—Procedure where government department involved—Finance Act 1972, s 19 (2). **Practice Direction** [1973] 2 464.

Crown Court—Rate of value added tax—Change in rate—Date from which change effective. **Practice Direction** [1974] 3 177.

Matrimonial proceedings—Divorce county court. **Practice Direction** [1973] 2 335, FamD.

Winding-up of company. *See* **Company** (Winding-up—Costs—Taxation).

Third party—

Arbitration—

Sale of goods—Third and fourth parties added on issue whether goods are of contract quality—Ordinary rule as to costs of successful parties where goods are of contract quality. **L E Cattan Ltd v A Michaelides & Co (a firm) (Turkie Third Party, George (trading as Yarns & Fibres Co) Fourth Party)** [1958] 2 125, QBD.

Joining of third party—

Appeal proceedings—Case stated by justices—Liability for costs. **Smith v Morris Motors Ltd** [1949] 2 715, KBD.

Jurisdiction—

High Court and county court—Whether plaintiff could be ordered to pay costs of third parties brought in by the defendant—Supreme Court of Judicature (Consolidation) Act 1925, s 50(1). **Edginton v Clark (Macassey (Trustees of Whitley House Trust) Third Parties)** [1963] 3 468, CA.

Plaintiff ordered to pay costs of third and fourth parties. **Thomas v The Times Book Co Ltd** [1966] 2 241, ChD.

Liability of third party—

Indemnification of defendant—Plaintiff succeeding on some issues and failing on others—Scale of costs to be paid by third party—Liability of third party not appearing. **Welch v Bank of England (Francis & Praed, Third Parties)** [1955] 1 811, ChD.

Tort—

High Court action—

Scale of costs—Damages of £10—'Sufficient reason' for awarding costs on High Court scale—Expectation based on medical evidence of recovering more than £50—County Courts Act 1934, s 47(3)(a). **Finch v Telegraph Construction and Maintenance Co Ltd** [1949] 1 452, KBD.

Scale of costs—Less than £100 recovered—Chandelier damaged by negligence of person contracting to clean it—Whether action founded on contract or on tort—Whether plaintiff entitled to costs on High Court scale—County Courts Act 1934, s 47(1)(b)(i), (ii). **Jackson v Mayfair Window Cleaning Co Ltd** [1952] 1 215, KBD.

Scale of costs—Sum recovered—Money paid into court—Two defendants—Payment into court of £100 by first defendant—Acceptance by plaintiff in satisfaction of claim—Whether money 'recovered' in the action—Scales of costs applicable to plaintiff's costs and second defendants' costs—County Courts Act 1934, s 47(1), as substituted by County Courts Act 1955, s 1(2)—RSC Ord 22, r 4(3). **Parkes v Knowles** [1957] 3 600, Assizes.

Trustee's. *See* **Trust and trustee** (Trustee's costs).

Variation of trusts by the court. *See* **Variation of trusts** (Practice—Costs).

Vouching bills of costs—

Certificate as evidence of payment of disbursement not exceeding £100—

Exception for counsel's fee—Certificate to be given by partner in firm claiming costs. **Practice Direction** [1976] 2 446.

Winding-up of company. *See* **Company** (Winding-up—Costs).

CO-SURETIES

Guarantee. *See* **Guarantee** (Co-sureties).

COUNSEL

Advice—

Mitigation of contempt of court. *See* **Contempt of court** (Mitigation—Legal advice that a course of conduct would not amount to breach of undertaking).

COUNSEL (cont)

Appearance—

Appearance in court on own behalf—

Practice—Criminal matter—Wearing of robes—Place in court. **Practice Note** [1961] 1 319, QBD.

Authority—

Admission—

Authority to bind client by admission—Admission made in error—Whether binding on client.

H Clark (Doncaster) Ltd v Wilkinson [1965] 1 934, CA.

Authority in respect of witnesses—

Right to call witnesses in sequence chosen by him—Domestic proceedings before magistrate. **Briscoe v Briscoe** [1966] 1 465, Div.

Limitation—

Compromise—Consent order based on compromise—Power to set aside order—Counsel entering into compromise agreement contrary to express instructions of client—Limitation of authority unknown to other side—Application to set aside order made on same day as order perfected—Court informed day or two previously that application would be made—Power of court to entertain application—Power to set aside order where risk of grave injustice to client. **Marsden v Marsden** [1972] 2 1162, FamD.

Communications with—

Legal professional privilege. *See* **Discovery** (Legal professional privilege—Communications with counsel).

Contempt of court—

Failure to attend court—

Act of discourtesy—Whether amounting to contempt of court. **Izuora v Reginam** [1953] 1 827, PC.

Counsel's and solicitor's fees—

Legal aid—

Taxation of costs. *See* **Legal aid** (Taxation of costs—Counsel's and solicitor's fees).

Disciplinary jurisdiction—

Senate of the Four Inns of Court—

Vesting of disciplinary powers in Senate—Power of judges and benchers of Inns acting together to alter disciplinary machinery. **Re S (A Barrister)** [1969] 1 1949.

Duty—

Advocacy—

Points of law—Duty in regard to taking doubtful points. **Abraham v Jutsun** [1963] 2 402, CA.

Appeal from county court—

Provision of note of county court judgment. *See* **County court** (Appeal—Note of county court judgment—Provision of note).

Conduct of litigation—

Duty to help in administration of justice. **Beevis v Dawson** [1956] 3 837, CA.Illegality—Whether counsel should raise defence of illegality of contract where not pleaded. **Mercantile Credit Co Ltd v Hamblin** [1964] 3 592, CA.

Divorce—

Negotiating settlement of claims to damages, etc. **Jakeman v Jakeman and Turner** [1963] 3 889, Div.

Dock brief—

Duty where unable to undertake defence—Matter to be mentioned to the court with request to be relieved of defence. **R v Howes** [1964] 2 172, CCA, **Practice Note** [1964] 2 400.

Evidence—

Giving of evidence by barrister when acting as counsel—

Propriety. **R v Secretary of State for India in Council, Ex parte Ezekiel** [1941] 2 546, KBD.

Fees—

Divorce petition heard outside London—

Undefended suit, petitioner legally aided. *See* **Divorce** (Costs—Taxation—Party and party taxation—Counsel's brief fee—Solicitors' fee for attending the hearing—Undefended divorce suit brought by wife legally aided with nil contribution—Suit heard at Chester).

Leading counsel—

Chambers—Certificate for attendance—No certificate asked for at time of approval of compromise of matter on behalf of infant—Consent order—Whether order could be amended subsequently to include provision for such costs—Whether consent order could be varied—Guardian ad litem of infant not concurring—Supreme Court Costs Rules 1959, App 2, Pt 10, para 2(3). **Re Ley's Will Trusts** [1964] 2 326, ChD.Taxation of costs. *See* **Costs** (Taxation—Counsel's fees).

Negligence—

Immunity—

Whether an action for negligence can lie against a barrister acting as such. **Rondel v Worsley** [1967] 3 993, HL.

Originating summons—

Separate representation of parties with same interest. *See* **Originating summons** (Parties—

Construction summons—Parties with same interest represented by separate counsel).

Pleading—

Lapse in pleading—

Effect on client—Lapse in pleading due to forgetfulness rather than mistake—Whether client bound. **Warner v Sampson** [1959] 1 120, CA.

Practice—

Appearance in court on own behalf—

Criminal matter. *See* **Appearance**—Appearance in court on own behalf, *ante*.

COUNSEL (cont)

Practice (cont)—

Submission of list of authorities—

Procedure in Queen's Bench Division—List of authorities to which it is intended to refer in argument to be handed in before hearing. *Practice Direction* [1961] 1 541, QBD.

Privy Council—

Counsel's fees. *See* **Privy Council** (Costs—Counsel's fees).

Professional misconduct—

Gambia. *See* **Gambia** (Counsel—Professional misconduct).

Proof—

Standard of proof required. *Bhandari v Advocates Committee* [1956] 3 742, PC.

Refresher fee—

Taxation of costs. *See* **Costs** (Taxation—Counsel fees—Refresher fees).

Representation by counsel—

Legal aid—

Criminal cases. *See* **Legal aid** (Criminal cases—Representation by counsel).

Tribunal—

Whether party entitled to be legally represented before domestic tribunal. *See* **Natural justice** (Domestic tribunal—Legal representatives).

Variation of trusts by the court—

Counsel's opinion—

Arrangements affecting interests of infants or unborn beneficiaries. *See* **Variation of trusts** (Practice—Arrangements—Evidence—Arrangements affecting interests of infants or unborn beneficiaries—Counsel's opinion).

Representation of parties. *See* **Variation of trusts** (Practice—Representation).

COUNT

Addition to indictment. *See* **Indictment** (Addition of new counts).

Indictment—

Addition of new counts. *See* **Indictment** (Addition of new counts).

Severance of counts—

Shortening of trial. *See* **Criminal law** (Trial—Shortening of trial—

COUNTERACTING

Tax advantage. *See* **Income tax** (Tax advantage—Counteracting).

COUNTERCLAIM

Action—

Costs of counterclaim—

Claim and counterclaim both successful. *See* **Costs** (Claim—Counterclaim—Claim and counterclaim both successful).

Whether costs of action. *See* **Costs** (County court scale—High Court action—Recovery of less than £300—Costs of the action—Whether costs of counterclaim and of negotiation of compromise costs of action).

Admiralty proceedings. *See* **Admiralty** (Practice—Counterclaim).

Charterparty—

Pleading. *See* **Pleading** (Counterclaim—Charterparty).

Dismissal—

Want of prosecution. *See* **Practice** (Dismissal of action for want of prosecution—Inordinate delay without excuse—Plaintiff in default in not proceeding with action—Counterclaim by defendants—Defendants took no steps to secure that counterclaim should be

Limitation period. *See* **Limitation of action** (Set-off or counterclaim).

Mortgaged property—

Claim related to mortgage debt—

Whether mortgage discharged. *See* **Mortgage** (Discharge).

Notice of counterclaim—Admiralty action in rem. *See* **Admiralty** (Practice—Counterclaim—Notice of counterclaim).

Service out of jurisdiction. *See* **Practice** (Service—Service of jurisdiction).

Slander—

Jurisdiction of county court. *See* **County court** (Jurisdiction—Counterclaim—Counterclaim for slander).

Third party. *See* **Practice** (Third-party procedure—Claims and issues between defendant and another party—Counterclaim by third party, a defendant in the action).

COUNTERFEIT COINS

Possession. *See* **Criminal law** (Coinage offence—Possessing counterfeit coins with intent to utter or put them off).

COUNTER-INFLATION

Legislation—

Limitation on rent. *See* **Landlord and tenant** (Rent—Limitation—Prohibition on increase in rate of rent).

COUNTY COURT

Action—

Action founded on contract or tort—

Debt or damage claimed not exceeding £20—Leave to appeal. *See* **Appeal**—Leave—Debt or damage claimed not exceeding £20, *post*.

Transfer from county court to High Court. *See* **Transfer of action**—Transfer to High Court—Action founded on contract or tort, *post*.

Transfer from High Court to county court—Jurisdiction. *See* **Transfer of action**—Transfer from High Court—Jurisdiction to order transfer—Action founded on tort, *post*.

COUNTY COURT (cont)

Action (cont)—

Commencement of action—

Time—Commences from issue of plaint. **United Motor Finance Corp Ltd v Turner** [1956] 1 623, CA.

Dismissal—

Want of prosecution—Jurisdiction. *See* Jurisdiction—Dismissal of action for want of prosecution, *post*.

Division of causes of action—

Hire-purchase agreement—Judgment recovered by owners for instalments due under agreement—Termination of hiring by owners—Goods re-sold by owners—Whether owners can bring action against hirer for damages for breach of terms of agreement—County Courts Act 1959, s 69. **Overstone Ltd v Shipway** [1962] 1 52, CA.

Adjournment—

Adjournment pending High Court decision—

Matrimonial suit—Action by wife for arrears of maintenance under separation deed—Application for determination of title to property under Married Women's Property Act 1882, s 17—Petition by husband for divorce on ground of wife's adultery—Proof of adultery relevant on issue of payment of maintenance—Applications by husband for adjournment of proceedings pending hearing of divorce petition—Husband's refusal to accept terms of adjournment—Applications for adjournment refused—Propriety. **Hickson v Hickson** [1953] 1 382, CA.

Jurisdiction—

Action for recovery of possession—Vested right of action—Application by tenant for registration of premises under Defence Regulations—Refusal by local authority—Adjournment pending application to High Court for order of mandamus—Defence (General) Regulations 1939, reg 68CB. **Ouzman v Kennedy** [1947] 1 99, CA.

Adjournment of hearing by judge—Hearing already adjourned sine die by registrar. **Tetley Tea Co Ltd v Alderson** [1969] 1 675, CA.

Adoption—

Application to dispense with consent of parent or guardian. *See* Adoption (Dispensing with consent of parent or guardian—Application—County court).

Dispensing with consent to adoption—

Application. *See* Adoption (Dispensing with consent of parent or guardian—Application).

Appeal—

Costs—

Misunderstanding at trial leading to decision on mistaken basis that point abandoned—No application for new trial—No costs of appeal—County Court Rules 1936, Ord 37, r 1. **Beale v Taylor** [1967] 3 253, CA.

Court to which appeal lies—

Order of judge that in default of discovery by defendant within 21 days defendant be debarred from defending—Judgment for plaintiff entered by registrar after default by defendant—Appeal against judgment—Whether appeal lay to judge as appeal from registrar, or to Court of Appeal as appeal from order of judge. **Haridas v Khan** [1971] 1 947, CA.

Evidence—

Weight to be given to evidence—Terms of new tenancy under Landlord and Tenant Act 1954, s 34—Whether weight given to particular evidence properly the subject of appeal—County Courts Act 1934, s 105 (as amended by County Courts Act 1955, s 12). **Harewood Hotels Ltd v Harris** [1958] 1 104, CA.

Ground of appeal—

Misdirection—Onus of proof—Judge's note ambiguous—Benefit of doubt. **Norman v King** [1946] 1 339, CA.

Point of law not argued in court below—Appeal limited to points raised in court below—Questions of fact not appealable—County Courts Act 1959, s 108, s 109. **Oscroft v Benabo** [1967] 2 548, CA.

Point of law not argued in court below—Illegality of hire-purchase agreement—Illegality neither pleaded nor argued in county court but apparent in law from evidence. **Snell v Unity Finance Ltd** [1963] 3 50, CA.

Point of law not argued in court below—Point pleaded but not argued—Respondent's notice—R S C Ord 58, r 6(2). **Thomas v Marconi's Wireless Telegraph Co Ltd** [1965] 2 598, CA.

Interpleader. *See* Interpleader (Appeal—County court).

Leave—

Application for leave—Time when application should be made—Before filing of notice of appeal—County Courts Act 1934, s 105(a). **Cumbes v Robinson** [1951] 1 661, CA.

Debt or damage claimed not exceeding £20—Action for nuisance—Claim not exceeding £20—Claim for ancillary injunction—Whether leave of county court judge necessary—County Courts Act 1934, s 105, proviso (a). **Brett v Thrower** [1945] 2 284, CA.

Debt or damage claimed not exceeding £20—Claim for less than £20 on one cause of action coupled with claim exceeding £20 on another—Whether leave to appeal required in respect of smaller claim—County Courts Act 1934, s 105. **Eric Gnapp Ltd v Petroleum Board** [1949] 1 980, CA.

Debt or damage claimed not exceeding £20—'Debt or damage claimed'—claiming £21 10s—Payment of £10 by defendant after commencement of action but before service of particulars of claim—Whether leave necessary—County Courts Act 1934, s 105, proviso (a). **Mason v Burningham** [1949] 2 134, CA.

Debt or damage claimed not exceeding £20—Refusal of leave by county court judge—Jurisdiction of Court of Appeal to hear appeal—County Courts Act 1888, ss 120, 124. **Conway v New Ideal Homesteads Ltd** [1936] 3 78, CA.

Interlocutory appeal—Point of law. *See* Appeal—Right of appeal—Point of law—Interlocutory appeal—Leave, *post*.

COUNTY COURT (cont)

Appeal (cont)—

Leave (cont)—

Leave to appeal out of time—Guardianship of infant. **Practice Direction** [1955] 3 591, ChD.

Note of county court judgment—

Practice where judge's note incomplete. *See Court of Appeal* (Judge's note—Practice—Appeal from county court—Judge's note incomplete).

Provision of note—Duty of counsel and solicitors. **Sims v Wilson** [1946] 2 261, CA.

Provision of note—Provision where judge's note incomplete—Whether affidavit evidence of grounds of judgment admissible on appeal—R S C Ord 58, r 18(5). **Hayman v Rowlands** [1957] 1 321, CA.

Provision of note—Provision where judge's note incomplete—Duty of counsel—Counsel's note should be available on appeal after having been submitted to county court judge. **Bruen v Bruce** [1959] 2 375, CA.

Raising in Court of Appeal of point not argued in court below—

Remission of case to trial judge—County Courts Acts 1934, s 108. **Whall v Bulman** [1953] 2 306, CA.

Whether permissible. **Bell v Gosden** [1950] 1 266, CA, **Boyer v Warbey** [1952] 2 976, CA.

Whether permissible. **United Dominions Trust Ltd v Bycroft** [1954] 3 455, CA.

Review of exercise of discretion—

Duty of appellate court. *See Appeal* (Review of exercise of discretion).

Right of appeal—

Appeal from decision of county court on case stated by arbitrator—Agricultural holding—Consultative Case stated by arbitrators—County Courts Act 1934, s 105—Agricultural Holdings Act 1948, Sch 6, para 24. **Re Lower Onibury Farm, Onibury, Shropshire** [1955] 2 409, CA.

Company—Compulsory winding-up order—Appeal on error of law only—County Courts Act 1959, s 108. **Re P & J Macrae Ltd** [1961] 1 302, CA.

Party aggrieved by 'direction, decision or order of judge'—Ruling that on pleadings burden of proof lay on defendant, who therefore should begin—Whether appeal lies from such a ruling—Whether ruling 'a direction, decision or order' within County Courts Act 1959, s 108. **Seldon v Davidson** [1968] 2 755, CA.

Person who could have been a party. *See Court of Appeal* (Appeal—Right of appeal—Person who could have been a party).

Point of law—Exercise of discretion by county court judge—Refusal to adjourn hearing to enable a party unable to attend to give evidence—Evidence of party essential—Doctor's certificate unsupported by affidavit—County Courts Act 1934, s 105—Evidence Act 1938, s 1(5). **Dick v Piller** [1943] 1 627, CA.

Point of law—Interlocutory appeal—Leave—Whether leave to appeal required—Supreme Court of Judicature (Consolidation) Act 1925, s 31(1)(i)—County Courts Act 1959, s 108. **Senior v Holdsworth** [1975] 2 1009, CA.

Question of fact—Action founded on contract or tort where claim exceeding £200—Issue tried in county court by consent—Decision on question of fact—Right of appeal to Court of Appeal—County Courts Act 1934, s 105. **Hyde v Hyde** [1950] 1 788, CA.

Question of fact—Action founded on contract or tort where claim exceeding £200—Third party's appeal on question of fact—Whether claim for indemnity against third party exceeding £200—Plaintiffs' amended claim £198 1s 7d—Prayer limiting damages to £400—Judgment for plaintiffs for £195 1s 7d and costs—Defendants' claim against third party for indemnity including costs awarded to plaintiffs against defendants—County Courts Act 1959, s 109(2). **William Mallinson & Sons (Mfg) Ltd v Key Transport Co Ltd (S Hughes (Hirers) Ltd Third Party, Coastal Transport Ltd Fourth Party, Henry Long (Manningham) Ltd Fifth Party)** [1960] 3 735, CA.

Question of fact—Action founded on contract or tort where relief sought includes an injunction—Particulars of claim including prayer for injunction—Informal agreement between parties not to pursue claim for injunction—Particulars of claim not formally amended—Whether in view of informal agreement 'relief sought' still including an injunction—County Courts Act 1959, s 109(2). **Connor v Maunder** [1972] 2 1195, CA.

Question of fact—Appeal against award of damages—test for intervention by appellate court. **Wilson v Pilley** [1957] 3 525, CA.

Question of fact—Appeal against award of damages—Personal injuries—Excessive damages—No right of appeal in absence of error of law. **Shave v J W Lees (Brewers) Ltd** [1954] 3 249, CA.

Stay of execution pending appeal—

Conditions on stay. *See Execution* (Stay—Stay of execution pending appeal—Conditions imposed on stay—County court).

Witness summons. *See* Witness summons—Appeal, *post*.

Arbitration—

Reference of proceedings to arbitration—

Award—Setting aside award—Extent of county court's discretion—County Courts Act 1934, s 89(3), proviso, as amended by Administration of Justice Act 1956, s 31(4). **Meyer v Leanse** [1958] 3 213, CA.

Award—Setting aside award—Misconduct—Admission of evidence not adduced by parties—Knowledge of bankruptcy proceedings of person not party to arbitration—Consultation of registrar by judge—Duty of judge—County Courts Act 1934, s 89. **Owen v Nicholl** [1948] 1 707, CA.

Award—Setting aside award—Misconduct—Admission of evidence other than adduced by parties. **Owen v Nicholl** [1948] 1 707, CA.

COUNTY COURT (cont)

Arbitration (cont)—

Reference of proceedings to arbitration (cont)—

Terms of order—List of suggested terms—Notice if departure from terms listed contemplated—County Courts Act 1959, s 92 (as amended by the Administration of Justice Act 1973, s 7)—C C R Ord 19, r 1(2) (as amended by the County Court (Amendment No 3) Rules 1973(S I 1973 No 1412), r 4). **Practice Direction [1973] 3 448.**

Bailiff—

Execution of warrant. *See* Execution—Bailiff, *post*.

Bankruptcy. *See* Bankruptcy.Certiorari to quash decision of. *See* Certiorari (Jurisdiction—County court).

Concurrent proceedings before High Court—Stay of proceedings. *See* Practice (Stay of proceedings—Concurrent proceedings before county court and High Court).

Contempt of court—

Committal—

Appeal against committal. *See* Contempt of court (Committal—Appeal against committal—Committal by county court).

Jurisdiction—Breach of injunction. *See* Contempt of court (Committal—Breach of injunction—Jurisdiction—County court).

Costs—

Action brought in the High Court. *See* Costs (County court scale—High court action).

Action transferred to High Court—

Scale of costs—Action for breach of contract transferred to High Court—Recovery by plaintiff of less than £100—Discretion to award costs on High Court scale—County Courts Act 1934, s 47(1)(b)(i). **Turner v Jacaranda Clubs Ltd [1953] 2 548, QBD.**

Appeal. *See* Appeal—Costs, *ante*.

Discretion—

Exercise of discretion—Proceedings for possession of premises subject to Rent Restrictions Acts—Landlord successful in establishing jurisdiction of court to grant relief—Order for possession refused as being too harsh in circumstances—Landlord awarded costs of proceedings—Discretion as to costs properly exercised—County Court Rules 1936, Ord 47, r 1. **Ottway v Jones [1955] 2 585, CA.**

Exercise of discretion—Set-off of full amount claimed—Lesser sum found to be due to defendant—Defendant's right to costs of action—County Court Rules 1936, Ord 47 r 1. **Nicholson v Little [1956] 2 699, CA.**

Remitted action. *See* Costs—Remitted action—Discretion, *post*.

Scale of costs—Award of costs on lower scale—Car collision—Insurers' arrangements inter se—Action by car owner for damages arising out of collision with another car—Car owner's insurers not liable to pay first £10 under policy of insurance—Knock-for-knock agreement—Car owner held two-thirds to blame—Amount recovered by car owner appropriate to carry Scale 3 costs—Car owner awarded costs on Scale 2—Car owner paid by his insurers less the £10—Whether insurers' knock-for-knock agreement relevant—County Court Rules 1936, Ord 47, r 1, r 6(1)(a). **Bourne v Stanbridge [1965] 1 241, CA.**

Fixed costs—

Claim for damages for personal injury—Further costs—Payment in by defendant of sum for damages plus fixed costs—Acceptance by plaintiff—Application for order for further costs—County Court Rules 1936, Ord 11, r 1(3)(c), as amended by S I 1959 No 1251. **Hopkins v Manners [1960] 2 188, CA.**

Claim for damages for personal injury—Interim costs—Payment in by defendant of sum for damages plus fixed costs—Acceptance of damages by plaintiff—Application for order for further costs—County Court Rules, Ord 11, r 7(3)(c). **Herbert v Rhondda Transport Co Ltd [1963] 1 33, CA.**

Claim for damages for personal injury—Payment in by defendant of lesser sum with denial of liability—Acceptance by plaintiff of sum paid in—Whether plaintiff entitled to tax his costs or only to fixed costs—County Court Rules 1936, Ord 11, r 1. **Allott v Wagon Repairs Ltd, Rutherford v British Overseas Airways Corp [1959] 2 59, CA.**

Claim for damages for personal injury—Whether court officials should enter fixed costs on summons—Payment in by defendant of sum for damages plus amount of fixed costs—Acceptance by plaintiff of sum paid in for damages—Whether plaintiff entitled to tax his costs or only to fixed costs—County Court Rules 1936, Ord 11, r 1, Appendix D, Pt 1, Direction 1(a). **Reid v Thomas Bolton & Sons Ltd [1958] 1 465, CA.**

Hearing—

Order setting aside judgment in default—Costs of hearing costs in cause—Judge's discretion as to costs correctly exercised. **Cooper v Scott-Farnell [1969] 1 178, CA.**

Want of service of summons—Order made at hearing set aside—Costs of hearing made costs in cause—Defendant entitled to have order set aside ex debito justitiae without any terms being imposed as to costs of hearing. **White v Weston [1968] 2 842, CA.**

High Court action. *See* Costs (County court scale—High Court action).

Landlord and tenant—

Business premises—Application for new tenancy—Discretion of judge. **The Decca Navigation Co Ltd v Greater London Council [1974] 1 1178, CA.**

Business premises—Application for new tenancy—Normal practice not to award costs—Practice approved—County Court Rules 1936, Ord 47, r 1, r 15. **Willis v Association of Universities of the British Commonwealth (No 2) [1965] 2 393, CA.**

Payment into court—

Effect—Claim alleging only one cause of action—Payment in of £75—Subsequent amendment to add additional causes of action—Recovery by plaintiff at trial of £75 in respect of original cause of action, plus £2 in respect of cause added after payment in of £75—Whether plaintiff or defendant entitled to costs since payment in—C C R 1936, Ord 11, r 1, r 2, r 3, Ord 15, r 1(1). **Tingay v Harris [1967] 1 385, CA.**

Effect—Payment in full and final settlement of claim and costs with denial of liability—Acceptance by plaintiff—Whether plaintiff debarred from lodging bill of costs—C C R Ord 11, rr 7, 8. **Stafford Knight & Co Ltd v Conway [1970] 2 52, CA.**

COUNTY COURT (cont)

Costs (cont)—

Payment into court (cont)—

Effect—Successive payments in—Acceptance by plaintiff after more than four days after third payment in—Whether plaintiff entitled to costs up to date of last payment in—County Court Rules 1936, Ord 11, r 7, r 9, r 11, Ord 47, r 1. **Gold v Introductions Ltd** [1963] 2 279, CA.

Practice—

Costs of taking evidence before examiner—No direction as to costs in order—High Court practice applicable—County Courts Act 1934, s 100—County Court Rules 1936, Ord 47, r 1. **Friis v Paramount Bagwash Co Ltd (No 2)** [1940] 4 72, CA.

Remitted action—

Discretion—Reduction of claim in High Court by giving credit—No judgment in High Court—Exercise of discretion—County Courts Act 1919, ss 11, 12. **Hardman v Cuaston C A** [1936] 1 61, CA.

Scale of costs—Action dismissed with costs—Defendant's right to High Court costs down to transfer and county court costs thereafter. **Friis v Paramount Bagwash Co Ltd** [1940] 1 595, CA.

Scale of costs—Costs in High Court—Discretion of county court judge to give county court costs only—County Courts Act 1934 (c 53), ss 47, 73. **Goadby v Orridge** [1937] 4 610, CA.

Scale of costs—Payment into court—Three plaintiffs—Three separate sums paid into court—Taxation in respect of each sum paid in—Scale applicable—County Courts Act 1934 (c 73), s 73. **Haile v West** [1939] 4 339, CA.

Scale items—

Fees beyond maxima given in scale—Power of registrar on taxation and judge on review—Limitation to maxima—County Court Rules 1936, Ord 47. **Murray v Redpath, Brown & Co Ltd** [1937] 4 478, CA.

Set-off—

Legal aid—Plaintiff legally aided for part of action, but not at nor for sometime before hearing—Plaintiff then acting in person—Judgment for plaintiff with costs—Plaintiff's own costs taxed and paid by defendants into court (£65 4s 6d)—Plaintiff ordered to pay defendants' costs of unsuccessful appeal, exceeding plaintiff's own costs in county court—Application by defendants to set-off £65 4s 5d against costs payable to them by plaintiff, and to be paid £65 4s 6d out of court—Legal Aid and Advice Act 1949, s 2(2)(d)—County Court Rules 1936, Ord 11, r 10(2)—Legal Aid (General) Regulations 1962 (S I 1962 No 148), reg 17(1), (11). **Anderson v Hills Automobiles (Woodford) Ltd** [1965] 2 255, CA.

Special allowances—

When allowable—Only to be allowed at hearing—What is a 'hearing'—Court Rules 1936, Ord 18, rr 1, 2—County Court Rules 1936, Ord 47, r 21. **University Motors Ltd v Barrington** [1939] 1 630, CA.

Taxation—

Value added tax—Matrimonial proceedings. *See* Costs (Taxation—Value added tax—Matrimonial proceedings—Divorce county court).

Division of causes of action. *See* Action—Division of causes of action, *ante*.

Divorce—

Ancillary and alternative relief—

Jurisdiction. *See* Divorce (Ancillary and alternative relief—Jurisdiction—Competence of divorce county court).

Cause list. *See* Divorce (Matrimonial cause list—County court list).

Declaration as to matrimonial status. *See* Declaration (Jurisdiction—Declaration as to marital status).

Execution—

Bailiff—

Entry—Arrest of debtor—Debtor in house of third party—Right of bailiff to enter third party's house—Entry through door shut but not locked nor bolted—Whether entry lawful—County Courts Act 1959, s 165. **Southam v Smout** [1963] 3 104, CA.

Entry—Use of force—Respondent, knowing bailiff had come to levy execution, entered her house and tried to shut the door against the bailiff—Bailiff pushed door open to obtain entry—Respondent assaulted him—Whether an assault on the bailiff in the execution of his duty—County Courts Act 1959, s 30. **Vaughan v McKenzie** [1968] 1 1154, QBD.

Levy—

High Bailiff—Irregularity in levy—Liability of bailiff—Remoteness of damage. **Domine v Grimsdall** [1937] 2 119, KBD.

Stay—Discretion of judge. **Domine v M Cohen & Co** [1936] 1 55, CA.

Warrant for possession of premises—

Suspension of execution—Jurisdiction—No jurisdiction to suspend execution after period of giving possession expired. **Moore v Registrar of Lambeth County Court** [1969] 1 782, CA.

Findings of—

Matrimonial proceedings in—

Whether binding in High Court. *See* Estoppel (Issue estoppel—Matrimonial proceedings—County court proceedings—Subsequent proceedings in High Court for determination of property rights).

Injunction. *See* Injunction (County court action).

Interpleader—

Appeal. *See* Interpleader (Appeal—County court).

Judgment or order—

Appeal from—

Provision of note of county court judgment. *See* Appeal—Note of county court judgment, *ante*.

COUNTY COURT (cont)

Judgment or order (cont)—

Satisfaction—

Payment into court—Bankruptcy notice—County court exercising bankruptcy jurisdiction—Notice specifying agent to receive payment on behalf of creditor—Validity—Payment required to be made into court—Bankruptcy Act 1914, s 2—County Courts Act 1959, s 99(3). **Re a Debtor, Ex parte The Debtor v Hungerford Rural District Council** [1973] 1 797, ChD.

Time limit—

Extension—Practice. *See* Practice—Application of High Court practice—Case not expressly provided for—High Court practice applicable only in relation to matters of principle not expressly provided for in county court rules—Judgment or order, *post*.

Jurisdiction—

Action for recovery of possession—

Limit of jurisdiction—Furnished house—Whether apportionment provisions of Rent Restrictions Acts apply—County Courts Act 1934, s 48(1)—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(2), proviso (i)—Rent and Mortgage Interest Restrictions Act 1923 s 10, **Somersfield v Robin** [1946] 1 218, CA.

Adjournment. *See* Adjournment—Jurisdiction, *ante*.

Agricultural holding—

Setting aside award of arbitrator under Agricultural Holdings Act 1948. *See* **Agricultural holding** (Arbitration)—Award—Setting aside award—Jurisdiction—County court).

Amendment of particulars of claim—

Action claiming unlimited damages—Request for leave to amend particulars of claim by adding 'not exceeding £100' after claim for damages—Jurisdiction of judge to allow amendment—County Courts Act 1934, s 42(1)—Administration of Justice (Miscellaneous Provisions) Act 1938, s 19(1), Sch II—County Court Rules 1936, Ord 15, r 6. **Legon v Count** [1945] 1 710, CA.

Cause of action arising wholly or in part in district of court—

District in which cause of action arising—Action founded on a contract of sale of goods to be paid by instalments—Contract of guarantee—District in which cause of action wholly or in part arose—County Court Rules 1936, Ord 2, r 1. **R v Shoreditch County Court Registrar, Ex parte Saxon Finance Corp Ltd** [1937] 4 231, KBD.

District in which cause of action arising—Parcel posted in London—Not registered—Parcel lost—Jurisdiction of court at Bakewell—County Court Rules 1936, Ord 2, r 1(1)(b). **Beasley v Burberrys Ltd** [1944] 2 205, CA.

Committal for contempt of court—

Breach of injunction. *See* **Contempt of court** (Committal—Breach of injunction—Jurisdiction—County court).

Committal for fixed term. *See* **Contempt of court** (County court—Jurisdiction).

Committal for non-payment of judgment debt—

Revocation of order. *See* **Debt** (Non-payment of judgment debt—Committal—Order—Revocation—Jurisdiction—County court order).

Counterclaim—

Counterclaim for slander—Action for slander excluded from jurisdiction—Whether counterclaim for slander excluded—County Courts Act 1934, ss 40, 63. **Hardwicke v Gilroy** [1944] 1 521, CA.

Declaration—

Easement—Rateable value of premises under £400 net annual value—Claim for declaration and damages—Whether jurisdiction to grant declaration—County Courts Act 1959, s 51(a), as amended by County Courts (Jurisdiction) Act 1963, s 1(1). **Wong v Beaumont Property Trust Ltd** [1964] 2 119, CA.

Defence—

Equitable defence—Value of property such as to exclude jurisdiction if plea raised by way of claim—Action for recovery of possession by landlord—Defence of oral tenancy for life—No counterclaim for specific performance—Whether defence maintainable—County Courts Act 1959, s 74, s 52(1)(d). **Kingswood Estate Co Ltd v Anderson** [1962] 3 593, CA.

Dismissal of action for want of prosecution—

Dismissal on application of defendants—C C R Ord 13, r 4(4). **Kirkpatrick v The Salvation Army Trustee Co Ltd** [1969] 1 388, CA.

Divorce—

Ancillary and alternative relief. *See* **Divorce** (Ancillary and alternative relief—Jurisdiction—Competence of divorce county court).

Blood test. *See* **Paternity** (Blood test—Divorce—Jurisdiction to order test).

Equity jurisdiction—

Landlord and tenant—Agreement for lease—Business premises—New tenancy—Tenants claiming landlord not entitled to give notice to determine tenancy—Tenants claiming to be in possession under agreement for 50 year lease—Proceedings in county court in relation to application for new tenancy—Tenants commencing proceedings in High Court for specific performance of agreement for 50 year lease—County court not having jurisdiction to entertain proceedings for specific performance—Whether court having jurisdiction to entertain proceedings for new tenancy involving decision whether tenants entitled to 50 year lease—Whether county court proceedings should be stayed pending determination of High Court proceedings. **Rushton v Smith** [1975] 2 905, CA.

Inherent jurisdiction—

Jurisdiction to amend order—Extension of time—Order for payment into court of sum of money before specified time—Application to extend time—Application made after expiry of time—Whether court having jurisdiction to extend time—Whether jurisdiction exercisable after expiry of time—CCR Ord 13, r 5(1). **R v Bloomsbury and Marylebone County Court, ex parte Villers Ltd** [1976] 1 897, CA.

COUNTY COURT (cont)

Jurisdiction (cont)—

Land registration—

Rectification of register—Notice of charge—Vacation of entry—Matrimonial home—Spouse's right of occupation—Jurisdiction of county court to order rectification of register by vacating registration of notice—Court of competent jurisdiction—Decision that person entitled to estate right or interest in registered land—Husband registered proprietor of matrimonial home—Wife not in occupation—Contract by husband to sell home to plaintiffs—Wife registering notice of charge against house—Action in county court by plaintiffs for damages against husband and wife limited to £750—Jurisdiction of county court to vacate registration of wife's notice—Land Registration Act 1925, s 82(1)—Matrimonial Homes Act 1967, s 2(7). **Watts v Waller** [1972] 3 257, CA.

Landlord and tenant—

New tenancy of business premises—Rateable value of premises below £500—Value of property above £500—Incidental question of equitable title of landlord—Landlord and Tenant Act 1954, s 63(2)(a). **Cornish v Brook Green Laundry Ltd** [1959] 1 373, CA.

Order for possession—Jurisdiction to postpone execution of order. *See* Landlord and tenant (Recovery of possession—County court action—Order for possession—Jurisdiction to postpone execution of order).

Mortgage—

Possession—Whether action for possession is an action for recovery of land—County Courts Act 1934, s 48, as amended by County Courts Act 1955, s 2, Sch 1, para 4. **R v Judge Dutton Briant, Ex parte Abbey National Building Society** [1957] 2 625, QBD.

Possession—Whether jurisdiction over an action for possession is that applicable to an action for recovery of land or for enforcement of the mortgage—County Courts Act 1959, s 48(1), s 52(1)(c). **West Penwith District Council v Gunnell** [1968] 2 1005, CA.

National savings certificates—

Application by husband for declaration that certificates in wife's name were his property—Regulations providing that disputes between Postmaster-General and person claiming to be interested in certificate to be referred to Chief Registrar of Friendly Societies—Savings Certificates Regulations 1933 (S R & O 1933 No 1149), r 27(1). **Winter v Winter** [1946] 1 686, CA.

Negligence—

Damages—Apportionment—Damages assessed at sum in excess of that which court had jurisdiction to award—Reduced to amount within limits of jurisdiction—County Courts Act 1934, s 40(1)—Law Reform (Contributory Negligence) Act 1945, s 1(1), (2). **Kelly v Stockport Corp'n** [1949] 1 893, CA.

New tenancy of business premises—

Premature application. *See* Landlord and tenant (Business premises—Application for new tenancy—Premature application).

Order for repayment of money paid out of court in error—

Payment out of money by mistake of registry—Whether there was jurisdiction to order money to be repaid into court. **Gainsborough Mixed Concrete Ltd v Duplex Petrol Installations Ltd and Barclays Bank Ltd (Garnishee)** [1968] 3 267, CA.

Probate—

Power to pronounce for validity of will. **Re Thomas** [1949] 1 1048, Prob.

Probate. *See* Probate (County court—Jurisdiction).

Question of title to hereditament—

Easement—Declaration. *See* Jurisdiction—Declaration—Easement, *ante*.

Easement—Whether 'hereditament in respect of which the easment is claimed' exceeds £100 per year and refers to both dominant and servient tenements—County Courts Act 1934, s 51. **R v Judge Drucquer, Ex parte Speller** [1939] 2 473, KBD.

Jurisdiction by agreement—Memorandum of agreement—Co-lessees—Rent over £100—Action for contribution to rent paid—Denial by defendant that land vested in him—Whether pleadings constitute memorandum conferring jurisdiction—County Courts Act 1934, s 40(1)(b), s 43, s 51. **Lea v Moore** [1955] 1 65, CA.

Rates—

Recovery of water rates—Dispute—Water Act 1945, s 38(3)—Local Government Act 1948, s 62(1)—Lands Tribunal Act 1949 s 1(3)(e). **Sowerby Bridge Urban District Council v Stott** [1956] 2 264, CA.

Registrar—

Consent of parties—Application of both parties—Hire-purchase agreement—Non-payment of instalments—Action to recover instalments due—Allegation of fraud—Allegation contained in letter to court—Party not attending hearing to support allegation—Second action to recover further instalments—Fraud again alleged—Whether *res judicata*—County Courts (Amendment) Act 1934, s 19. **Rentit Ltd v Duffield** [1937] 3 117, CA.

Salvage action—

Costs. *See* Admiralty (Costs—Jurisdiction—County court—Salvage action).

Security for costs. *See* Security for costs—Jurisdiction, *post*.

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Specific performance—

Agreement to erect fence—County Courts Act 1934, s 52(1)(d), s 71. **Bourne v McDonald** [1950] 2 183, CA.

Stay of execution of warrant for possession of premises. *See* Execution—Warrant for possession of premises—Suspension of execution—Jurisdiction, *ante*.

Striking out pleading—

Action commenced in High Court—Failure to deliver particulars as ordered—No provision in order for event of default—Remission of case to county court—County court judge's order striking out pleadings—No peremptory order for particulars—Whether jurisdiction to strike out pleading—County Court Rules, Ord 7, r 9(2)—County Courts Act 1959, s 103. **Williamson v Rider** [1962] 2 268, CA.

COUNTY COURT (cont)

Jurisdiction (cont)—

Sum recoverable by statute—

Recovery of expenses of maintenance of sewer—Public Health Act 1936, ss 24(1), (3), 293(1). **Great Yarmouth Corp v Gibson** [1956] 1 113, CA.

Transfer of action to. *See* Transfer of action—Transfer from High Court—Jurisdiction to order transfer, *post*.

Landlord and tenant—

Action for recovery of possession—

Order for possession—Form—Order subject to condition—No warrant to issue without leave of registrar—Limit to period of refusal of leave. **Air Ministry v Harris** [1951] 2 862, CA.

Order for possession—Jurisdiction to postpone execution of order—County Courts Act 1934, s 48(1)—County Court Rules 1936, Ord 24, r 11. **Jones v Savery** [1951] 1 820, CA.

Business premises—

Application for new tenancy—Costs. *See* Costs—Landlord and tenant—Business premises—Application for new tenancy, *ante*.

Equity jurisdiction. *See* Jurisdiction—Equity jurisdiction—Landlord and tenant, *ante*.

New tenancy—

Business premises—Time limit for application—Period expiring on Sunday or holiday. *See* Time—Period prescribed by statute expiring on a Sunday or holiday—Period within which application to be made to court for new business tenancy expired on Easter Monday, *post*.

Lease—

Forfeiture—

Arrears of rent—Form of order. *See* Landlord and tenant (Forfeiture of lease—Arrears of rent—County court action—Form of order).

Minor—

Payment out of court of money recovered by minors in High Court and transferred to county court. *See* Payment out of court—Money recovered by infants etc in High Court and transferred to county court, *post*.

Transfer to county court of money recovered in High Court by minor. *See* Practice—Transfer to county court of money recovered in High Court by infant etc, *post*.

New trial—

Discretion of county court judge to allow—

Appeal from judgment or order of registrar—Principle on which discretion must be exercised—County Court Rules 1936, Ord 37, r 5(1). **Devenish v P D I Homes (Hythe) Ltd** [1959] 3 843, CA.

Review of exercise of discretion—No reason given for refusal—Power of Court of Appeal to review facts and reverse decision—County Court Rules 1936, Ord 37, r 2—County Courts Act 1934, s 105. **Grimshaw v Dunbar** [1953] 1 350, CA.

Failure to apply for—

Costs of appeal. *See* Appeal—Costs—Misunderstanding at trial leading to decision on mistaken basis that point abandoned—No application for new trial, *ante*.

Further evidence—

Evidence which could with reasonable diligence have been adduced at the trial—Evidence not adduced because of mistake—Respondent contributing to failure to adduce evidence—Whether new trial would be ordered—County Court Rules Ord 37, r 1(1). **Skrzykowski v Silvan Investments Ltd** [1963] 1 886, CA.

Evidence which could with reasonable diligence have been adduced at the trial—Failure to seek adjournment to pursue allegations becoming known in course of trial—Dismissal for misconduct—Successful action for damages—Whether new trial would be ordered. **Cowling v Matbro Ltd** [1969] 2 664, CA.

Expert evidence on handwriting—Alleged forgery of postscript in letter—Letter written in Punjabi—Written report of experts ultimately obtained by defendant some months after judgment at adjourned hearing to allow expert evidence—Expert in India—Amount in issue £298 10s—Necessity of attendance of expert for cross-examination—Whether new trial should be granted. **Dass (an infant) v Masih** [1968] 2 226, CA.

Jurisdiction of Court of Appeal to order new trial—

Circumstances in which exercisable—Essential matter not considered by county court judge. **Dorrington v Griff Fender (Swansea) Ltd** [1953] 1 1177, CA.

Circumstances in which exercisable—Further evidence—No application to county court for new trial—Power of Court of Appeal to order new trial—County Courts Act 1934, s 105—County Court Rules 1936, Ord 37, r 1(1). **Weinbaum v Klein** [1950] 1 353, CA.

New trial following judgment in defendant's absence—

Jurisdiction—Repeated application—Judgment in A County Court in absence of defendant—New trial granted by judge on terms under County Court Rules, Ord 37, r 2—Terms not complied with—Judgment summons in, and proceedings transferred to, B County Court—Application to judge of B County Court to order new trial under County Court Rules, Ord 37, r 1—Jurisdiction—County Court Rules 1936, Ord 37, r 1, r 2. **R v His Honour Judge Sir Shirley Worthington-Evans, Clerkenwell County Court, Ex parte Madan** [1959] 2 457, QBD.

Refusal—Grounds that the same conclusion would have been reached on a fresh hearing—Whether new trial should be granted—County Court Rules 1936, Ord 37, r 2. **Hayman v Rowlands** [1957] 1 321, CA.

Order for new trial—

Court of Appeal. *See* Court of Appeal (Order for new trial).

Officer—

Bailliff—

Execution of warrant by. *See* Execution—Bailliff, *ante*.

COUNTY COURT (cont)

Order—

Forfeiture of lease—

Arrears of rent—Form of order. *See* **Landlord and tenant** (Forfeiture of lease—Arrears of rent—County court action—Form of order).

Order debarring defendant from defending in default of discovery—

Order that defence be 'struck out' in default of discovery—Appeal—Whether order valid and effective as order debarring defendant from defending—CCR Ord 14, r 9(b). **Haridas v Khan** [1971] 1 947, CA.

Payment into court—

Costs. *See* Costs—Payment into court, *ante*.

Tender—

Plea filed after payment in—Applicability of County Court Rules 1936, Ord 47, r 8(2). **Hida v Nolan** [1948] 2 849, CA.

Payment out of court—

Mistake—

Enforcing repayment into court. *See* Jurisdiction—Order for repayment of money paid out of court in error, *ante*.

Money recovered by infants etc in High Court and transferred to county court—

Legally assisted infant plaintiff—Charge for costs on property recovered—Whether money to be paid out to Law Society for benefit of legal aid fund—County Court Rules 1936, Ord 16, r 13(4). **Law Society v Rushman** [1955] 2 544, CA.

Money paid in for infant plaintiff—Attainment of full age by plaintiff—Right to payment out of fund—County Courts Act 1934, s 164 (2). **Re Embleton** [1946] 2 542, CA.

Power to refuse payment out—Fatal accident—Damages recovered by widow invested at low rate of interest—Money recovered in High Court transferred to county court—Discretion—County Courts Act 1934, s 164(2), (3). **Cross v Edey** [1958] 1 170, CA.

Postal transactions—

County court instructions to Post Office not to deliver mail on Saturdays—

Effect on applications required to be made within specified time—Originating application posted to county court on day before Good Friday, delivered following Tuesday—Not delivered on Saturday because of instruction by county court to Post Office not to deliver on Saturday—Post Office thus made agents for keeping mail for county court—Time for making application expired on Easter Monday—Whether application in time—C C R Ord 26, r 1—Landlord and Tenant Act 1954, s 29(3). **Hodgson v Armstrong** [1967] 1 307, CA.

Practice—

Appeal—

Leave. *See* Appeal—Leave, *ante*.

Provision of note of county court judgment. *See* Appeal—Note of county court judgment—Provision of note, *ante*.

Application of High Court practice—

Case not expressly provided for—High Court practice applicable only in relation to matters of principle not expressly provided for in county court rules—Judgment or order—Finality—Judge setting aside order on terms to be complied with within specified time limit—Failure to comply within time limit—Judge having no power under county court rules to extend time limit after expiry—No scope for applying different provisions of Supreme Court rules so as to give jurisdiction to extend time limit—County Courts Act 1959, ss 98, 103—RSC Ord 3, r 5(1)—CCR Ord 13, r 5(1). **R v Bloomsbury and Marylebone County Court, Ex parte Villierwest Ltd** [1975] 2 562, QBD.

Exhibits—

Production and marking—Hire-purchase agreement—Production and marking of agreement as exhibit. **Hodge Industrial Securities Ltd v Cooper** [1962] 1 403, CA.

Non-suit—

Jurisdiction in absence of plaintiff's consent—Need to hear parties affected—Prior invitation to plaintiff to amend refused—County Court Rules 1936, Ord 23, r 3. **Clack v Arthurs Engineering Ltd** [1959] 2 503, CA.

Particulars of claim—

Form—Stating whether amount of claim exceeds £200—Whether claim should be expressly limited to £400—Whether claim or damages limited to £400 was claim in excess of £200 for purposes of appeal on fact—County Courts Act 1955, s 12(2)(a)(i). **Leslie v Liverpool Corp'n** [1959] 3 898, CA.

Parties—

Adding persons as parties—Whether amendment is effective until service—C C R Ord 15, r 2. **Seabridge v H Cox & Sons (Plant Hire) Ltd, Barclay v Same** [1968] 1 570, CA.

Service of summons—

Service by post—Defendant on holiday—Summons not received until after hearing—C C R Ord 8, r 8(2)—Interpretation Act 1889, s 26. **Cooper v Scott-Farnell** [1969] 1 178, CA.

Service by post—Sending to address originally supplied by defendant at time of accident—Defendant no longer resident there at time of service—Summons did not reach defendant—No service—C C R Ord 8, r 8(3)—Interpretation Act 1889, s 26. **White v Weston** [1968] 2 842, CA.

Transfer of action from county court to Chancery Division. *See* Transfer of action—Transfer to High Court—Practice—Transfer to Chancery Division, *post*.

Transfer to county court of money recovered in High Court by infants, etc—

Judgment or order—Endorsement—R S C Ord 80, r 14(2), (3). **Practice Direction** [1965] 2 332.

Production of document—

Meaning of 'document'—

Cinematograph film—Exhibition of film—Whether film a document—Whether witness can be compelled to exhibit film to court—CCR Ord 13, r 3, Ord 20, r 8(1). **Senior v Holdsworth** [1975] 2 1009, CA.

COUNTY COURT (cont)

Reference to registrar or referee for inquiry and report—

Consent—

Reference of whole action by judge to registrar for inquiry and report—Parties not consenting—Effect—County Courts Act 1919, s 6—County Courts (Amendment) Act 1934 (c 17) s 20. *Morgan v Cullen* [1936] 2 147, CA.

Registrar—

Misbehaviour in public office. *See* **Criminal law** (Misbehaviour in public office—Common law offence—Use of office for personal advantage—County court registrar).

Security for costs—

Jurisdiction—

Order on defendant to give or be debarred from defending—Order made on plaintiffs' application that defendant pay costs thrown away by reason of late delivery of defence—Plaintiffs' counsel and witnesses already on way to court before plaintiffs' solicitors notified of adjournment—No application by defendant to court—Defendant given no opportunity to be heard on application—Jurisdiction to make order—C R Ord 13, r 2. *Tetley Tea Co Ltd v Alderson* [1969] 1 675, CA.

Service of summons. *See* **Practice**—Service of summons, *ante*.

Specific performance. *See* **Specific performance** (County court jurisdiction).

Stay of proceedings—

Concurrent proceedings before county court and High Court. *See* **Practice** (Stay of proceedings—Concurrent proceedings before county court and High Court).

Time—

Period prescribed by statute expiring on a Sunday or holiday—

Period within which application to be made to court for new business tenancy expired on Easter Monday—Application posted to court office on previous Thursday—Delivered on the Tuesday following the Easter Monday—Whether in time—C R Ord 48, r 10(3)—Landlord and Tenant Act 1954, s 29(3). *Hodgson v Armstrong* [1967] 1 307, CA.

Transfer of action—

Transfer from High Court—

Consent order—Nature of transfer—Whether transfer under s 43 or s 45 of County Courts Act 1934—Action for damages for breach of copyright—No limit on claim stated—Summons for directions requesting trial at named county court—Agreement by letters of solicitors to transfer—No statement of enactment under which action transferred—Agreement not filed before trial—County Courts Act 1934, s 43, s 45—County Court Rules 1936, Ord 16, r 10(2)(b). *Williams v Settle* [1960] 2 806, CA.

Costs of action. *See* **Costs** (Remitted action—Scale of costs—High Court action remitted to county court).

Discretion—Factors to be considered—Claim for damages for personal injuries—Exercise of discretion—Questions of law raised in defence—Application to remit action to county court. *Phillips v A Lloyd & Sons Ltd* [1938] 1 226, CA.

Discretion—Factors to be considered—Claim for damages for personal injuries—Exercise of discretion—Means of plaintiff—Severity of injuries—County Courts Act 1919, s 2. *Stevens v Walker* [1936] 1 892, CA. *Culver v Beard* [1937] 1 301, CA.

Discretion—Factors to be considered—Claim for damages for personal injuries—Exercise of discretion—Value of expectation of life—Difficult questions of law—County Courts Act 1934, s 46(2). *Berridge v Everard* [1938] 1 717, CA.

Jurisdiction to order transfer—Action founded on tort—Impecunious plaintiff—Remittance of action in tort unless security given by plaintiff for defendant's costs—Legal aid certificate issued to plaintiff—Jurisdiction to remit—County Courts Act 1934, s 46(1), (2). *Burton v Holdsworth* [1951] 2 381, CA.

Jurisdiction to order transfer—Equity proceedings—Any action or matter which is assigned to the Chancery Division—Causes and matters specifically assigned to Chancery Division under s 56 of the Supreme Court of Judicature (Consolidation) Act 1925—Causes or matters assigned to Chancery Division at option of plaintiff under s 58 of that Act—County Courts Act 1959, s 54(2). *Saunders v Beevor* [1971] 1 737, ChD.

Prerequisites to transfer—Action capable of being brought initially in county court—Claim for damages ancillary to claims for declarations and injunctions. *Thompson v White* [1970] 3 678, ChD.

Transfer to another county court—

Discretion—Collision of motor vehicles—Second action arising out of same accident—Whether more fairly triable in another court—County Court Rules 1936, Ord 16, r 1(1). *Birch v County Motor and Engineering Co Ltd (Shuker, Third Party)* [1958] 3 175, CA.

Transfer to High Court—

Action founded on contract or tort—Plaintiff's right to transfer—Application when reasonable ground for supposing amount of damages recoverable to be in excess of amount recoverable in county court—Discretion of judge—Judge bound to order transfer when reasonable expectation that damages would exceed county court limit established—County Courts Act 1959, s 43. *Stiffel v Industrial Dwelling Society Ltd* [1973] 2 1131, CA.

Action founded on contract or tort—Transfer at defendant's instance—Whether some important question of law and fact likely to arise—County Courts Act 1934, s 44(2)(b), as substituted by County Courts Act 1955, s 1(4), Sch 1, Pt 1, para 3. *Patterson v Ellis* [1957] 2 510, CA.

Costs of action. *See* **Costs**—Action transferred to High Court, *ante*.

Discretion—Action in county court under Employers' Liability Act 1880—Concurrent common law action in High Court—County Courts Act 1934, s 111. *Lee v Hay's Wharf Ltd (Proprietors)* [1940] 3 282, CA.

Practice—Transfer to Chancery Division—Form of application for leave to transfer proceedings—Ex parte application not available—County Courts Act 1934, s 111. *Portman v Roskill & Sons* [1941] 1 226, ChD.

Transfer to county court of money recovered in High Court by infant, etc. *See* **Practice**—Transfer to county court of money recovered in High Court by infant etc, *ante*.

COUNTY COURT (cont)

- Warrant—
 - Execution—
 - Bailiff. *See* Execution—Bailiff, *ante*.
- Water rates—
 - Dispute as to amount due—
 - Recovery—Jurisdiction. *See* Jurisdiction—Rates—Recovery of water rates, *ante*.
- Witness summons—
 - Appeal—
 - Summons to produce documents—Right of appeal—Issue of summons by court an administrative act—Right of party summoned to apply for order to be set aside—Court having a discretion to set aside summons—Right of appeal against refusal of order to set aside summons—Order against broadcasting company—Summons to be set aside where what is sought is irrelevant, oppressive or an abuse of process of court. **Senior v Holdsworth** [1975] 2 1009, CA.

COURT

- Admiralty—
 - Jurisdiction. *See* Admiralty (Jurisdiction).
- Approval—
 - Compromise of action. *See* Practice (Compromise of action—Approval of court).
- Commercial Court. *See* Commercial Court.
- Consistory court. *See* Ecclesiastical law (Consistory court).
- Contempt of court. *See* Contempt of court.
- County court. *See* County court.
- Court of Appeal. *See* Court of Appeal.
- Court of Chivalry. *See* Court of Chivalry.
- Criminal cases—
 - Legal aid—
 - Pleas of guilty—Duty of court to offer legal aid where heavy sentence likely. *See* Legal aid (Criminal cases—Offer of legal aid—Guilty plea—Offer to be made by court where heavy sentence likely).
- Crown Court. *See* Crown Court.
- Discretion—
 - Review of exercise of discretion—
 - Duty of appellate court. *See* Appeal (Review of exercise of discretion).
- Divisional Court. *See* Divisional Court.
- Duty—
 - Taxation of costs—
 - Duty to make order for taxation—Legal aid. *See* Legal aid (Taxation of costs—No order made as to costs—Duty of court to make order for taxation).
- Ecclesiastical Court of the Great Orthodox Patriarchate, Jerusalem. *See* Palestine (Minor—Appointment of guardian).
- European Court—
 - Reference to. *See* European Economic Community (Reference to European Court).
- Fees—
 - Probate. *See* Probate (Fees—Court fees).
- Funds in court. *See* Practice (Funds in court).
- Investment of funds in court. *See* Public trustee (Investment of funds in court).
- Judicial office—
 - Characteristics—
 - Distinctions between executive and judicial power. **United Engineering Workers Union v Devanayagam** [1967] 2 367, PC.
- Judicial proceedings—
 - Report—
 - Defamation—Qualified privilege. *See* Libel and slander (Qualified privilege—Report of judicial proceedings).
- Jurisdiction—
 - Adoption. *See* Adoption (Jurisdiction).
 - Arbitration—
 - Appointment of arbitrator. *See* Arbitration (Appointment of arbitrator—Power of court to appoint arbitrator).
 - Remission of award. *See* Arbitration (Award—Remission).
 - Special case. *See* Arbitration (Special case—Jurisdiction).
 - Charities—
 - Registration. *See* Charity (Registration—Control by the court—Control by court in exercise of its charitable jurisdiction).
 - Criminal law. *See* Criminal law (Jurisdiction).
 - Document—
 - Power to order detention by court. *See* Practice (Document—Detention by court—Inherent jurisdiction).
 - High Court of Justice—
 - Divisions of High Court—Supreme Court of Judicature (Consolidation) Act 1925, s 57. **Practice Direction** [1973] 2 233.
 - jurisdiction to order review of taxation—
 - Legal aid. *See* Legal aid (Taxation of costs—Review of taxation—Jurisdiction of court to order review).
 - Relief from forfeiture. *See* Equity (Forfeiture—Relief—Jurisdiction of court).
- Juvenile court. *See* Magistrates (Juvenile court).
- Language. *See* Practice (Conduct of proceedings—Language).
- List—
 - Style of reference of deputy circuit judge. *See* Judge (Circuit judge—Deputy circuit judge—Mode of address—Style of reference in court list).

COURT (cont)

Liverpool Court of Passage. *See* **Liverpool Court of Passage**.

Magistrates. *See* **Magistrates (Court)**.

National Industrial Relations Court—

Precedent—

Decisions binding on court. *See* **Precedent** (National Industrial Relations Court).

Order—

Enforcement—

Order made in compulsory winding-up of company. *See* **Comany** (Compulsory winding-up—

Enforcement of orders throughout United Kingdom).

Payment into—

Non-disclosure on appeal as to quantum of damages. *See* **Court of Appeal** (Practice—Payment into court—Non-disclosure—Appeal as to quantum of damages).

Payment into court—

Practice. *See* **Practice** (Payment into court).

Payment out—

Admiralty. *See* **Admiralty** (Practice—Payment out of court).

Payment out of—

Generally. *See* **Practice** (Payment out of court).

Persons attending court—

Privilege from arrest. *See* **Arrest** (Privilege from arrest—Persons attending court).

Receiver—

Appointment by court. *See* **Receiver** (Appointed by court).

Rectification of land register, by court. *See* **Land registration** (Rectification of register).

Sale of land by court. *See* **Sale of land** (Sale by court).

Supreme Court of Canada. *See* **Canada** (Supreme Court of Canada).

Supreme Court of Palestine. *See* **Palestine** (Supreme Court of Palestine).

Trusts—

Variation of trusts by the court. *See* **Trust and trustee** (Variation of trusts by the court).

Ward of court. *See* **Ward of court**.

West Africa—

Native courts—

Jurisdiction. *See* **West Africa** (Courts—Native courts—Jurisdiction).

COURT OF APPEAL

Adoption proceedings—

Right of appeal. *See* **Adoption** (Appeal—Court of Appeal).

Appeal—

Appeal against conviction. *See* **Criminal law** (Appeal).

Appeal against order for compulsory winding-up of company—

Nature of appeal—Appeal to be entered in interlocutory appeals list. *Re* **Reliance Properties Ltd** [1951] 2 327, CA.

Change in law—

Change in law after decision in court of first instance—Duty of the Court of Appeal—RSC Ord 58, rr 1, 4. *New Brunswick Ry Co v British & French Trust Corp Ltd* [1938] 4 747, HL.

Change in law after decision in court of first instance—Jurisdiction of Court of Appeal. *See* Jurisdiction—Alteration of law pending appeal, *post*.

Compromise—

Practice—Consent—Tomlin order proposed—Consent brief of counsel required. *Practice Note* [1962] 2 956, CA.

County court from—

Jurisdiction to order new trial. *See* **County court** (New trial—Jurisdiction of Court of Appeal to order new trial).

Dismissal—

Consent—Consent initialled by president of court—No order drawn up or entered—Discretion of court to allow or refuse appeal to be proceeded with. *James Lamont & Co Ltd v Hyland Ltd* [1950] 1 341, CA.

Consent—Consent to dismissal without costs—Consent initialled by president of court—No order drawn up or entered—Compromise for good consideration—No ground for setting it aside—Appeal not allowed to proceed. *National Benzole Co Ltd v Gooch* [1961] 3 1097, CA.

Reinstatement—Appeal as to damages—Final judgment not entered—Disparity with subsequent assessment in similar case by Court of Appeal—Whether appeal to be reinstated. *Bastow v Bagley & Co Ltd* [1961] 3 1101, CA.

Reinstatement—Jurisdiction—No appearance of appellant—Appeal dismissed with costs—Application to reinstate. *Brooksbank v J L Rawsthorne & Co (a firm)* [1951] 2 413, CA.

Jurisdiction. *See* Jurisdiction, *post*.

Leave—

Application. *See* **House of Lords** (Leave to appeal—Application).

Notice of appeal. *See* Notice of appeal, *post*.

Right of appeal—

Person who could have been a party—Adoption order made by county court—Notice of application not served on mother and her consent dispensed with—Right of mother to appeal—County Courts Act 1934, s 105. *Re B (an infant)* [1957] 3 193, CA.

Time for appeal. *See* Time for appeal, *post*.

Variation of decision after judgment delivered—

Judgment dismissing appeal—Order not passed and entered—Appellant discovering fresh evidence—Appellant seeking further hearing of appeal—Circumstances in which further hearing permissible. *Re Barrell Enterprises* [1972] 3 631, CA.

COURT OF APPEAL (cont)

Certiorari—

Practice—

Leave to apply for certiorari refused by Divisional Court—Leave granted by Court of Appeal—Substantive motion to be moved before Court of Appeal, not Divisional Court—RSC Ord 59, r 5(1)—Supreme Court of Judicature (Consolidation) Act 1925, s 32. **R v Industrial Injuries Comr, Ex parte Amalgamated Engineering Union** [1966] 1 97, CA.

Change in law—

Change in law after decision in court of first instance—

Duty of Court of Appeal. *See* Appeal—Change in law—Change in law after decision in court of first instance, *ante*.

Ground of appeal. *See* Ground of appeal—Contention not pressed in court of first instance—Discretion of court—Lands Tribunal decision—Change in law after decision and before appeal, *post*.

Compromise—

Practice. *See* Appeal—Compromise—Practice, *ante*.

Contempt—

Criticism of decision—

Error. *See* Contempt of court (Publications concerning legal proceedings—Criticism of administration of justice—Court of Appeal).

Costs—

Appeal against order as to costs only—

Leave. *See* Costs (Appeal to Court of Appeal—Leave—Requirement of leave—Appeal as to costs only).

Appeal from county court. *See* County court (Appeal—Costs).

Appeal from Crown Court. *See* Crown Court (Appeal from Crown Court—Costs—Court of Appeal, Criminal Division).

Legal aid—

Unassisted person's costs out of legal aid fund. *See* Legal aid (Unassisted person's costs out of legal aid fund—Just and equitable—Successful appeal to court of appeal against decision in favour of assisted party).

Taxation—

Order. *See* Costs (Taxation—Order—Court of Appeal).

Criminal appeal. *See* Criminal law (Court of Appeal).

Criminal cause or matter—

Appeals generally. *See* Criminal law (Appeal).

Crown Court—

Appeal from—

Interlocutory order. *See* Crown court (Appeal from Crown Court—Interlocutory order).

Damages—

Assessment—

Appeal—Principle on which award varied. *See* Damages (Assessment—Principle on which appellate court will intervene).

Personal injuries—

Inspection of injuries by Court of Appeal—Whether court will accede to request to examine injury. **Stevens v William Nash Ltd** [1966] 3 156, CA.

Declaratory judgment—

Discretion—

Restrictive covenant—Breach—Covenant expiring before date of Court of Appeal judgment—Power of court to make declaration that at material time defendant in breach of covenant. **Marion White Ltd v Francis** [1972] 3 857, CA.

Discretion—

New point taken on appeal. *See* Ground of appeal—Contention not pressed in court of first instance—Discretion of court, *post*.

Review of judge's exercise of discretion—

Duty of court. *See* Appeal (Review of exercise of discretion).

Discretion of judge—

Review of exercise of discretion—

Considerations taken into account correctly at date of exercise of discretion—Delay—Subsequent decisions affecting the considerations formerly applicable—Whether Court of Appeal would interfere with judge's exercise of discretion as to mode of trial—Discretion not 'absolute' in the sense of not being open to review—Whether word 'absolute' in RSC Ord 36, r 1(3), was ultra vires. **Ward v James** [1965] 1 563, CA.

Duty of appellate court. **Re O (infants)** [1971] 2 744, CA.

Principles governing intervention by appellate court—Award under Inheritance (Family Provision) Act 1938—When Court of Appeal will interfere with judge's award. **Thornley v Palmer** [1969] 3 31, CA.

Principles governing intervention by appellate court—Discretion to make winding-up order against company on judgment creditor's petition. **Re LHF Wools Ltd** [1969] 3 882, CA.

Principles governing intervention by appellate court. **Hennell v Ranaboldo** [1963] 3 684, CA, **Sims v William Howard & Son Ltd** [1964] 1 918, CA, **Watts v Manning** [1964] 2 267, CA, **Ward v James** [1965] 1 563, CA.

Discretion of Official Referee—

Review of exercise of discretion—

Principles governing intervention of appellate court. **Instrumatic Ltd v Supabrase Ltd** [1969] 2 131, CA.

Divorce—

Appeal from Divisional Court—

Jurisdiction to entertain. *See* Divorce (Appeal—Court of Appeal—Appeal from Divisional Court—Jurisdiction to entertain).

COURT OF APPEAL (cont)

Divorce (cont)—

Undefended suit—

Necessity for transcript of shorthand note of counsel's argument and judge's observations. *See* Divorce (Appeal—Court of Appeal—Undefended suit—Transcript of shorthand note of counsel's argument and judge's observations).

Eastern Africa Court of Appeal. *See* East Africa (Court of Appeal).

Evidence—

Document—

Unstamped document—Duty to take notice of omission—Stamp Act 1891, s 14(1). *Routledge v McKay* [1954] 1 855, CA.

Evidence to be taken into account by Court of Appeal—

Evidence led by plaintiff at trial to which defendants could have objected because facts not pleaded—Evidence led without objection—Whether Court of Appeal should take such evidence into account. *Domsalla v Barr* (Trading as AB Construction) [1969] 3 487, CA.

Finding of fact of trial judge—

Finding depending on credibility of witnesses heard by trial judge—Whether court entitled to disturb finding. *Breen v Amalgamated Engineering Union* [1971] 1 1148, CA.

Interference with finding of fact—Principles on which appellate court acts. *See* Appeal (Evidence—Finding of fact of trial judge).

Further evidence—

Appeal—Evidence obtained after appeal dismissed—Order dismissing appeal not passed and entered—Whether further hearing of appeal permissible. *See* Appeal—Variation of decision after judgment entered—Judgment dismissing appeal—Order not passed and entered—Appellant discovering fresh evidence, *ante*.

Appeal by way of case stated from Lands Tribunal—Right to adduce fresh evidence—Lands Tribunal Act 1949, s 3(4). *Routh Trustees v Central Land Board, Routh v Same* [1960] 2 436, CA.

Character of witness—Witness having died since date of trial—Fresh evidence of witness' criminal record—No opportunity for challenge or explanation—Whether evidence admissible. *McCann v Sheppard* [1973] 2 881, CA.

Damages awarded to widow under Fatal Accidents Act 1846—Basis of assessment affected by event occurring after trial—Remarriage of widow after trial but before expiry of time for service of notice of appeal—RSC Ord 58, r 9(2). *Curwen v James* [1963] 2 619, CA.

Damages for personal injuries—Basis of assessment falsified by events occurring after trial—Change of opinion by doctor about condition of plaintiff—Agreed medical report in court below—Whether evidence to modify medical report admissible. *Pursell v Railway Executive* [1951] 1 536, CA.

Damages for personal injuries—Basis of assessment falsified by events occurring after trial—Death of plaintiff—Death occurring after notice of appeal lodged—Pain-killing drug prescribed for plaintiff after accident—Plaintiff becoming addicted to drug—Plaintiff dying from overdose of drug—Whether evidence of death admissible in Court of Appeal—Effect on general damages and damages for lost future earnings. *McCann v Sheppard* [1973] 2 881, CA.

Damages for personal injuries—Basis of assessment falsified by events occurring after trial—Dramatic change of circumstances—Assessment of future cost of medical and nursing services falsified by events occurring after trial—RSC Ord 59, r 10(2). *Mulholland v Mitchell* [1971] 1 307, HL.

Damages for personal injuries—Basis of assessment of loss of future earnings proved wrong after trial—RSC Ord 58, r 9(2). *Jenkins v Richard Thomas & Baldwins Ltd* [1966] 2 15, CA.

Document—Discovery—Failure to obtain document by discovery before trial—Divorce—Adultery—Petition by husband—No reason for husband to suspect existence of documentary evidence—Co-respondent's solicitors stating no documents to disclose on discovery—Denial of adultery by co-respondent at trial—Dismissal of petition—Wife producing letters allegedly from co-respondent after trial—Letters constituting strong prima facie case of adultery—Whether new trial should be ordered on basis of further evidence despite failure to obtain discovery. *Skone v Skone* [1971] 2 582, HL.

Evidence obtainable at time of trial—Application of Rent Acts not disputed at trial—Admission of evidence in Court of Appeal to prove rateable value—RSC Ord 58, r 4. *E H Lewis & Son Ltd v Morelli* [1948] 2 1021, CA.

Interlocutory appeal—Discretion of court—RSC Ord 58, r 4. *Krakauer v Katz* [1954] 1 244, CA.

Matters known to witness but not known to those who called him as witness—No examination at trial on such matters—Whether evidence regarded as available at trial—Matter important to the issue that was to be decided—New trial granted. *House v Houghton Brothers (Worcester) Ltd* [1967] 1 39, CA.

Perjury—Witness' confession that relevant evidence accepted at trial was perjured. *Piotrowska v Piotrowski* [1958] 2 729, CA.

Power to receive—County court appeal. *Gillan v Landless* [1948] 2 721, CA.

Power to receive—Credit—Application for leave to recall witness for cross-examination as to credit—RSC Ord 58, r 4. *Braddock v Tillotsons Newspapers Ltd* [1949] 2 306, CA.

Principles on which received—Evidence presumably to be believed—Evidence proffered by witness that her evidence at trial was not the truth—Whether fresh evidence presumably to be believed. *Ladd v Marshall* [1954] 3 745, CA.

Principles on which received—Judgment for plaintiff in action for payment of part price on agreement for sale of invention—Subsequent discovery by defendant of earlier assignment of invention by plaintiff which, if effective, meant total failure of consideration for sale price. *Ellis v Scott (No 2)* [1965] 1 3, CA.

Principles on which received—Matrimonial cause—RSC Ord 58, r 4. *Corbett v Corbett* [1953] 2 69, CA.

COURT OF APPEAL (cont)

Evidence (cont)—

Further evidence (cont)—

Use of reasonable diligence to obtain evidence before trial—Divorce—Adultery—Petition by husband—Denial of adultery by co-respondent at trial—Dismissal of petition—Wife producing to husband's solicitors after trial letters allegedly from co-respondent—Letters constituting strong prima facie case of adultery—Whether husband could have obtained evidence before trial b use of reasonable diligence. **Skone v Skone** [1971] 2 582, HL.

Use of reasonable diligence to obtain evidence before trial—Evidence obtainable at time of trial—Administration action—Sexual impotence of father—Children's failure to make inquiries—Whether reasonable. **Re Herwin [decd]** [1953] 2 782, CA.

Use of reasonable diligence to obtain evidence before trial—Judgment recovered against road contractors for negligence in leaving barrier on road unlighted—Subsequently evidence proffered by passenger in plaintiff driver's car that plaintiff was drunk at time of accident which gave rise to action—Passenger not approached by road contractors' solicitor until after judgment for plaintiff—Passenger then told people that plaintiff was drunk—Passenger disgruntled at not having received any part of money recovered for accident—Whether passenger's evidence obtainable with reasonable diligence before trial. **Roe v Robert McGregor and Sons Ltd** [1968] 2 636, CA.

Use of reasonable diligence to obtain evidence before trial—Relevance emerging towards end of opponent's case—Whether evidence could have been obtained with reasonable diligence for use at trial. **Crook v Derbyshire** [1961] 3 786, CA.

Use of reasonable diligence to obtain evidence before trial—Running-down action—Reasonable and due diligence applied in preparation of case failing to reveal evidence at earlier stage. **Delaney v Douglas (No 1)** [1969] 3 1454, CA.

Transcripts of proceedings in court below—

Right to bring appeal without providing such transcripts and to rely upon judge's notes—RSC Ord 58, r 11(b). **Bradford Third Equitable Benefit Building Society v Borders (No 2)** [1939] 3 611, CA.

Sufficiency of notes of trial judge—Omission from transcript of part of evidence—RSC Ord 66A, r 3(1), (2). **Stevens v Stevens** [1954] 2 381, CA.

Ground of appeal—

Action for negligence and breach of statutory duty—

Allegation of negligence in writ but no such allegation in statement of claim or at hearing—Judgment based on breach of statutory duty—Right to raise issue of negligence on appeal. **Woods v W H Rhodes & Son Ltd** [1953] 2 658, CA.

Contention not pressed in court of first instance—

Construction of contract—Hire-purchase agreement—Termination of agreement—Minimum payment by hirer computed on erroneous basis—Issues on true basis not raised at hearing of action nor included in notice of appeal—Whether these should be determined by Court of Appeal. **Yeoman Credit Ltd v Odgers (Vospers Motor House (Plymouth) Ltd third party)** [1962] 1 789, CA.

Discretion of court—Lands Tribunal decision—Change in law after decision and before appeal—Change in law portended in judgments of Court of Appeal prior to tribunal hearing—Exercise of discretion—Failure to put alternative valuations before tribunal—Court of Appeal not in possession of all material to dispose of matter finally. **Wilson v Liverpool City Council** [1971] 1 628, CA.

Inapplicability of building regulations—All necessary facts found at trial—Whether contention should be allowed to be argued on appeal. **Donaghey v Boulton & Paul Ltd** [1967] 2 1014, HL.

Formulation—

Notice of appeal. *See* Notice of appeal—Grounds of appeal—Formulation, *post*.

Hearing in camera—

Circumstances in which appropriate—

Ends of justice determining factor. **Re Agricultural Industries Ltd** [1952] 1 1188, CA.

Jurisdiction—

Bankruptcy—ApPlication by trustee in bankruptcy for order for examination of person capable of giving information about debtor—Bankruptcy Act 1914, s 25(1)—RSC Ord 58, r 13(3). **Re Green (a bankrupt), ex parte The Trustee** [1958] 2 57, CA.

Incompetent proceedings—

Powers of court. *See* Practice (Appeal—Appeal to Court of Appeal—Powers of the court—Incompetent proceedings).

Interlocutory appeal—

Extension of time for appeal. *See* Time for appeal—Extension of time for appeal—Interlocutory appeal, *post*.

Further evidence—

Discretion of court to receive. *See* Evidence—Further evidence—Interlocutory appeal, *ante*.

Judgment on admission of facts. *See* Judgment (Judgment on admission of facts—Interlocutory or final judgment—Appeal).

Jurisdiction—

Custody of infant. *See* Jurisdiction—Custody of infant—Jurisdiction to entertain appeal from Chancery judge hearing appeals from justices—Interlocutory appeal, *post*.

Leave to appeal—

Necessity—Appeal against order granting leave to proceed under Courts (Emergency Powers) Act 1943—Whether interlocutory order—Supreme Court of Judicature (Consolidation) Act 1925, ss 31(1)(i) (2), 68(2)—Courts (Emergency Powers) Act 1943, s 1—RSC Ord 58, r 15. **Egerton v Shirley** [1944] 2 583, CA.

Necessity—Appeal against interlocutory order of official referee—Supreme Court of Judicature (Consolidation) Act 1925, s 31 (1)(i)—Administration of Justice Act 1932, s 1(1)—RSC Ord 36, rr 49, 50. **Viner v Goldstein** [1946] 2 276, CA.

COURT OF APPEAL (cont)

Interlocutory appeal (cont)—

Leave to appeal (cont)—

Necessity—Appeal against order granting conditional leave to defend—Supreme Court of Judicature (Consolidation) Act 1925, s 31(1)(5) (2). *Gordon v Cradock* [1963] 2 121, CA.

Necessity—Appeal against order refusing leave to bring proceedings in respect of acts done in pursuance of Mental Health Act 1959—Whether order interlocutory or final—Supreme Court of Judicature (Consolidation) Act 1925, s 31(1)(i)—Mental Health Act 1959, s 141(2). *Moore v Commissioner of Metropolitan Police* [1967] 2 827, CA.

Necessity—Appeal against order setting aside order of special referee and giving leave to amend—Whether final or interlocutory order. *Kronstein v Korda* [1937] 1 357, CA.

Necessity—Appeal against order under RSC Ord 25, r 4—Whether an 'interlocutory order'. *Hunt v Allied Bakeries Ltd* [1956] 3 513, CA.

Necessity—Appeal against order varying maintenance of infants—Original order related both to custody and maintenance—Whether variation order was an order where custody of infants concerned—Whether leave to appeal necessary—Supreme Court of Judicature (Consolidation) Act 1925, s 31(1)(i). *Re W (infants)* [1956] 1 368, CA.

Point of law—Appeal from county court. *See* County court (Appeal—Right of appeal—Point of law—Interlocutory appeal).

Stay of execution pending appeal—Form of interlocutory order—Order to record whether application for leave or for stay of execution made—Order to record whether leave granted or refused. *Guerrera v Guerrera* [1974] 3 460, CA.

Review of exercise of discretion—

Duty of court. *See* Appeal (Review of exercise of discretion).

Time for appeal—

Extension of time for appeal. *See* Time for appeal—Extension of time for appeal—Interlocutory appeal, *post*.

Leave to extend time to appeal—No injustice to other side—Delay without explanation—RSC Ord 3, r 5. *Revici v Prentice Hall Inc* [1969] 1 772, CA.

Judge's note—

Practice—

Absence of shorthand note—Judge's notice of evidence and note of reasons should be available for Court of Appeal. *Johnson v Rea Ltd* [1961] 3 816, CA.

Appeal from county court—Judge's note incomplete—Counsel's note to be available on appeal after having been submitted to county court judge. *Bruen v Bruce* [1959] 2 375, CA.

Appeal from county court—Judge's note incomplete—Admission of other evidence or statement of what occurred—Whether affidavit evidence of grounds of judgment admissible. *Hayman v Rowlands* [1957] 1 321, CA.

Appeal from Liverpool Court of Passage—Supply of copies of note prior to hearing of appeal—Copy of judge's notes of evidence to be available for counsel before hearing of appeal. *Jones v McKie and Mersey Docks and Harbour Board* [1964] 2 842, CA.

Substitution of note taken by solicitors—

Appeal from official referee—Official referee's note available—Fuller note taken by appellant's solicitors—Application by appellant to substitute solicitors' note for official referee's—Agreement by official referee but objection by respondent—Discretion—In absence of agreement official referee's note should be the note used by the Court of Appeal—RSC Ord 59, r 12(1). *Thompson v Andrews* [1968] 2 419, CA.

Jurisdiction—

Alteration of law pending appeal—

Amending statute conferring jurisdiction on High Court—Whether Court of Appeal had on appeal the like jurisdiction—Supreme Court of Judicature (Amendment) Act 1959, s 1(1)—RSC Ord 58, r 9(3). *Attorney-General v Vernazza* [1960] 3 97, HL.

Power of court to make any order—Act changing existing law coming into force after judgment of lower court delivered—Act coming into force before hearing of appeal—Power of court to give effect to new Act on appeal—Fatal accident—Action by widow—Assessment of damages—Act abolishing rule that widow's prospects of remarriage to be taken into account—Judge wrongly applying new law before Act in force—Appeal against award of damages—Whether Court of Appeal entitled to apply new law on hearing appeal—Law Reform (Miscellaneous Provisions) Act 1971, ss 4(1), 6(2)—RSC Ord 59, r 10(3). *Wilson v Dagnall* [1972] 2 44, CA.

Appeal by person convicted by court-martial—

Confirmation of conviction by Army Council. *See* Court-martial (Appeal—Jurisdiction—Court of Appeal—Conviction of accused by court-martial—Confirmation by Army Council).

Appeal from county court—

Jurisdiction to order new trial. *See* County court (New trial—Jurisdiction of Court of Appeal to order new trial).

Appeal from Crown Court—

Interlocutory order. *See* Crown Court (Appeal from Crown Court—Interlocutory order—Jurisdiction).

Appeal from judge at chambers in King's Bench Division—

Appeal to Divisional Court except in matters of practice and procedure—Appeal from order of committal—Whether 'matter of practice and procedure'—RSC Ord 54, r 23. *Lever Bros Ltd v Kneale* [1937] 2 477, CA.

Appeal from Liverpool Court of Passage—

Appeal from trial of action, by consent, by registrar of court—Liverpool Corporation Act 1921, s 246, s 255, s 260. *Watson v Thomas S Whitney & Co Ltd* [1966] 1 122, CA.

COURT OF APPEAL (cont)

Jurisdiction (cont)—

Appeal from Mayor's and City of London Court—

Proceedings within county court jurisdiction—Common Law Procedure Act 1852—London (City) Small Debts Extension Act 1852—Mayor's 1852—Mayor's Court of London Procedure Act 1857—Supreme Court of Judicature Act 1873—Local Government Act 1888—County Courts Act 1888—Mayor's and City of London Court Act 1920—Supreme Court of Judicature (Consolidation) Act 1925—Administration of Justice (Appeals) Act 1934. **Bowater (W V) & Sons Ltd v Davidson's Paper Sales Ltd** [1936] 1 110, CA.

Appeal from order of transport tribunal—

Jurisdiction to entertain. **British Transport Commission v London County Council** [1953] 1 801, CA.

Costs—

Compensation appeal. *See* **Costs** (Order for costs—Jurisdiction—Court of Appeal—Compensation appeal).

Criminal Division. *See* **Criminal law** (Court of Appeal—Jurisdiction).

Custody of infant—

Jurisdiction to entertain appeal from Chancery judge hearing appeals from justices—Interlocutory appeal—Guardianship of Infants Act 1886, s 5—Supreme Court of Judicature (Consolidation) Act 1925, s 31(1)(i). **Re W (an infant)** [1953] 2 1337, CA.

Divorce—

Appeal after decree absolute. *See* **Divorce** (Appeal—Decree absolute—Jurisdiction of Court of Appeal).

Appeal from Divisional Court. *See* **Divorce** (Appeal—Court of Appeal—Appeal from Divisional Court—Jurisdiction to entertain).

Ex parte application—

No proceedings—Application to inspect document filed in central office—RSC Ord 61, r 17. **Ex parte Associated Newspapers Ltd** [1959] 3 878, CA.

Habeas corpus—

Applicant convicted on indictment containing five counts—Conviction quashed on three counts but sentence unaltered—Applicant's application to Divisional Court of Queen's Bench Division for habeas corpus rejected—Subsequent application to Divisional Court of Chancery Division rejected—Appeal to Court of Appeal against second rejection—Whether appeal in 'criminal cause or matter'—Supreme Court of Judicature (Consolidation) Act 1925, s 31(1)(a). **Re Hastings (No 3)** [1959] 3 221, CA.

Order for new trial—

County court action—Further evidence—No application made to county court to order new trial. **Weinbaum v Klein** [1950] 1 353, CA.

Original or appellate jurisdiction—

Appeal from order of Divisional Court refusing application to discharge fugitive—Whether court had dual jurisdiction both original and appellate—Fugitive Offenders Act 1881, s 10, s 39. **De Demko v Home Secretary** [1959] 1 341, HL.

Reinstatement of appeal. *See* Appeal—Dismissal—Reinstatement—Jurisdiction, *ante*.

Striking out defence—

Vexatious and oppressive defence—Inherent jurisdiction to strike out. **Charles Oxford Ltd v Gonshaw Ltd** [1948] 2 229, CA.

Striking out notice of appeal. *See* Notice of appeal—Striking out—Jurisdiction of court, *post*.

Leave to appeal—

Application. *See* **House of Lords** (Leave to appeal—Application).

Malaysia—

Extension of time refused by Court of Appeal. *See* **Malaysia** (Court of Appeal).

New legislation pending appeal—

Jurisdiction. *See* Jurisdiction—Alteration of law pending appeal, *ante*.

New point taken on appeal. *See* Ground of Appeal—Contention not pressed in court of first instance, *ante*.

New trial—

Election to call no evidence—

Respondent at trial having elected to call no evidence—Appellant's appeal allowed—Circumstances in which new trial will be ordered despite respondent's election—Election influenced by erroneous view of law expressed by trial judge at early stage of argument—Action by appellant for possession of land—Respondent's defence raising claim to protection under Rent Acts. **Portland Managements Ltd v Harte** [1976] 1 225, CA.

Notice of appeal—

Abandonment—

Reinstatement—Intention of appellant not to prosecute appeal—Respondent's consent given to dismissal on terms that appellant should pay respondent's costs—Appeal not dismissed—Appellant desiring to proceed with appeal—Original notice of appeal effective—RSC Ord 58, r 8 (practice note). **Re The Hon Mrs Deirdre Samuel** [1945] 2 319, CA.

Amendment—

Leave—RSC, Ord 58, r 2. **Gelberg v Vivian** [1952] 2 746, CA.

Form of notice—

Contents—Certificate of service—Notice by appellant. **Practice Direction** [1953] 2 1510, CA.

Discretion of Chief Registrar—Supreme Court of Judicature (Consolidation) Act 1925, s 68(2)—RSC Ord 58, r 3, r 8. **Parish v Beach Bros (Dover) Ltd** [1955] 1 869, CA.

Grounds of appeal. *See* Notice of appeal—Grounds of appeal—Formulation, *post*.

Matters to be included. **Luttrell v Addicott** [1946] 2 625, CA.

Grounds of appeal—

Formulation—Care in preparation of statement. **Practice Note** [1962] 1 897, CA.

Formulation—Particulars required—Rules of the Supreme Court (Appeals) 1955 (SI 1955 No 1885)—RSC Ord 58, r 3(2). **Taylor v John Summers & Sons Ltd** [1957] 3 541, CA.

COURT OF APPEAL (cont)

Notice of appeal (cont)—

Grounds of appeal (cont)—

Formulation—Statement of broad issues and not detailed reasons—Rules of the Supreme Court (Appeals) 1955 (SI 1955 No 1885)—RSC Ord 58, r 3(2),(3). **Sansom v Sansom** [1956] 3 446, CA.

Reinstatement. *See* Notice of appeal—Abandonment—Reinstatement, *ante*.

Respondent's notice. *See* Respondent's notice, *post*.

Service—

Method of service—Petition for presumption of death and for dissolution of marriage—Respondent's whereabouts unknown—Service by advertisement in local newspaper. **Maxted v Maxted** [1956] 3 695, CA.

Persons on whom notice to be served—Several defendants—Judgment against all defendants—Appeal by one defendant only—Whether notice of appeal should be served on all defendants. **Hopgood v Willan** [1938] 2 196, CA.

Service out of time—Practice. **Practice Direction** [1958] 2 493, CA.

Setting down—

Preparation and lodgment of papers for use of Court of Appeal—Expedition. **Practice Note** [1963] 2 30, CA.

Striking out—

Jurisdiction of court—Appeal on point of law only—Grounds of appeal disclosing no point of law—Power to control proceedings by striking out. **Avlagents Ltd v Balstravest Investments Ltd** [1966] 1 450, CA.

Official Solicitor—

Authority to apply by way of appeal against committal for contempt. *See* Official Solicitor (Powers and duties—Contempt of court).

Order dismissing appeal—

Form—

Incorrectly drawn up—Costs of application to correct. *See* Costs (Order for costs—Correction of order—Omission from order on appeal as drawn up—Correction of order under slip rule—Costs of application to correct order).

Order for new trial—

Action for damages for personal injuries—

Power to order new trial before judge alone. **Ward v James** [1965] 1 563, CA.

Circumstances in which appropriate—

Action for damages for personal injuries—Contradictory allegations of parties—Refusal of judge to find cause of accident—Dismissal of claim and counterclaim. **Bray v Palmer** [1953] 2 1449, CA.

Apprehension of prejudgment of issue—Respondent in divorce suit alleging that judge had made up his mind after hearing petitioner's evidence—Withdrawal of respondent from trial before giving evidence—Burden of justifying withdrawal when applying to Court of Appeal for new trial. **Brassington v Brassington** [1961] 3 988, CA.

Claims for breach of statutory duty and of common law duty—No finding on the latter. **Automatic Woodturning Co Ltd v Stringer** [1957] 1 90, HL.

Discovery of fresh evidence—Agreement for sale of invention—Judgment for plaintiff in action for payment of price—No error by trial judge on issue before him—Subsequent discovery by defendant of earlier assignment of invention by plaintiff—Whether judgment should be set aside and new trial ordered on fresh issue. **Ellis v Scott (No 2)** [1965] 1 3, CA.

Misleading the court at trial—Concealment of material matter relevant to credit of party—Duty of advocate to court—Action for false imprisonment—Defendant police officer reduced in rank while action pending—Disciplinary charge leading to reduction showing deception of court in relation to another arrest—Concealment of reduction in rank during trial of action—Miscarriage of justice. **Meek v Fleming** [1961] 3 148, CA.

Extent of order—

Claims under Fatal Accidents Acts and for loss of expectation of life—Nil assessment for loss of expectation of life—Whether necessary to order new trial in respect of both sets of damages. **Ellis v Raine** [1939] 1 104, CA.

Jurisdiction to make order. *See* Jurisdiction—Order for new trial, *ante*.

Refusal—

Grounds for refusal—Grounds that same conclusion would have been reached on fresh hearing—County Court Rules 1936, Ord 37, r 2. **Hayman v Rowlands** [1957] 1 321, CA.

Grounds for refusal—Impossibility of inferior court coming to decision different from that of appellate tribunal. **Selwyn v Hamill** [1948] 1 70, CA.

Grounds for refusal—Libel action—Verdict clearly given for wrong party—Payment in—No miscarriage of justice—RSC Ord 39, r 6. **Poliakoff v News Chronicle Ltd** [1939] 1 390, CA.

Grounds for refusal—Smallness of damages as factor in refusing new trial. **Newstead v London Express Newspaper Ltd** [1939] 4 319, CA.

Relief not claimed at trial—

Relief to which party might have been entitled—Evidence necessary to support claim not adduced at first trial—Action by landlord for possession of premises following forfeiture of lease for non-payment of rent—Failure of defendant to claim relief against forfeiture—Whether ground for ordering new trial on appeal. **Ezekiel v Orakpo** [1976] 3 659, CA.

Patents Appeal Tribunal—

Time for appeal. *See* Patent (Appeal to Court of Appeal).

Powers of court—

Power to make any order—

Alteration of law pending appeal. *See* Jurisdiction—Alteration of law pending appeal—Power of court to make any order, *ante*.

COURT OF APPEAL (cont)

Practice—

Admiralty appeals—

Nautical and other assessors. **Practice Direction** [1965] 2 504, CA.

Appeal against compulsory winding-up order. *See* **Company** (Compulsory winding-up—Winding-up order—Appeal—Appeal to Court of Appeal).

Certiorari—

Hearing on motion. *See* **Certiorari**—Practice, *ante*.

Compromise of appeal. *See* **Appeal**—Compromise—Practice, *ante*.

Hearing in camera. *See* **Hearing in camera**—Circumstances in which appropriate, *ante*.

Notice of appeal. *See* **Notice of appeal**, *ante*.

Payment into court—

Non-disclosure—Appeal as to quantum of damages—Judgment of court below disclosing payment into court—Judgment containing no reference to amount of payment in—Disclosure not prejudicial where amount not stated. **Thornton v Swan Hunter (Shipbuilders) Ltd** [1971] 3 1248, CA.

Non-disclosure—Appeal as to quantum of damages—Non-disclosure of payment into court on appeal as to quantum of damages—RSC Ord 22, r 7. **Mason v Mason** [1965] 3 492, CA.

Prior reading of judgment or decision and cases cited therein—

Statement of grounds of appeal—Experimental procedure with a view to saving time and reducing costs. **Practice Note** [1962] 1 897, CA.

Queen's Bench Court of Appeal orders—

Postal despatch of copy order. **Practice Direction** [1964] 2 955, QBD.

Transcripts—

Counsel's speech in court below—Whether Court of Appeal will allow opposing party to read extracts from transcript to court. **Warren v King** [1963] 3 523, CA.

Precedent. *See* **Precedent** (Court of Appeal).

Refusal of order for new trial. *See* **Order for new trial**—Refusal, *ante*.

Report to court—

Inquiries subsequent to trial. *See* **Criminal law** (Appeal—Report sent to Court of Appeal—Inquiries subsequent to trial).

Respondent's notice—

Service on third party—

Leave—Whether necessary—RSC Ord 59, r 6(4). **British Road Services Ltd v Arthur v Crutchley & Co Ltd (Factory Guards Ltd, Third Parties)** [1967] 2 792, CA.

Restrictive trade practices—

Appeal. *See* **Restrictive trade practices** (Appeal to Court of Appeal by way of case stated).

Review of judge's exercise of discretion—

Duty of court. *See* **Appeal** (Review of exercise of discretion).

Right of audience—

Litigant in person—

Appeal from refusal of certiorari. **R v Staff Sub-Committee of London County Council's Education Committee, ex parte Schonfield** [1956] 1 753, CA.

Respondent to undefended divorce petition. *See* **Divorce** (Appeal—Court of Appeal—Undefended suit—Petition by husband—Right of wife to appear in Court of Appeal).

Sentence—

Justices' on-licence—

Disqualification—Appeal. *See* **Licensing** (On-licence—Disqualification—Conviction of offence—Appeal).

Third party—

Appeal against judgment in favour of plaintiff in main action—

Leave—Circumstances in which leave will be granted—Whether defendant a necessary party—Security for costs. **Asphalt and Public Works Ltd v Indemnity Guarantee Trust Ltd (Campbell, Third Parties)** [1968] 3 509, CA.

Service of respondent's notice on. *See* **Respondent's notice**—Service on third party, *ante*.

Time for appeal—

Abridgement of time—

Jurisdiction—RSC, Ord 58, r 4(1)(c), r 14 (as substituted by Rules of the Supreme Court (Appeals) 1955 (SI 1955 No 1885)—RSC Ord 64, r 7. **Re 20, Exchange Street, Manchester** [1956] 2 509, ChD.

Date from which time runs—

Admiralty action—Time for service of notice of appeal—From what date calculated—RSC Ord 58, r 4(1). **Ferranti (Owners) v American Jurist (Owners) & Claycarrier (Owners), American Jurist (Owners) v Ferranti (Owners) & Claycarrier (Owners), The American Jurist and The Claycarrier** [1958] 2 659, Adm.

Divorce Division—District registry—Maintenance order—RSC Ord 58, r 4(1). **Lant v Lant** [1964] 2 608, CA.

Extension of time for appeal—

Discretion—Appeal entered late—Mistake of legal adviser—Discretion of court to extend time—RSC Ord 58, r 15—RSC Ord 64, r 7. **Gatti v Shoosmith** [1939] 3 916, CA.

Discretion—Factors to be considered—Overruling decision by superior court in an analogous case—Whether relevant ground for application to enlarge time for appeal—Discretion of court to extend time—Finance Act 1941, s 25(1)—RSC Ord 58, r 15, Ord 64, r 7. **Re Berkeley** [1944] 2 395, CA.

Grounds for extension—Appeal against interlocutory order—Plaintiff in America—RSC Ord 58, r 15—RSC Ord 64, r 7. **Kevorkian v Burney** [1937] 4 97, CA.

Grounds for extension—Fresh evidence—Evidence discrediting witnesses—Whether extension should be granted—RSC Ord 58, r 15, Ord 64, r 7. **Mohahir Ali v Ellmore** [1953] 2 1044, CA.

Grounds for extension—Legal aid—Notice of appeal not filed in time because appellant awaiting grant of legal aid. **Addison v Addison and Holden** [1960] 3 187, CA.

COURT OF APPEAL (cont)

Time for appeal (cont)—

Extension of time for appeal (cont)—

Interlocutory appeal—Mode of trial—Inapplicability of principles as to extension of time for final appeal. **Ward v James** [1965] 1 563, CA.

Interlocutory appeal. *See* Interlocutory appeal—Time—Leave to extend time to appeal, *ante*.

Power of judge to grant extension—‘Order...in... matter not being an action’—Company winding-up—Distribution of surplus assets—RSC Ord 58, r 15. **Re Isle of Thanet Electric Supply Co Ltd** [1949] 2 316, ChD.

Variation of decision after judgment delivered. *See* Appeal—Variation of decision after judgment delivered, *ante*.

Wardship—

Jurisdiction to substitute own view of right order for that of judge. *See* **Ward of court** (Appeal—Appeal against order determining or continuing wardship—Jurisdiction of Court of Appeal to substitute own view of right order for that of judge).

COURT OF ARCHES

Function—

Appeal from consistory court. *See* **Ecclesiastical Law** (Faculty—Appeal—Appeal from Consistory Court—Function of Court of Arches).

COURT OF CHIVALRY

Jurisdiction—

Armorial bearings—

Extent of jurisdiction—Whether court having jurisdiction to deal with complaint relating to usurpation of armorial bearings—Statute 8 Ric 2 (1384)—Statute 13 Ric 2 stat 1 (1389–90)—Statute Law Revision and Civil Procedure Act 1881, s 3, Sch. **Manchester Corpn v Manchester Palace of Varieties Ltd** [1955] 1 387, Ct of Chivalry.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

References to. *See* **European Economic Community** (Reference to European Court).

COURT OF PROTECTION

Divorce—

Petition by patient—

Considerations. *See* **Divorce** (Insanity—Petition for divorce—Application to present—Considerations).

Jurisdiction. *See* **Mental health**.

Minor—

Administration of damages recovered. *See* **Minor** (Money recovered—Control).

Patient's property—

Functions of judge. *See* **Mental health** (Patient's property—Functions of judge).

COURT WELFARE OFFICER

Reference to—

Matrimonial litigation—

Reconciliation. *See* **Divorce** (Reconciliation—Practice—Machinery for exploring possibility of reconciliation with a view to determining whether there is reasonable probability of the parties being reconciled—Role of court welfare officer).

COURT-MARTIAL

Appeal—

Abandonment of appeal—

Withdrawal of notice of abandonment—Application—Application for such withdrawal not allowable unless notice of abandonment a nullity, as through mistake or fraud—Criminal Appeal Rules 1908 (SR & O 1908 No 227), r 23—Courts-Martial Appeal Rules 1952 (SI 1952 No 194), r 5 (1). **R v Caddy** [1959] 3 138, CMAC.

Application for leave to appeal—

Second application—Jurisdiction of court to entertain—First application refused—Court-Martial (Appeals) Act 1968, ss 8, 9. **R v Grantham** [1969] 2 545, GmAC.

Time limit—Extension of time—Power to extend time—Courts-Martial (Appeals) Act 1951, s 3(1), (2)—Courts-Martial Appeal Rules 1952 (SI 1952 No 194), r 6(1)(b), as substituted by Courts-Martial Appeal (Amendment) Rules 1954 (SI 1954 No 1557), r 2. **R v Lacey** [1956] 3 427, CMAC.

Costs—

Reference by Secretary of State. *See* Appeal—Reference of cases by authorities—Costs, *post*.

Evidence—

Fresh evidence. *See* Appeal—Fresh evidence, *post*.

Unreasonable finding of court-martial—Finding not supported by evidence—Examination of evidence by court on appeal—Courts-Martial (Appeals) Act 1951, s 5(1). **R v Tucker** [1952] 2 1074, CMAC.

COURT-MARTIAL (cont)

Appeal (cont)—

Fresh evidence—

Admissibility—Accused elected not to give evidence at trial—Application by him for leave to appeal against conviction so as to give evidence—Proposed evidence to be admissible must be relevant and credible to justify retrial—Courts-Martial (Appeals) Act 1951, s 8(1)(d)—Criminal Appeal Act 1964, s 4, Sch 1. **R v Kelly** [1965] 2 250, CMAC.

Power to receive—Power to admit presupposing competent appeal—Courts-Martial (Appeals) Act 1968, s 28. **R v Grantham** [1969] 2 545, CMAC.

Jurisdiction—

Court of Appeal—Conviction of accused by court-martial—Confirmation by Army Council—Jurisdiction of Court of Appeal to hear appeal—Whether 'Criminal cause or matter'—Army Act, s 57(2)—Supreme Court of Judicature (Consolidation) Act 1925, s 31(1)(A). **R v Army Council, ex parte Sandford** [1940] 2 372, CA.

Reference of cases by Service authorities—

Costs—Costs of defence—Expenses properly incurred by defendant for the purposes of his appearance before Appeal Court—Costs restricted to costs incurred in his appearing physically before the court—Courts-Martial (Appeals) Act 1968, s 35(1). **R v Swabey (No 2)** [1973] 1 711, CMAC.

Reference by Secretary of State—Jurisdiction of court—Jurisdiction limited to matters specified in reference—Matters specified in reference to be considered against background of whole case—Appellant's acquittal by earlier court-martial on similar charges not brought to notice of court-martial at the trial—Courts-Martial (Appeals) Act 1968, s 34(1)(b). **R v Swabey** [1972] 2 1094, CMAC.

Application for leave to appeal. *See* Appeal—Application for leave to appeal, *ante*.

Certiorari to quash decision of. *See* Certiorari (Jurisdiction—Court-martial).

Charge—

Charge sheet—

Need for commanding officer's signature on charge sheet—Charge sheet not signed by commanding officer—Validity of finding of court-martial—Army Act, s 53, s 54(6)—Rules of Procedure 1947 (SR & O 1947 No 2354), r 56. **R v Durkin** [1953] 2 685, CMAC.

Investigation by commanding officer—

'Commanding officer'—Offence abroad by officer stationed in England—Arrest in England—Investigation of charge by commanding officer abroad—Validity—Jurisdiction of court-martial—Army Act, s 45(1)(5), s 46. **R v Harris-Rivett** [1955] 3 567, CMAC.

Larceny by person subject to military law—

Offence within provisions of Army Act, s 18—Charge to be laid under that Act—Army Act, s 18, s 41—Larceny Act 1916, s 2. **R v Bryant** [1955] 2 406, CMAC.

Offence within provisions of Army Act, s 18—Charge to be laid under that Act—Army Act, s 18, s 41—Larceny Act 1916, s 2—Magistrates' Courts Act 1952, Sch 1. **R v Bryant** [1956] 1 340, CMAC.

Civil offence—

Charge—

Duplicity—Charge of causing grievous bodily harm with intent to maim, disfigure or disable—Whether charge bad for duplicity—Offences against the Person Act 1861, s 18—Army Act 1955, s 70—Indictment Rules 1915 (Sch 1 to Indictments Act 1915), r 5(1)—Rules of Procedure (Army) 1956 (SI 1956 No 162), r 15(1)(4). **R v Naismith** [1961] 2 735, CMAC.

Consent of Director of Public Prosecutions required for institution of proceedings—

Gross indecency between males one of whom under twenty-one years of age—'Proceedings'—Consent of Director of Public Prosecutions not obtained—Whether naval court-martial a nullity—Sexual Offences Act 1956, s 13—Naval Discipline Act 1957, s 42—Sexual Offences Act 1967, s 8, s 10(2). **Secretary of State for Defence v Warn** [1968] 2 300, HL.

Corruption—

Ingredients of offence—Proper direction by judge-advocate—Prevention of Corruption Act 1906, s 1(1). **R v Carr** [1956] 3 979, CMAC.

Gross indecency—

Attempt to procure—Relation to offence of acts charged. **R v Miskell** [1954] 1 137, CMAC.

Consent of Director of Public Prosecutions to institution of proceedings—Failure to obtain—Effect. *See* Civil offence—Consent of Director of Public Prosecutions required for institution of proceedings—Gross indecency between males one of whom under 21 years of age, *ante*.

Jurisdiction—

Act or omission abroad punishable by law of England—Driving without due care and attention on road in Germany—Whether civil offence within Army Act 1955, s 70(1)(2)—Road Traffic Act 1960, s 3(1). **Cox v Army Council** [1962] 1 880, HL.

Conviction—Driving without due care and attention—Offence committed in Germany—No warning given of prosecution in accordance with Road Traffic Act 1930, s 21—Court-martial entitled to convict—Army Act, s 41(5)—Road Traffic Act 1930, s 12, s 21. **R v Jennings** [1956] 3 429, CMAC.

Murder—Murder of foreign national abroad—Victim not within the Queen's peace—Army Act, s 41. **R v Page** [1953] 2 1355, CMAC.

Murder—

Intention—Application of Criminal Justice Act 1967, s 8. **R v Cooper** [1969] 3 118, CMAC.

Time limit—

Sexual offences between males—Limitation of time under s 7 of Act of 1967 applicable to proceedings under Naval Discipline Act 1957, s 42—Sexual Offences Act 1967, s 7(2). **Secretary of State for Defence v Warn** [1968] 2 300, HL.

COURT-MARTIAL (cont)

Civil offence (cont)—

Time of commission of offence—

Charge under statute commencing Jan 1, 1957—Difference between standard local time and Greenwich mean time—Operative date to correspond with local time—Army Act 1955, s 70, s 226—Army Act 1955 (Commencement), 1955 (SI 1955 No 1805). **R v Logan** [1957] 2 688, CMAC.

Courts-Martial Appeal Court—

Appeal to. *See* Appeal, *ante*.

Evidence—

Admissibility—

Confession—Second statement after prior inadmissible confession. **R v Smith** [1959] 2 193, CMAC.

Judges' Rules—Application to courts-martial. **R v Harris-Rivett** [1955] 3 567, CMAC.

Appeal. *See* Appeal—Evidence, *ante*.

Corroboration—

Direction—Assault and conspiracy to pervert justice—Single witness—Corroborating witness implicated in assault—Medical evidence of nature of injury—Sufficiency of direction by judge-advocate. **R v Linzee**, **R v O'Driscoll** [1956] 3 980, CMAC.

Desertion—

Intention—Documentary evidence of absence and arrest—Inference of intention from length of absence—Certificate of arrest stating that accused was then wearing civilian clothes—Statement in certificate inadmissible—No objection to admissibility of evidence at trial or in notice of appeal—Conviction upheld—Army Act, s 163(1)(g),(h),(j)—Courts-Martial (Appeals) Act 1951, s 5(1), proviso. **R v Mahoney** [1956] 3 799, CMAC.

Fresh evidence—

Appeal. *See* Appeal—Fresh evidence, *ante*.

Judge advocate—

Position and duties of judge-advocate—

Duty to advise court-martial on questions of law. **R v Linzee**, **R v O'Driscoll** [1956] 3 980, CMAC.

Jurisdiction—

Civil offence. *See* Civil offence—Jurisdiction, *ante*.

Deserter arrested abroad—

Detention in England—Delay in convening court. **R v O/C Depot Battalion, RASC Colchester**, *ex parte Elliott* [1949] 1 373, KBD.

Time-expired soldier not transferred to the reserve—

Whether subject to military law—Army Act, s 90. **R v Hadfield** [1954] 2 765, C-MAC.

Mutiny—

Ingredients of offence—

Not an individual offence—Collective 'insubordination' or defiance or refusal to obey—Army Act, s 7. **R v Grant, Davis, Riley and Topley** [1957] 2 694, CMAC.

Offences relating to property—

Fraudulent misapplication of public or service property—

Burden of proof—Deficiency in mess funds—No explanation given by accused person—Inference of guilt—Army Act, s 17. **R v Tucker** [1952] 2 1074, CMAC.

Scope of offence—Misapplying mess funds—Bar takings in warrant officers' mess—Whether 'service property'—Army Act, s 17, s 190, as amended by Army and Air Force (Annual) Act 1951, s 7(1)(a),(b),(4). **R v Nicholson** [1957] 1 67, CMAC.

Procedure—

Deliberation on findings in closed court—

Communication while court closed—Whether proceedings invalidated—Whether position of members of court-martial analogous to that of jury or bench of magistrates. **R v Linzee**, **R v O'Driscoll** [1956] 3 980, CMAC.

Non-compliance with rules of procedure—

Jurisdiction of High Court—Certiorari—Rules of Procedure 1926 (SR & O 1926 No 989), r 34(c). **R v Secretary of State for War**, *ex parte Martyn* [1949] 1 242, KBD.

COVENANT

Assignment of lease—

Covenant against assignment.

See Landlord and tenant (Assignment of lease—Covenant against assignment).

Assignment of leasehold interest—

Implied covenant. *See* Sale of land (Leasehold interest—Assignment—Implied covenant).

Breach—

Forfeiture of lease. *See* Landlord and tenant (Forfeiture of lease—Breach of covenant).

Right of re-entry on breach of covenant—

Registration. *See* Land charge (Estate contract—Option to purchase, right of pre-emption or other like right—Right of re-entry).

Deed—

Covenant in deed. *See* Deed (Covenant).

Deed of covenant—

Rectification. *See* Deed (Rectification—Deed of covenant).

Deed made in consideration of marriage—

Ante-nuptial settlement. *See* Variation of settlement (Ante-nuptial settlement—Deed made in consideration of marriage—Deed containing covenant to transfer securities as absolute gift immediately after marriage).

Enforceability—

Settlement. *See* Settlement (Covenant—Enforceability).

Implied—

Lease—

Repair. *See* Landlord and tenant (Implied covenant to repair).

COVENANT (cont)

Land—

Covenant running with land—

Landlord and tenant. *See* **Landlord and tenant** (Covenant—Covenant running with land).Landlord and tenant. *See* **Landlord and tenant** (Covenant).

Lease—

Generally. *See* **Landlord and tenant** (Covenant).

To pay all rates, taxes and outgoings—

Owner's drainage rate paid by tenant. *See* **Land drainage** (Drainage rates—Owner's rate—

Covenant in lease—Covenant by tenant to pay 'all rates, taxes and outgoings'—Owner's rate paid by tenant—Whether entitled to be recouped by landlord).

Positive covenant—

Notice—

Registered land—Positive covenant noted on register—Whether binding on subsequent purchaser—Land Registration Act 1925, s 20. *Cator v Newton and Bates* [1939] 4 457, CA.

Purchaser, by—

Erection and maintenance of bridge. *See* **Bridge** (Maintenance—Covenant to maintain—Covenant by purchaser of land to erect and maintain bridge).

Rent—

Covenant to pay on gold basis. *See* **Landlord and tenant** (Rent—Covenant to pay on gold basis).

Repair—

Implied covenant—

Landlord and tenant. *See* **Landlord and tenant** (Implied covenant to repair).Repair. *See* **Landlord and tenant** (Repair).Restraint of trade. *See* **Restraint of trade by agreement**.

Restrictive covenant affecting land—

Discharge or modification—

Lands Tribunal's jurisdiction. *See* **Lands Tribunal** (Jurisdiction—Application for discharge or modification of restrictive covenants).Generally. *See* **Restrictive covenant affecting land**.Registration as land charge. *See* **Land charge** (Registration—Restrictive covenant).

Sale of land—

Covenant running with land. *See* **Sale of land** (Covenant running with land).

Title—

Sale of land. *See* **Sale of land** (Covenants for title).

Will—

Covenant not to revoke—

Revocation by remarriage. *See* **Will** (Revocation—Covenant not to revoke—Revocation by remarriage).**COVER NOTE**

Motor insurance policy—

Duration of cover. *See* **Motor insurance** (Cover note—Duration of cover).

Temporary—

Motor insurance. *See* **Motor insurance** (Using vehicle or causing or permitting vehicle to be used on road without policy being in force—Policy of insurance—Temporary cover note).**CRAFTSMANSHIP**

Work of artistic craftsmanship—

Copyright. *See* **Copyright** (Artistic work—Work of artistic craftsmanship).**CRANE**Dock. *See* **Dock** (Crane).

Harbour—

Obligation to allow public to use. *See* **Harbour** (Quay—Cranes).**CRASH HELMET**

Failure to wear—

Contributory negligence. *See* **Negligence** (Contributory negligence—Road accident—Crash helmet).**CREAM**Marketing scheme. *See* **Food and drugs** (Milk—Cream—Marketing scheme).**CREDIT**Documentary credit. *See* **Bank** (Documentary credit).Impeaching credit of witness. *See* **Criminal evidence** (Impeaching credit of witness).Obtaining by fraud. *See* **Criminal law** (Obtaining credit by fraud).

Representation—

Negligent. *See* **Misrepresentation** (Misrepresentation as to person's credit).Sale of goods. *See* **Sale of goods** (Payment).Undischarged bankrupt obtaining credit. *See* **Bankruptcy** (Offences—Undischarged bankrupt obtaining credit).**CREDITOR**

Company—

Winding-up petition by creditor. *See* **Company** (Compulsory winding-up—Petition by creditor).Conveyance with intent to defraud creditors. *See* **Fraudulent conveyance** (Conveyance of property with intent to defraud creditors).

Defendant to administration action—

Unwilling defendant. *See* **Administration of estates** (Administration action—Creditor).

CREDITOR (cont)

Interest—

Deceased's estate—

Right of creditor to interest. *See* **Administration of estates** (Interest—Creditor's right to interest).

Will—

Direction to pay debts. *See* **Will** (Debts—Direction to pay debts—Creditors).

CREMATORIUM

Charitable purpose—

Non-profit-making cremation society. *See* **Rates** (Charitable and other organisations—Hereditaments wholly or mainly used for charitable purposes—Cremation society).

Income tax—

Capital allowances. *See* **Income tax** (Capital allowances—Industrial building or structure—Crematorium).

CRIME

Compensation—

Riot. *See* **Riot** (Damage—Compensation).

Victims of crimes of violence. *See* **Compensation** (Criminal injuries).

Dentist—

Erasure from register. *See* **Dentist** (Erasure from register for crime or infamous conduct).

Executor—

Passing over executrix convicted of deceased's manslaughter when granting administration to his estate. *See* **Executor and administrator** (Administrator—Appointment—Appointment in special circumstances—Conviction of executor).

CRIMINAL DAMAGE

See **Criminal law** (Damage to property).

CRIMINAL EVIDENCE

Abnormal propensity. *See* **Improper conduct of accused on other occasions—Similar offences—**

Abnormal propensity, *post*.

Accused—

Examination. *See* **Examination of accused, post**.

Failure to give evidence—

Corroboration. *See* **Corroboration—Failure of accused to give evidence, post**.

Improper conduct on other occasions. *See* **Improper conduct of accused on other occasions, post**.

Personality—

Psychiatrist's evidence. *See* **Expert evidence—Psychiatrist—Personality of accused, post**.

Psychologist's evidence. *See* **Expert evidence—Psychiatrist—Personality of accused, post**.

Silence of accused—

Admission. *See* **Admissions and confessions—Silence of accused, post**.

Corroboration. *See* **Corroboration—Silence of accused, post**.

Statement. *See* **Statement by accused, post**.

Admissibility—

Confessions. *See* **Admissions and confessions, post**.

Admissions and confessions—

Answers and statements to police—

Absence of caution—Accused arrested on suspicion of breaking and entering—No charge preferred against accused on arrest—Accused not informed that they might be prosecuted—Admissibility of incriminating statements made to police by accused—Judges' Rules (revised, 1964), r 3(a) and Introduction, Appendix A, para (d). **R v Collier, R v Stenning** [1965] 3 136, CCA.

Absence of caution—Admission to police officer obtained in conversation without caution—Discretion of court to admit such evidence—Judges' Rules, r 3. **R v Smith** [1961] 3 972, CCA.

Absence of caution—Admission while in custody, obtained without caution—Direction to jury—Judges' Rules, r (3). **R v Bass** [1953] 1 1064, CCA.

Admission relating to offence other than that for which in custody—Whether questioning about such offences while in custody contrary to Judges' Rules—Judges' Rules, r 3. **R v Buchan** [1964] 1 502, CCA.

Caution—Absence. *See* **Admissions and confessions—Answers and statements to police—**

Absence of caution, *ante*.

Caution—Person charged with or informed he may be prosecuted for offence—Meaning of 'person charged'—Person informed that he will be charged—Whether a 'person charged'—Judges' Rules (1964), r 3. **Conway v Hotten** [1976] 2 213, QBD.

Caution—Person charged with offence—Arrest on suspicion—Accused informed of arrest on suspicion of having committed rape—Whether accused thereby charged with offence or informed that he may be prosecuted for it so as to render questioning without cautioning inadmissible as contrary to Judges' Rules—Judges' Rules 1964, r 1, 3. **R v Brackenbury** [1965] 1 960, Assizes.

Caution—Person in custody—Broadmoor patient—Answers to questions by police—Failure to give caution—Whether answers to questions inadmissible—Judges' Rules, r 3. **R v Straffen** [1952] 2 657, CCA.

Caution—Police officer having evidence affording reasonable grounds for suspicion—Evidence—Police officer having reasonable grounds for suspecting accused—Officer not having sufficient evidence to prefer a charge—Whether officer required to administer caution—Judges' Rules (1964), r 2. **R v Osborne, R v Virtue** [1973] 1 649, CA.

Judges' Rules—Committal proceedings. *See* **Admissions and confessions—Committal proceedings—Judges' Rules, post**.

Judges' Rules—Interrogation—Cautioning—Taking of statements—Application to persons other than police. **Practice Note** [1964] 1 237, CCA.

CRIMINAL EVIDENCE (cont)

Admissions and confessions (cont)—

Answers and statements to police (cont)—

Judges' Rules—Investigation by officers of services other services—Customs and excise officers—Whether Judges' Rules applicable. **R v Ovenell, R v Walter A Cartwright Ltd** [1968] 1 933, CA.

Judges' Rules—Non-observance of rules—Failure to administer caution—Confession admissible despite breach of rules provided it is voluntary—Open to judge to admit confession on basis that it was voluntary without ruling whether obtained in breach of rules. **R v Prager** [1972] 1 1114, CA.

Oppression—Statements obtained by oppression—Meaning of oppression. **R v Prager** [1972] 1 1114, CA.

Refusal to answer questions—Inference to be drawn. *See* Admissions and confessions—Silence of accused—Refusal to answer questions, *post*.

Ceylon. *See* Ceylon (Criminal evidence—Admissions and confessions).

Committal proceedings—

Judges' Rules—Evidence obtained in breach of rules—Whether examining justices having power to reject confession obtained in breach of rules. **Beese v Governor of Ashford Remand Centre** [1973] 3 689, HL.

Confession of one accused evidence against second accused—

Inaccurate translation of letters used by court—No substantial injustice—Transvaal Proclamation 1902, s 20. **Fakisandhla Nkambule v R** [1940] 3 184, PC.

• Court-martial. *See* Court-Martial (Evidence—Admissibility—Confession).

Different crime—

Confession of two crimes—Admissibility on trial for one crime—Murder—Charges of murder of wife and child—Trial on charge relating to child—Admissibility of confession of murder of wife. **R v Evans** [1950] 1 610, CCA.

Direction to jury—

Admissibility determined by judge—Whether summing-up should include direction to disregard confession unless jury satisfied beyond all reasonable doubt as to its voluntary character. **Chan Wai-Keung v Reginam** [1967] 1 948, PC.

Voluntariness of confession. *see* Jury (Direction to jury—Confession).

Discovery of facts in consequence of inadmissible confession—

Admissibility of facts—Inducement—Production of documents in consequence of inducement—Production of documents by taxpayer to Inland Revenue—Whether documents could be used in evidence in proceedings against taxpayer. **R v Barker** [1941] 3 33, CCA.

Distinction as to admissibility—

Admission falling short of confession—Whether any difference in principle in admissibility of full confession or admission falling short of a full confession. **Commissioners of Customs and Excise v Harz** [1967] 1 177, HL.

Implication of co-accused—

Statement to police by accused—Accused acquitted and co-accused convicted—Conviction only possible if statement acted on—Validity of conviction. **R v Oram** [1938] 3 793, CCA.

Improper means—

Allegation that statement obtained by improper means—Right of prisoner to give evidence in support of allegation. **R v Cowell** [1940] 2 599, CCA.

Ruling in absence of jury on admissibility—Right of counsel at trial again to cross-examine police and examine prisoner regarding circumstances in which confession obtained. **R v Murray** [1950] 2 925, CCA.

Incriminating admission in answer to question put under statutory power to require information—

Investigation of company. *See* Company (Investigation by Board of Trade—Evidence before inspectors—Self-incrimination—Admissibility against director in subsequent criminal proceedings).

India. *See* India (Criminal evidence—Admissions and confessions).

Inducement—

Conduct of person in authority—Conduct not improper or unjustified—Conduct such as to have effect of inducing a confession—Whether exclusion of confession on ground that it was not voluntary must be related to some improper or unjustified conduct on part of person in authority. **R v Isequilla** [1975] 1 77, CA.

Duty of judge—Duty in relation to question of admissibility at trial—Statement by accused to police amounting to confession—Accused drunk at time of alleged offence and not able to remember—Accused accepting police officer's statement as proof—Previous statement by accused not admitting offence—Whether statement made voluntarily or induced by hope of advantage—Hope of avoidance of publicity, of less embarrassment and freedom for wife to leave Bermuda—Whether miscarriage of justice if statement not voluntary. **Sparks v Reginam** [1964] 1 727, PC.

Hope of advantage—Expression of sympathy by investigating officer—Evidence of admission made at interview with investigating officers of customs and excise—Statement made without caution being administered—Whether statement induced by hope of advantage—Judges' Rules (1964), r 2. **R v Ovenell, R v Walter A Cartwright Ltd** [1968] 1 933, CA.

Person in authority—Householder—Burglary—Whether owner of house burgled and of property stolen is person in authority. **R v Wilson, R v Marshall-Graham** [1967] 1 797, CA.

Person in authority—Police doctor—Driver of motor vehicle charged with being drunk—Advice of doctor to permit medical examination—Whether doctor person in authority. **R v Nowell** [1948] 1 794, CCA.

Person in authority—Statement to friend put in same lock-up as appellant by police—Whether person in authority. **Deokinanan v Reginam** [1968] 2 346, PC.

CRIMINAL EVIDENCE (cont)

Admissions and confessions (cont)—

Inducement (cont)—

Police—Accused told police would need statement—Interview with police officer before being charged—Accused told officer would need statement from him—Whether consequent statement admissible at trial. **R v Joyce** [1957] 3 623, CCC.

Question by accused—Inducement resulting from question by accused to police officer—Accused asking whether bail would be granted if he made statement—Answer in affirmative—Whether subsequent confession admissible. **R v Zaveckas** [1970] 1 413, CA.

Issue as to admissibility—

Evidence relating to admissibility—Allegation that confession made involuntarily—Duty of judge to hear evidence as to circumstances in which confession obtained—Discretion of judge to reject confession even though voluntary. **R v Middleton** [1974] 2 1190, CA.

Issue whether confession made—

Determination by judge. *See* Judge—Issues to be determined by judge—Confession made, *post*.

Personal knowledge—

Admission by party of something of which he knows nothing—Evidential value—Admission made on reading markings on goods, but without knowledge from other sources, of no greater evidential value than markings themselves. **Comptroller of Customs v Western Electric Co Ltd** [1965] 3 599, PC.

Plea of guilty at magistrates' court—

Withdrawal of plea—Committal for trial to quarter sessions—Admissibility of original plea of guilty in evidence at subsequent trial—Discretion of judge—Factors to be considered. **R v Rimmer** [1972] 1 604, CA.

Previous convictions—

Admission amounting to evidence of previous conviction—Statement by accused after caution that he had 'done time' for previous similar offence—Indecent behaviour contrary to railway bye-laws—Statement relevant as admission that behaviour deliberate—Whether admissible. **Turner v Underwood** [1948] 1 859, KBD.

Retrial—

Admission at first trial—Admission of accused when giving evidence at first trial—Admission admitted on re-trial—Cross-examination of witness as to accused's explanation at first trial—Accused not giving evidence at second trial—Whether statement should be left to jury to decide as to the truth. **R v McGregor** [1967] 1 267, CA.

Silence of accused—

Accusation made by person speaking to defendant on even terms—Defendant making no reply when accused of having stabbed woman—Accusations made by mother of deceased woman—Defendant attempting to stab mother when she threatened to detain him until police were sent for—Judge directing jury that defendant's silence and conduct matters from which they could infer that he accepted the truth of the accusation—Whether proper inference to be drawn from defendant's silence. **Parkes v The Queen** [1976] 3 380, PC.

Inference from silence—Accused making no reply when informed of accusation against him—Whether silence capable of giving rise to an inference that accused accepted truth of accusation. **Hall v Reginan** [1971] 1 322, PC.

Refusal to answer questions—Accused refusing to answer certain questions posed by police—Questions posed before and after accused cautioned—Judge directing jury that accused's silence possibly to avoid self-incrimination—Proper inference to be drawn from accused's silence. **R v Chandler** [1976] 3 105, CA.

Statement of co-accused—

Confession prompted by verbal information given by police of statement of confederate—Judges' Rules, r 8. **R v Mills, R v Lemon** [1946] 2 776, CCA.

Statutory power—

Power to require information—Incriminating admission in answer to question put under statutory power to require information. **Commissioners of Customs and Excise v Harz** [1967] 1 177, HL.

Subsequent statement—

Admissibility—Second statement after prior inadmissible confession—Troops paraded by sergeant-major and told that they would remain on parade until one confessed to a stabbing incident—Confession by accused—Confession inadmissible having been obtained by threat—Subsequent interview with investigating officer—Reference to earlier confession—Whether confession made at subsequent interview admissible. **R v Smith** [1959] 2 193, C-MAC.

Threat—

Person other than accused subject of threat—Threat relating to person other than accused or immediate family—Threat relating to acquaintance of accused—Whether threat rendering confession inadmissible. **R v Middleton** [1974] 2 1190, CA.

Prosecution for different offence—Evidence of statements made to investigating officers tendered at trial on charges of conspiracy to defraud customs—Statements induced by threat of prosecution for not answering questions put by investigating officers—Threat thus of prosecution for a different offence than that in issue at trial—Finance Act 1946, s 20(4)—Purchase Tax Act 1963, s 33(5). **Commissioners of Customs and Excise v Harz** [1967] 1 177, HL.

Trap—

Police—Admission overheard by police officer in adjacent cell—Officer disguised as a fellow prisoner—Discretion of court whether evidence of admission should be excluded. **R v Stewart** [1970] 1 689, CA.

CRIMINAL EVIDENCE (cont)

Admissions and confessions (cont)—

Voluntary statement—

Proof that admission voluntary—Test to be applied—Proof that statement not made in consequence of threat or inducement by person in authority—Question one of fact and causation—Intention of person in authority or propriety of conduct immaterial—Onus on prosecution to satisfy judge that statement not made in consequence of something said or done by person in authority which amounted to threat or inducement. **Director of Public Prosecutions v Ping Lin** [1975] 3 175, HL.

Alibi—

Burden of proof. *See* Burden of proof—Alibi, *post*.

Evidence in support of alibi—

Continuing offence—Charge of living on earnings of prostitution in particular city—Offence of continuing nature in general locality—Alibi relating to particular day at a particular place—Criminal Justice Act 1967, s 11(8). **R v Hassan** [1970] 1 745, CA.

Leave to call evidence—

Particulars in notice disputed—Application for leave resisted by prosecution—Particulars in notice (given out of time) disputed—Procedure—Criminal Justice Act 1967, s 11(1). **R v Sullivan** [1970] 2 681, CA.

Refusal—Grounds for refusing—Failure to give notice of particulars in prescribed period—Criminal Justice Act 1967, s 11(1). **R v Sullivan** [1970] 2 681, CA.

Notice of particulars—

Copy to court—Notice given to prosecution—Copy notice to be sent to court of trial. **Practice Note** [1969] 1 1042, CA.

Prescribed period for giving notice—Waiver of period by prosecution—Criminal Justice Act 1967, s 11(1), (8). **R v Sullivan** [1970] 2 681, CA.

Relevant time—Time offence committed—Alibi relating to occasion other than when crime alleged to have been committed—Place or date at or on which offence was committed—Alibi evidence relating to another occasion not subject to restrictions—Criminal Justice Act 1967, s 11. **R v Lewis** [1969] 1 79, CA.

Statements of two accused setting up same alibi. *See* Hearsay—Statements of two accused setting up same alibi, *post*.

Appeal—

Fresh evidence. *See* Criminal law (Appeal—Fresh evidence).

Bankers' books—

Inspection of entries—

Criminal proceedings—Power of court to order inspection and taking of copies—Means of requiring accused to incriminate himself—Interference with liberty of subject—Circumstances in which order may be made in criminal proceedings—Bankers' Books Evidence Act 1879, s 7. **Williams v Summerfield** [1972] 2 1334, QBD.

Best evidence—

Film—

Reconstruction of crime—Charge of keeping disorderly house—Charge based on indecent performances and exhibitions—Film of identical performances made three months after offence—Whether admissible. **R v Quinn, R v Bloom** [1961] 3 88, CCA.

Tape recording—

Original—Original tape recording only admissible—Evidence that original tape recordings interfered with. **R v Stevenson** [1971] 1 678, Assizes.

Original—Requisite standard of proof—Establishment of prima facie case that recordings original and authentic. **R v Robson** [1972] 2 699, CCC.

Translations—When admissible in evidence—Need to prove accuracy of recording and identify voices—Whether transcript of translation of tape recording can be put before jury. **R v Maqsood Ali, R v Ashiq Hussain** [1965] 2 464, CCA.

Burden of proof—

Alibi—

Burden of proving guilt remaining on prosecution—Accused who puts forward alibi not thereby assuming burden of proving defence. **R v Johnson** [1961] 3 969, CCA.

Automatism. *See* Criminal law (Automatism—Insanity distinguished—Burden of proof).

Customs offence—

Knowingly concerned in export of goods with intent to evade prohibition—Burden of proving requisite knowledge and intent on prosecution—Customs and Excise Act 1952, s 290(2). **Garrett v Arthur Churchill (Glass) Ltd** [1969] 2 1141, QBD.

Defence—

Acquisition of unrationed goods without coupons—Defence that supply not prohibited by order—Discharge of burden of proof if facts of acquisition constitute supply not prohibited by order—Consumer Rationing (Consolidation) Order 1944 (SR & O 1944 No 800), arts 3, 4. **R v Sellars** [1946] 1 82, CCA.

Diminished responsibility—Murder—Defence of diminished responsibility—Preponderance of probability. **R v Dunbar** [1957] 2 737, CCA.

Self-defence—Degree of proof required. **R v Lobell** [1957] 1 734, CCA.

Self-defence—Provocation—Murder—Withdrawal of defence of provocation from jury. **Chan Kau alias Chan Kai v Reginam** [1955] 1 266, PC.

Diminished responsibility. *See* Criminal law (Murder—Diminished responsibility—Burden of proof).

Direction to jury—

Burden on prosecution—Emphasis to be put on principle that it is for prosecution to prove case. **R v Hepworth, R v Fearnley** [1955] 2 918, CCA.

Burden on prosecution—No particular form of wording required. **R v Kritz** [1949] 2 406, CCA.

Burden on prosecution—Reasonable doubt—Use of expression—Whether desirable. **R v Summers** [1952] 1 1059, CCA.

Generally. *See* Jury (Direction to jury—Burden of proof).

CRIMINAL EVIDENCE (cont)

Burden of proof (cont)—

Direction to jury (cont)—

Standard of proof required—Direction that jury should be satisfied and sure of prisoners' guilt.
R v Attfield [1961] 3 243, CCA.

Driving without licence—

Possession of licence. *See Road traffic* (Driving without licence—Onus of proof—Possession of licence).Duress. *See Criminal law* (Duress as a defence—Burden of proof).

Facts peculiarly within knowledge of accused—

Grant of licence—Sugar dealer—Licence under defence regulations—No need for prosecution to prove accused had not been granted licence—Defence (General) Regulations 1939, reg 55—Sugar (Control) Order 1940 (S R & O 1940 No 1068), art 2. **R v Oliver** [1943] 2 800, CCA.Licence—Charge of driving without licence—Onus on accused to prove possession of licence—Road Traffic Act 1930, s 4(1). **John v Humphreys** [1955] 1 793, QBD.Fitness to plead. *See Criminal law* (Trial—Fitness to plead—Burden of proof).Insanity. *See Criminal law* (Insanity—Burden of proof).

Negative averment—

Facts within knowledge of accused—Statement by accused—Statement alleged to be false—

Burden on prosecution to prove falsity of statement—Accused a street trader—Accused offering goods for sale at £1—Accused stating that goods would cost 42s in shops—Police visiting four shops in area—Goods not on sale in those shops—Accused failing to adduce evidence that goods on sale in any shop for 42s—Whether Crown having discharged onus of proof. **R v Mandry** [1973] 3 996, CA.Prohibition of act subject to proviso, exception, excuse or qualification—Burden of proving that proviso etc applicable—Intoxicating liquor—Sale by retail without holding justices' licence—Grant of licence not peculiarly within knowledge of accused—Whether burden on prosecution to establish prima facie case that no licence granted—Whether burden on accused to prove grant of licence—Licensing Act 1964, s 160(1)(a). **R v Edwards** [1974] 2 1085, CA.

Obscene publications—

Destruction. *See Criminal law* (Obscene publications—Destruction—Onus of proof).Previous conviction. *See Character of accused*—Previous conviction—Evidence of conviction—Need for strict proof, *post*.

Prima facie case—

Burden on prosecution—Acquisition of unrationed goods without coupons—Duty of prosecution to establish prima facie case—Consumer Rationing (Consolidation) Order 1944 (S R & O 1944 No 800), arts 1, 2(3), 4. **R v Putland and Sorrell** [1946] 1 85, CCA.

Provocation—

Murder charge. *See Criminal law* (Murder—Provocation—Burden of proof).

Self-defence—

Direction to jury. *See Jury* (Direction to jury—Self-defence—Burden of proof).Murder charge. *See Criminal law* (Murder—Self-defence—Burden of proof).Calling of evidence at trial. *See Criminal law* (Trial—Presentation—Calling of evidence).

Caution—

Fingerprints. *See Fingerprints*—Caution, *post*.

Character of accused—

Aspect of character—

Restriction to one aspect of character—Propriety—Indecent assault on woman—Accused calling evidence restricted to his character in regard to women—Evidence of general bad character admissible. **R v Winfield** [1939] 4 164, CCA.

Charged with other offence—

Charged—Meaning—Charged in court—Evidence by accused that he had not previously been charged—Question designed to show accused had previously been suspected of committing an offence—Whether admissible—Criminal Evidence Act 1898, s 1(f). **Stirland v Director of Public Prosecutions** [1944] 2 13, HL.

Dishonesty—

Question suggesting dishonesty—Question whether keeping proper books of account would have made a difference in his honesty—Criminal Evidence Act 1898, s 1(f). **R v Cohen** [1938] 3 380, CCA.

Evidence against co-accused—

Cross-examination as to previous convictions—Discretion of judge—Whether discretion to disallow cross-examination on previous convictions although evidence given against co-accused—Criminal Evidence Act 1898, s 1(f)(iii). **Murdoch v Taylor** [1965] 1 406, HL.Cross-examination as to previous convictions—Right of co-accused to cross-examine—Co-accused subsequently changing plea to guilty—No application to discharge jury—Conflict of testimony between prisoners not pleading guilty—Judge in summing-up told jury to approach evidence of previous convictions from the viewpoint whether the prisoner could be regarded as a truthful witness—Criminal Evidence Act 1898, s 1(f)(iii). **R v Ellis, R v Ellis** [1961] 2 928, CCA.Denial of guilt—Evidence establishing that either accused or co-accused or both guilty of offence charged—Accused denying guilt—Denial necessarily implicating co-accused—Whether denial constituting 'evidence against' co-accused—Criminal Evidence Act 1898, s 1(f)(iii). **R v Davis (Alan Douglas)** [1975] 1 233, CA.Evidence against—Meaning—Evidence which, in minds of jury, will support prosecution's case in a material respect or undermine defence—Includes evidence given in cross-examination and not limited to evidence given with hostile intent—Criminal Evidence Act 1898, s 1(f)(iii). **Murdoch v Taylor** [1965] 1 406, HL.Evidence tending to undermine co-accused's defence—Accused giving evidence which contradicts co-accused's defence—Accused's evidence if believed resulting in co-accused's acquittal—Whether evidence 'against' co-accused—Criminal Evidence Act 1898, s 1(f)(iii). **R v Bruce** [1975] 3 277, CA.

CRIMINAL EVIDENCE (cont)**Character of accused (cont)—****Evidence against co-accused (cont)—**

Objective or subjective test—Accused not having intent to incriminate co-accused—Evidence having effect of undermining co-accused's defence—Whether accused having given 'evidence against' co-accused—Criminal Evidence Act 1898, s 1(f)(iii). **R v Stannard** [1964] 1 34, CCA.

Questions to prosecution witness—Question designed to establish guilt of co-accused—Whether accused rendering himself liable to cross-examination as to character. **R v Miller** [1952] 2 667, Assizes.

Refusal to allow co-accused to cross-examine—Refusal a departure from ordinary principles of justice—Ground for quashing conviction of co-accused—Criminal Evidence Act 1898, s 1(f)(iii). **Rigby v Woodward** [1957] 1 391, QBD.

Same offence—Evidence against other person charged with same offence—Meaning of 'same offence'—Charges of successive possession of forged bank notes—Criminal Evidence Act 1898, s 1(f)(iii). **R v Russell** [1970] 3 924, CA.

Same offence—Evidence against other person charged with same offence—Two accused charged in same indictment with different but related offences—Cross-examination of first accused on previous conviction—Criminal Evidence Act 1898, s 1(f)(iii). **R v Roberts** [1936] 1 23, CCA.

Evidence of good character tendered—

Questions put to prosecution witnesses with a view to establishing accused's good character—Questions seeking to establish bad character of other persons who might have been guilty of offence—Whether purpose of questions to establish accused's own good character—Whether questions rendering evidence of accused's bad character admissible—Criminal Evidence Act 1898, s 1(f)(ii). **R v Lee (Paul Robert)** [1976] 1 570, CA.

Good character—

Weight of evidence—Evidence of good character tendered—Bad character shown by cross-examination—Weight to be given by jury to both categories of evidence when assessing general credibility of accused. **R v Longman** [1968] 2 461, CA.

Imputation on character of prosecutor or witness—

Conduct alleged not unlawful—Prosecution witness—Accused making allegation against witness of homosexual conduct—Homosexual practices between consenting adults in private not criminal offence—Whether accused impugning character of prosecution witness—Criminal Evidence Act 1898, s 1(f)(ii). **R v Bishop** [1974] 2 1206, CA.

Cross-examination by co-accused—Leave—Accused conducting defence so as to involve imputation on character of prosecution witness—Accused also giving evidence against co-accused—Co-accused charged with different offence—Co-accused cross-examining accused about his criminal record without first seeking leave to do so—Whether in circumstances co-accused entitled to cross-examine accused without leave—Criminal Evidence Act 1898, s 1(f)(ii)(iii). **R v Lovett** [1973] 1 744, CA.

Discretion of court—Discretion over allowing accused to be cross-examined as to his previous convictions—Whether any general rule to exclude such evidence where defence necessarily involved such imputations—Criminal Evidence Act 1898, s 1(f)(ii). **Selvey v Director of Public Prosecutions** [1968] 2 497, HL.

Particular acts—Rape—Character of complainant—Prostitution—Evidence that complainant a prostitute—Whether evidence of particular acts admissible. **R v Bashir and Manzur** [1969] 3 692, Assizes.

Police—Confession—Allegation that police witness concocted confession—Whether cross-examination of accused as to character should be allowed—Criminal Evidence Act 1898, s 1(f). **R v Clark** [1955] 3 29, CCA.

Police—Confession—Allegation that police witness obtained confession by threat—Whether cross-examination of accused as to character should be allowed—Criminal Evidence Act 1898, s 1(f)(ii). **R v Cook** [1959] 2 97, CCA.

Rape—Defence of consent—Imputation on character of prosecutrix—Prisoner's evidence as to prosecutrix's gross indecency at material time—Whether evidence of prisoner's previous conviction admissible—Criminal Evidence Act 1898, s 1(f)(ii). **R v Turner** [1944] 1 599, CCA.

Warning—Accused conducting own defence—Accused attacking character of prosecution witness—Warning of consequent admissibility of questions as to accused's character—How given. **R v Weston-super-Mare Justices, ex parte Townsend** [1968] 3 225, QBD.

Warning—How given—Defendant conducting defence so as to involve imputation on character of prosecution witness—Warning of cross-examination of defendant as to his bad character if prosecution witness's character impugned—How warning should be given. **R v Weston-super-Mare Justices, ex parte Townsend** [1969] 225, QBD.

Witness for prosecution—Accused not called to give evidence—Evidence of bad character not admissible merely because he has attacked character of prosecution witnesses. **R v Butterwasser** [1947] 2 415, CCA.

Witness for prosecution—Imputation from nature of defence and accused's evidence as to character of prosecution witness—Discretion—Whether cross-examination of accused as to previous convictions should be allowed—Criminal Evidence Act 1898, s 1(f)(ii). **R v Flynn** [1961] 3 58, CCA.

Moral disposition—

Disposition to acts of violence—Charges of conspiracy to commit arson and of arson—Cross-examination of accused on his unpublished writings in year before date of alleged offences tending to show disposition to acts of violence—Whether 'character' meant actual moral disposition—Whether, therefore, such questions tended to show that accused was of bad character—Criminal Evidence and Procedure Act (Federation of Rhodesia and Nyasaland), s 303. **Malindi v Reginam** [1966] 3 285, PC.

CRIMINAL EVIDENCE (cont)

Character of accused (cont)—

Previous conviction—

Admissible evidence to show guilt of offence charged—Previous charge—Cross-examination of prisoner as to a previous charge—Prisoner acquitted of previous charge—Questions inadmissible—Conviction quashed—Criminal Evidence Act 1898, s 1(f)(i). **R v Cokar** [1960] 2 175, CCA.

Cross-examination as to previous convictions. *See* Character of accused—Evidence against co-accused—Cross-examination as to previous convictions, *ante*.

Discretion of judge—One previous conviction put in to explain subsequent conduct—Discretion of trial judge to admit or reject other previous convictions—Whether accused's character put in issue. **R v Thompson** [1966] 1 505, CCA.

Evidence of conviction—Need for strict proof—Evidence to be given by witness able to swear to it of own knowledge—Insufficient for police officer who was not present to read list of convictions. **R v Butterwasser** [1947] 2 415, CCA.

Newspaper report—Report of committal proceedings—Report disclosing previous convictions—Accused subsequently convicted—Whether report ground for quashing conviction. **R v Armstrong** [1951] 2 219, CCA.

One previous conviction put in to explain subsequent conduct—Whether character put in issue—Whether judge should admit evidence of other previous conviction. **R v Thompson** [1966] 1 505, CCA.

Proof—Method of proof. **Stone v Bastick** [1965] 3 713, QBD.

Questions as to previous convictions—Admissibility—Defence of automatism—Accused found in house at night—Charge of burglary—Accused giving evidence that he had no recollection of entering house and must have done so in state of automatism—Whether questions as to previous convictions permissible. **R v [1951] 2 727, CCA.**

Receiving stolen goods—Discretion to exclude evidence although satisfying conditions for admissibility—Larceny Act 1916, s 43(1). **R v List** [1965] 3 710, Assizes. **R v Herron** [1966] 2 26, CCA.

Receiving stolen goods—Knowledge that property stolen as distinct from acquired by other criminal means—Larceny Act 1916, s 43(1). **Director of Public Prosecutions v Nieser** [1958] 3 662, CCA.

Question on behalf of co-accused—

Question on behalf of one prisoner involving character of another—Question relevant—Counsel for co-accused to show same restraint as counsel for prosecution in putting question. **R v Miller** [1952] 2 667, Assizes.

Questions tending to show accused guilty of other offences or of bad character—

Tending to show—Evidence of accused indicating to jury he had previously been in trouble with police—Previous conviction of accused—Similar alibi—Cross-examination of accused as to similarity but no reference to previous offence—Accused's evidence in chief showing that he had been previously in trouble with the police—Whether questions as to previous alibis 'tending to show' accused guilty of another offence—Whether 'tending to show' meaning tending to reveal—Criminal Evidence Act 1898, s 1(e)(f)(i). **Jones v Director of Public Prosecutions** [1962] 1 569, HL.

Sexual offence—

Homosexuality—Accused charged with gross indecency with boys—Accused at trial asked whether he was a homosexual—Whether question admissible. **R v King** [1967] 1 379, CA.

Homosexuality—Admission—Gross indecency—Statement by accused that he used to be a homosexual—Admissibility—Relevance to issue before jury—Evidence must be probative in real degree of accused's guilt. **R v Horwood** [1969] 3 1156, CA.

Summing-up. *See* Criminal law (Trial—Summing-up—Character of accused).

Character of prosecutor—

Allegation as to bad character—

Admissibility of evidence as to good character—Prosecutor cross-examined as to alleged act of indecency—Whether reputation admissible. **R v Wood** [1951] 2 112, Assizes.

Sexual offence—

Character of complainant—Previous convictions for dishonesty—Charge of indecent assault against complainant—Whether previous convictions relevant. **R v Parks** [1961] 3 633, CCA.

Child—

Corroboration—

Sworn evidence of other child—Evidence given by child of tender years in corroboration of evidence of another child—Whether sufficient corroboration. **R v Campbell** [1956] 2 272, CCA.

Unsworn evidence of other child—Corroboration by other material evidence implicating accused—Mutual corroboration—Corroboration by evidence of witness on whose evidence it is dangerous to convict unless that evidence is corroborated—Corroboration by unsworn evidence—Charge of indecent assault—Unsworn evidence of child given in corroboration of sworn evidence of complainant—Whether evidence of complainant capable of amounting to corroboration of unsworn evidence—Whether unsworn evidence corroborating evidence of complainant—Children and Young Persons Act 1933, s 38(1). **Director of Public Prosecutions v Hester** [1972] 3 1056, HL.

Unsworn evidence of other child—Unsworn evidence of child of tender years—Whether can be corroboration of sworn evidence of another child—Children and Young Persons Act 1933, s 38(1). **R v E** [1964] 1 205, Liverpool Crown Court.

Oath—

Ability to understand nature of oath—Evidence of school attendance officer—Evidence given in absence of jury—Children and Young Persons Act 1933, s 38(1). **R v Reynolds** [1950] 1 335, CCA.

Unsworn evidence of child—

Corroboration. *See* Child—Corroboration—Unsworn evidence of other child, *ante*.

CRIMINAL EVIDENCE (cont)

Child (cont)—

Unsworn evidence of child (cont)—

Duty of judge—Duty before permitting unsworn evidence to be given—Duty to satisfy himself child not in a position to be sworn—Children and Young Persons Act 1933, s 38(1). **R v Surgenor** [1940] 2 249, CCA.

Circumstantial evidence—

Burden of proof—

Direction to jury. *See* **Jury** (Direction to jury—Burden of proof—Criminal proceedings—Prosecution case based on circumstantial evidence).

Murder. *See* **Criminal law** (Murder—Evidence—Circumstantial evidence).

Co-accused—

Admissibility of statement by. *See* **Admissions and confessions**—Statement of co-accused, *ante*.

Corroboration. *See* **Corroboration**—Accomplice—Co-accused, *post*.

Cross-examination—

Evidence of co-accused not adverse to accused—Right of counsel for accused to cross-examine co-accused whether or not evidence of co-accused adverse to his client. **R v Hilton** [1971] 3 541, CA.

Evidence against co-accused—

Cross-examination as to previous convictions. *See* **Character of accused**—Evidence against co-accused—Cross-examination as to previous convictions, *ante*.

Similar offences committed by co-accused—

Corrupt motive—Evidence of system—Evidence in respect of one accused admissible in relation to co-accused—Counts against each accused based on same transaction—Corrupt practices—Officer of public body—Counts alleging receiving of bribe by one accused and giving by other accused—First accused charged on number of counts with receiving bribes from different persons—Second accused charged with only one offence of giving bribe—Evidence of first accused's activities in relation to other bribes admissible as evidence of corrupt motive—Evidence relevant to charge against second accused. **R v Andrews Weather-Foil Ltd** [1972] 1 65, CA.

Statement incriminating accused—

Direction to jury—Joint trial—Statement admissible against co-accused but not evidence against accused. **R v Gunewardene** [1951] 2 290, CCA.

Collaboration of witnesses. *See* **Witnesses**—Collaboration, *post*.

Committal for trial—

Committal for trial at Crown Court without consideration of evidence—

Procedure. *See* **Crown Court** (Committal for trial at Crown Court—Procedure—Committal for trial without consideration of evidence).

Depositions—

Signature—Absence of signature—Effect—Some depositions not signed by examining justice—Whether committal for trial invalidated where other signed depositions are sufficient to justify committal on some charges—Magistrates' Courts Rules 1952, r 5(2). **R v Edgar, R v Parr, R v Pontika, R v Rooney** [1958] 2 494, CCA.

Validity—Evidence given in answer to leading questions—Validity of committal—Indictable Offences Act 1848, s 17. **R v Walker** [1950] 2 911, CCA.

Communications between spouses. *See* **Spouses**—Communications between spouses, *post*.

Competence as witness—

Accused—

Joint charge—Two accused—One accused called as witness for prosecution—Preliminary hearing before justices—Irregularity—Indictment quashed. **R v Sharrock** [1948] 1 145, Assizes.

Witness for prosecution—Evidence by one prisoner against another jointly charged with same offence—Evidence by one prisoner against another charged on same indictment with different offence. **R v Grant, Peel, Ley, Pearce, Trueman and Clarkson** [1944] 2 311, Assizes.

Spouse as witness for prosecution—

Nullity decree—Criminal offence committed during marriage—Admissibility of wife's evidence after decree of nullity for impotence. **R v Aigar** [1953] 2 1381, CCA.

Offence with reference to other spouse or his property—Meaning of 'with reference to'—Wife writing husband's name and her own on loan agreement—Finance company believing signatures written by two different people—Finance company making loan on that assumption—Wife subsequently charged with forging husband's signature on agreement—Prosecution seeking to call husband to give evidence that he had not authorised wife to sign on his behalf—Whether husband competent witness—Theft Act 1968, s 30(3). **R v Noble** [1974] 2 811, CA.

Personal violence by accused against spouse—Arson of spouse's property—Husband charged with arson of wife's property—Whether wife competent witness for prosecution—Married Women's Property Act 1882, s 12—Criminal Evidence Act 1898, s 4(1). **R v Moore** [1954] 2 189, Assizes.

Personal violence by accused against spouse—Buggery—Husband charged with committing buggery with wife—Whether wife competent to give evidence against husband. **R v Blanchard** [1952] 1 114, Assizes.

Personal violence by accused against spouse—Poisoning—Husband charged with attempting to cause wife to take a poison with intent to murder her—Whether wife competent witness for prosecution—Offences against the Person Act 1861, s 14—Criminal Evidence Act 1898, s 4, Sch. **R v Verolla** [1962] 2 426, Assizes.

Personal violence by accused against spouse—Wife—Charge against husband of sending letter threatening to murder her—Admissibility of wife's evidence—Offences against the Person Act 1861, s 16—Criminal Evidence Act 1898, s 4, Sch. **R v Yeo** [1951] 1 864, Assizes.

CRIMINAL EVIDENCE (cont)

Competence as witness (cont)—

Spouse as witness for prosecution (cont)—

Separated spouses—Decree of judicial separation—Competence of one spouse to give evidence against other spouse charged with criminal offence. **Moss v Moss** [1963] 2 829, QBD.

Complaints in sexual cases—

Lapse of time before complaint made—

Complaint to be made as speedily as possible—Rape—Whether complaint made as soon as could be expected—Question for judge. **R v Cummings** [1948] 1 551, CCA.

Confession—

Ceylon. *See* **Ceylon** (Criminal evidence—Admissions and confessions).Generally. *See* Admissions and confessions, *ante*.

Corroboration—

Accomplice—

Co-accused—Practice—Warning to jury—Co-accused giving evidence on own behalf—Warning that co-accused may have purpose of his own to serve. **R v Stannard** [1964] 1 34, CCA.Co-accused—Practice—Warning to jury—Witness having purpose of his own to serve—Warning whether witness a fellow-prisoner or Crown witness. **R v Prater** [1960] 1 298, CCA.Direction to jury—Absence of direction—Power of Court of Criminal Appeal to confirm conviction—No miscarriage of justice—Criminal Appeal Act 1907, s 4(1). **R v Lewis** [1937] 4 360, CCA.Duty of judge—Prosecution witness giving evidence partly favourable to prosecution and partly favourable to defence—Evidence indicating witness might be accomplice of defendant—Whether judge bound to give jury accomplice direction. **R v Royce-Bentley** [1974] 2 347, CA.Meaning of accomplice—Particeps criminis—Necessary that he should be accomplice in crime charged—Accused and witness in a gang which attacked four others—One of others killed as result of knife wound—Accused charged with murder—Witness having had no knowledge accused had knife—Whether accomplice in crime consisting of felonious use of knife. **Davies v Director of Public Prosecutions** [1954] 1 507, HL.Mutual corroboration—Gross indecency with boys—Boys accomplices—Whether boys could corroborate each other. **R v King** [1967] 1 379, CA.Warning to jury—Co-accused. *See* Corroboration—Accomplice—Co-accused—Practice—Warning to jury, *ante*.Warning to jury—Failure to give warning—Accomplice's evidence in fact corroborated—Whether absence of warning on corroboration ground for quashing conviction. **Davies v Director of Public Prosecutions** [1954] 1 507, HL.Wife of accomplice. *See* Corroboration—Wife of accomplice, *post*.Witness not called by prosecution—Evidence of fellow-prisoners inculcating accused—Fellow prisoners not called by prosecution—Whether warning with regard to evidence of accomplices necessary. **R v Barnes, R v Richards** [1940] 2 229, CCA.Agent provocateur. *See* Police (Conduct—Commission of offence to secure evidence against offender).Child. *See* Child—Corroboration, *ante*.

Direction to jury—

Absence of corroborating evidence—Indecent assault—Where no corroboration, unnecessary to direct jury what corroboration meant. **R v Fisher** [1965] 1 677, CCA.Accomplice. *See* Corroboration—Accomplice—Direction to jury, *ante*.Evidence relied on as corroboration—Adequate warning and explanation on meaning of corroboration—Whether necessary for judge to refer to evidence relied on as corroboration. **R v Zielinski** [1950] 2 1114, CCA.Generally. *See* Jury (Direction to jury—Corroboration—Accomplice).Indication of sort of evidence jury may treat as corroboration—Need for judge to give broad indication. **R v Goddard** [1962] 3 582, CCA.Necessity for direction—Rape—Necessity for direction in summing-up as to corroboration—Absence of such direction—Whether proviso applicable—Criminal Appeal Act 1907, s 4(1), proviso. **R v Trigg** [1963] 1 490, CCA.Reference to corroboration—Rape—Identity—Scientific evidence identifying accused as assailant—Corroboration not mentioned in summing-up, but jury directed to disregard evidence of complainant and another and to consider scientific evidence on issue of identity—Sufficiency of the direction. **R v O'Reilly** [1967] 2 766, CA.Sexual offence—Indecent assault on boy—Boy's uncorroborated evidence—Warning as to danger of convicting on uncorroborated evidence—Failure to point out discrepancies in evidence—Lapse of time between giving of evidence and summing up—Whether omissions amounting to misdirection. **R v Cleal** [1942] 1 203, CCA.Driving at excessive speed. *See* Road traffic (Excessive speed—Corroboration of evidence).

Failure of accused to give evidence—

Failure as corroboration of prosecution evidence—Matter which jury may take into account—Whether constituting corroboration of evidence of accomplice. **R v Jackson** [1953] 1 872, CCA.

Nature of corroboration—

Evidence tending to confirm other evidence—Indecent assault—Child victim—Boy—Evidence of system—Mutual corroboration—Evidence of other boys alleging similar offences against themselves—Evidence of other boys admissible as proving system and negating innocent association—Whether evidence of other boys capable of constituting corroboration of victim's evidence. **Director of Public Prosecutions v Kilbourne** [1973] 1 440, HL.

Rejection of defendant's evidence—

Denial of guilt—Denial rejected—Untruth of accused's evidence not itself corroboration. **R v King** [1967] 1 379, CA.

CRIMINAL EVIDENCE (cont)

Corroboration (cont)—

Rejection of defendant's evidence (cont)—

Rejection by court of evidence as untrue—Whether rejection corroboration of otherwise uncorroborated evidence against the defendant. **R v Chapman** [1973] 2 624, CA.

Sexual offence—

Direction to jury. *See* Corroboration—Direction to jury—Sexual offence, *ante*.

Distressed condition of complainant—Complainant a young girl—Indecent assault—Whether distressed condition of complainant capable of constituting corroboration. **R v Knight** [1966] 1 647, CCA.

Silence of accused—

Silence or inadequate answers when charged with the crime—Prisoner stating he wished to say nothing when asked by magistrates if he had anything to say—Prisoner electing not to give evidence—Whether capable of constituting corroboration. **R v Keeling** [1942] 1 507, CCA.

Unreasonable verdict in absence of corroboration—

Verdict set aside on appeal. *See* Criminal law (Appeal—Unreasonable verdict—Verdict set aside—No corroboration).

Wife of accomplice—

Corroboration of accomplice's evidence by wife—Wife of co-accused—Whether evidence of wife of one co-accused can corroborate evidence of her husband against other co-accused. **R v Evans, R v Allen** [1964] 3 401, CCA.

Court-martial—

Appeal. *See* Court-Martial (Appeal—Evidence).

Cross-examination—

Character of accused. *See* Character of accused, *ante*.

Co-accused. *See* Co-accused—Cross-examination, *ante*.

Statement by accused. *See* Statement by accused—Cross-examination on statement, *post*.

Depositions—

Evidence at trial. *See* Criminal law (Trial—Depositions as evidence).

Validity. *See* Committal for trial—Depositions—Validity, *ante*.

Document—

Secondary evidence as to contents—

Admissibility of secondary evidence in criminal proceedings—Person in possession of the document beyond the jurisdiction of the court—Court unable to compel production of original document—Whether secondary evidence as to contents of document admissible. **R v Nowaz (alias Karim)** [1976] 3 5, CA.

Examination of accused—

Questions by judge—

Matters not in evidence—Questions put to accused by judge—Examination on matters not put in evidence by counsel. **R v Cohen** [1951] 1 203, CCA.

Exhibits—

Examination—

Open court. *See* Criminal law (Trial—Open court—Proceedings to be held in open court—Evidence—Exhibits).

Expert evidence—

Appeal—

Fresh evidence. *See* Criminal law (Appeal—Fresh evidence—Expert evidence).

Handwriting. *See* Handwriting—Expert evidence, *post*.

Obscene publications—

Defence of public good. *See* Criminal law (Obscene publications—Defence of public good—Expert evidence).

Issue of obscenity. *See* Criminal law (Obscene publication—Evidence—Issue of obscenity).

Psychiatrist—

Personality of accused—Evidence of psychiatrist regarding personality of accused—Accused charged with murder—Accused seeking to call psychiatrist to support defence of provocation and his credibility—Admissibility of psychiatrist's evidence. **R v Turner** [1975] 1 70, CA.

Psychologist—

Personality of accused—Evidence of psychologist based on personality tests—Murder committed by one of two accused—No apparent motive—Both accused charged—Each accused alleging that other responsible for killing—Evidence that personalities of accused such that one more likely to have committed crime than other. **Lowery v The Queen** [1973] 3 662, PC.

Facts peculiarly within knowledge of accused—

Burden of proof. *See* Burden of proof—Facts peculiarly within knowledge of accused, *ante*.

Failure of accused to give evidence—

Comment by judge. *See* Jury (Direction to jury—Comment by judge on failure of accused to give evidence).

Fingerprints—

Caution—

Failure to give caution—Fingerprints obtained from man in legal custody without giving caution—Fingerprints given without objection—Whether evidence of them admissible. **Callis v Gunn** [1963] 3 677, QBD.

Further evidence—

Jury having retired. *See* Criminal law (Trial—Retirement of jury—Further evidence).

Handling stolen goods. *See* Criminal law (Handling stolen goods—Evidence).

Handwriting—

Expert evidence—

Necessity for expert evidence to assist jury—Danger of leaving jury to compare handwriting—Criminal Procedure Act 1865, s 8. **R v Tilley** [1961] 3 406, CCA.

CRIMINAL EVIDENCE (cont)

Handwriting (cont)—

Signature disputed—

Warning to jury—No expert evidence—Jury warned that it would be dangerous to make comparisons of signatures without expert guidance—Whether conviction should stand. **R v O'Sullivan** [1969] 2 237, CA.

Hearsay—

Document—

Warranting inference as to truth of contents—Admissibility as real evidence—Airline ticket—Ticket bearing names of two co-defendants—Probability that it would have been used by one of co-defendants. **R v Rice** [1963] 1 832, CA.

Evidence at earlier trial—

Transcript of evidence—Death of witness—Discretion to admit transcript evidence—Authentication of transcript—New trial ordered after jury disagreeing—Death of witness before second trial—Transcript of witness's evidence at first trial admissible at second trial—Method of authenticating transcript—Exercise of discretion whether to admit evidence. **R v Hall (P B)** [1973] 1 1, CA.

Implied assertion—

Identification of accused—Charge of arson—Evidence of policeman as to statement made by woman to accused shortly after fire—Statement expressing surprise that accused leaving scene of fire—Whether admissible as evidence that accused present at scene of alleged crime. **Teper v Reginam** [1952] 2 447, PC.

Meaning—

Statement tendered as original evidence—Evidence that statement made rather than evidence of truth of statement—Evidence of statement made to accused by person not called as a witness—Statement relevant in considering subsequent conduct of accused. **R v Willis** [1960] 1 331, CCA.

Record relating to trade or business—

Trade or business—Consignment note relating to goods supplied from Home Office store—Whether Home Office store a trade or business—Criminal Evidence Act 1965, s 1(1)(a). **R v Gwilliam** [1968] 3 821, CA.

Records compiled in course of trade or business—

Manufacturer's records—Confirmation by records of testimony identifying stolen cars—Records prepared by photography of workmen's entries of component numbers on cards—Schedule prepared from microfilm—Produced in evidence by witness in charge of records but not by makers of entries on cards—Whether evidence admissible or inadmissible as hearsay. **Myers v Director of Public Prosecutions** [1964] 2 881, HL.

Res gestae. *See* Res gestae, *post*.

Stamp on goods—

Stamp indicating place of origin—Markings on bags stating origin of goods—Whether admissible as evidence of place of origin. **Patel v Comptroller of Customs** [1965] 3 593, PC, **Comptroller of Customs v Western Electric Co Ltd** [1965] 3 599, PC.

Statements of two accused setting up same alibi—

Each statement made to police by one accused in the absence of the other—Evidence of statements admitted to show that accused were acting in concert in concocting alibi. **Mawaz Khan v Reginam** [1967] 1 80, PC.

Homosexuality—

Character of accused. *See* Character of accused—Sexual offence—Homosexuality, *ante*.

Husband and wife. *See* Spouses, *post*.

Identity—

Driver of vehicle—

Careless driving. *See* Road traffic (Careless driving—Evidence—Identity of driver).

Identification parade—

Evidence of identification—Evidence of third party—Admissibility—Witness picking out accused at identification parade—Witness denying at trial that she had picked out accused—Evidence of police officer in charge of identification parade—Evidence that witness had picked out accused—Whether evidence of police officer admissible. **R v Osborne, R v Virtue** [1973] 1 649, CA.

Visual identification—

Possibility of mistaken identification—Direction to jury—Caution against relying on identification—Supporting evidence—Desirable that judge should identify supporting evidence for jury—Case to be withdrawn from jury when identification unsupported. **R v Turnbull** [1976] 3 549, CA.

Written statement. *See* Written statement—Identity, *post*.

Illegally obtained evidence—

Unlawful search—

Evidence disclosed by search—Admissibility—Ammunition discovered on person of accused—Discovery in consequence of search by police officer below rank of those permitted to make searches—Whether court concerned with method of obtaining evidence. **Kuruma Son of Kanui v Reginam** [1955] 1 236, PC.

Impeaching credit of witness—

Evidence of belief witness not worthy of credit—

Admissibility—Particular facts, circumstances and incidents forming basis of opinion not admissible in examination-in-chief. **R v Longman** [1968] 2 761, CA.

Means of impeaching credit—

Evidence of witnesses that witness not worthy of credit—Evidence of belief that witness not worthy of credit—Reasons for belief not admissible in examination-in-chief. **R v Gunewardene** [1951] 2 290, CCA.

CRIMINAL EVIDENCE (cont)

Impeaching credit of witness (cont)—

Physical or mental condition tending to unreliability—

Disease or abnormality—Medical evidence of disease or abnormality affecting reliability of witness—Evidence of police surgeon that a youth who was the alleged victim of the appellant's assault and the main prosecution witness was more liable to hysteria than a normal person, and as to the effect of alcohol on hysteria—Admissible evidence to impeach credibility, and as being relevant to facts in issue, viz, whether the assault occurred or was the figment of youth's hysteria. **Toohy v Metropolitan Police Comr** [1965] 1 506, HL.

Improper conduct of accused on other occasions—

Identification of accused—

Articles found in possession of accused—Whether articles admissible to identify accused with offences previously committed when accused denying that they were present when offences committed. **R v Reading** [1966] 1 521, CCA.

Offence of continuing nature—

Element of persistence—Keeping a disorderly house—Evidence admissible that user during period named in indictment was a continuation of prior user. **R v Brady, R v Ram** [1964] 3 616, CCA.

Prejudice to accused—

Disclosure of previous imprisonment—Charge of using words with intent to stir up racial hatred—Witness giving evidence of words used by accused at public meeting—Reference by accused in addressing meeting to the fact that he had been in prison—Evidence of this given by witness at trial—Accused, who conducted his own defence, addressed the jury at his trial in some detail on the matter of his having been in prison—Whether conviction should stand. **R v Malik** [1968] 1 582, CA.

Evidence inadvertently let in—Editing statement by accused—Evidence prejudicial to accused inadvertently let in—Whether jury should be discharged—Discretion. **R v Weaver** [1967] 1 277, CA.

Evidence inadvertently let in—Evidence of previous imprisonment—Disclosure in cross-examination—Whether jury should be discharged—Discretion. **R v Palin** [1969] 3 689, CA.

Pending charges—Police evidence of other pending charges—Need to discharge jury. **R v Firth** [1938] 3 783, CCA.

Photograph of accused—Book of photographs referred to by police witness—Issue of identification—Direction to jury that photographs not necessarily of convicted persons or known thieves—Whether accused prejudiced by reference to photograph. **R v Wattam** [1942] 1 178, CCA.

Relevance—

Gross indecency—Indecent postcards found in possession of prisoner charged with gross indecency—Admissibility in evidence as things which man about to commit offence might have in his possession. **R v Gillingham** [1939] 4 122, CCA.

Similar offences—

Abnormal propensity—Propensity to commit crime in particular way—Murder of young girls by strangulation—Evidence of previous murders in similar circumstances. **R v Straffen** [1952] 2 657, CCA.

Acquittal of other offence—Larceny—Evidence showing guilt of accused on charge of which she had been acquitted. **G (an infant) v Coltart** [1967] 1 271, QBD.

Defence of innocent association—Rebuttal of defence—Eight counts alleging gross indecency with three men—Evidence on all counts admissible on each count. **R v Hall** [1952] 1 66, CCA.

Defence of innocent association—Special features of offences—Evidence of other offences rebutting defence of innocent association—Several counts alleging buggery with separate persons—Admissibility of evidence relating to one count on other counts—Whether separate trials should be ordered—Indictments Act 1915, s 5(3), Sch 1, r 3. **R v Sims** [1946] 1 697, CCA.

Disposition to commit crime—Evidence inadmissible as showing disposition to commit crime charged—Murder—Poisoning—Evidence of previous death in similar circumstances inadmissible. **Noor Mohamed v R** [1949] 1 365, PC.

Exclusion of evidence as irrelevant—Discretion of judge to exclude—Admissible if relevant to some issue before jury—Proof of intention—Rebuttal of possible defence—Charge of larceny—Evidence of previous offences of larceny. **Harris v Director of Prosecutions** [1952] 1 1044, HL.

Fraud—Charge involving fraud—Charge of false pretences—Question as to previous offence of obtaining overdraft by misrepresentation—Criminal Evidence Act 1898, s 1(f). **R v Hamilton** [1939] 1 469, CCA.

Indecency—Act of indecency—Issue whether meeting had ever taken place—Whether evidence of similar incidents admissible to help to determine whether a single alleged meeting took place. **R v Chandor** [1959] 1 702, CCA.

Indecency—Different form of indecency from that charged—Indecent assault on child—Evidence of other forms of indecency with children. **R v Doughty** [1965] 1 560, CCA.

Lapse of time—Charges of indecent assault followed by indecent exposure within short time—Whether evidence concerning one offence admissible on other charge. **R v Fitzpatrick** [1962] 3 840, CCA.

Method of committing offence—False pretences—Money similarly obtained two days before—Use of different pretence—Admissibility of evidence of previous facts. **R v Slender** [1938] 2 387, CCA.

Probative value—Similar facts—Sexual offences—Corroboration—Buggery and incitement to buggery—Accused charged with two offences against different youths—Evidence that on each occasion accused's conduct took particular and unusual form—Whether homosexual offences in special category in relation to admissibility of similar fact evidence—Whether evidence of each youth admissible to corroborate evidence of other youth in relation to other offence. **Boardman v Director of Public Prosecutions** [1974] 3 887, HL.

CRIMINAL EVIDENCE (cont)

- Improper conduct of accused on other occasions (cont)—
 - Transactions not subject of charge—
 - Evasion of purchase tax—Charge of conspiracy—Evidence tendered by prosecution of similar transaction in which accused had taken part—Evidence relevant to issue whether accused had assisted in conspiracy to evade purchase tax. **R v Patel** [1951] 2 29, CCA.
- Incest—
 - Relationship—
 - Knowledge of accused—Evidence—Admissibility—Accused's daughter—Accused wishing to adduce evidence of lack of knowledge that girl was his daughter—Punishment of Incest Act 1908, s 1(1). **R v Carmichael** [1940] 2 165, CCA.
- Insanity—
 - Prosecution evidence. *See* **Criminal law** (Insanity—Evidence tendered by prosecution).
- Insufficient evidence. *See* **Criminal law** (Trial—Insufficient evidence).
- Judge—
 - Issues to be determined by judge—
 - Confession made—Issue whether confession in fact made—Function of judge to determine whether prima facie evidence—Statements alleged to have been made by deaf mute. **R v Roberts** [1953] 2 340, Assizes.
- Judge's Rules. *See* Admissions and confessions—Answers and statements to police, *ante*.
- Magistrates—
 - Preliminary hearing. *See* **Criminal law** (Committal—Preliminary hearing before justices—Prima facie case—Evidence).
- Medical evidence—
 - Calling by prosecution after case closed. *See* Prosecution evidence—Adducing evidence before close of case—Fresh evidence after prosecution's case closed—Medical evidence, *post*.
 - Diminished responsibility. *See* **Criminal law** (Murder—Diminished responsibility—Medical evidence).
 - Insanity. *See* **Criminal law** (Insanity—Medical evidence).
 - Summing-Up. *See* **Criminal law** (Trial—Summing-up—Medical evidence).
 - Unfitness to drive through drink or drugs. *See* **Road traffic** (Driving while unfit to drive through drink or drugs—Evidence—Medical evidence).
- Weight—
 - Position of doctor giving medical evidence at criminal trial—Weight to be attached to such evidence—Wrong to direct jury that doctor's evidence ought to be accepted in the absence of reasons for rejecting it—Road traffic offence—Driving while unfit to drive through drink. **R v Lanfear** [1968] 1 683, CA.
- Motoring offence—
 - Special reasons for not disqualifying. *See* **Road traffic** (Special reasons for not disqualifying—Evidence).
- Negative averment—
 - Burden of proof. *See* Burden of proof—Negative averment, *ante*.
- Oath—
 - Child—
 - Ability to understand nature of oath. *See* Child—Oath, *ante*.
- Objection to admissibility. *See* **Criminal law** (Trial—Objection to admissibility of evidence).
- Obscene publication—
 - Expert evidence—
 - Defence of public good. *See* **Criminal law** (Obscene publications—Defence of public good—Expert evidence).
- Onus o+ proof. *See* Burden of proof, *ante*.
- Onus of proof—
 - Facts within knowledge of accused—
 - No onus on accused of proving facts within own knowledge. **Seneviratne v R** [1936] 3 36, PC.
- Personality of accused—
 - Psychiatrist's evidence. *See* Expert evidence—Psychiatrist—Personality of accused, *ante*.
 - Psychologist's evidence. *See* Expert evidence—Psychologist—Personality of accused, *ante*.
- Photograph—
 - Prejudice to accused. *See* Improper conduct of accused on other occasions—Prejudice to accused—Photograph of accused, *ante*.
- Police—
 - Statements to police. *See* Admissions and confessions—Answers and statements to police, *ante*.
- Possession of stolen goods—
 - Evidence of possession—
 - Receiving stolen goods—Goods received by servant in absence of master—Master denied knowledge of receipt of goods—Submission of no case to answer overruled. **R v Cavendish** [1961] 2 856, CCA.
- Prejudice to accused—
 - Evidence of improper conduct on other occasions. *See* Improper conduct of accused on other occasions—Prejudice to accused, *ante*.
- Previous convictions—
 - Reference to convictions at trial. *See* **Criminal law** (Trial—Previous convictions).
- Previous inconsistent statement—
 - Statement of witness. *See* Witness—Previous inconsistent statement, *post*.
- Prosecution—
 - Disclosure of evidence. *See* **Criminal law** (Trial—Prosecution—Disclosure of evidence).

CRIMINAL EVIDENCE (cont)

Prosecution evidence—

Adding evidence before close of case—

Evidence available at outset of case—Evidence in rebuttal—Forgery—Evidence of handwriting expert—Evidence called by prosecution at judge's suggestion after close of case for defence—Necessity for evidence foreseeable from outset—Conviction quashed on appeal. **R v Day** [1940] 1 402, CCA.

Fresh evidence after prosecution's case closed—Medical evidence—Murder—Diminished responsibility—Calling of medical witnesses by the court sought by prosecution—Diminished responsibility to be raised as defence to charge of murder—Evidence of medical witnesses as to insanity of the accused at the time of the act—Evidence not allowed to be given in the circumstances of the case. **R v Russell** [1963] 3 603, CCC.

Informer—

Disclosure to court of existence of informer. **R v Birtles** [1969] 2 1131, CA.

Statement by accused—

Obligation on prosecution—Statement drafted by counsel on instructions—Police asked to witness statement—Inappropriate and undesirable method of conduct of trial. **R v Thatcher** [1969] 1 998, CA.

Reconstruction of crime—

Film. *See* Best evidence—Film—Reconstruction of crime, *ante*.

Record relating to trade or business. *See* Hearsay—Record relating to trade or business, *ante*.

Refreshing memory. *See* Witness—Refreshing memory, *post*.

Relevant facts—

Probative value—

Articles in possession of accused—Larceny by trick—Victim parting with money for purchase of Kruger sovereigns—Kruger sovereigns found in accused's home in possession of servant—Whether evidence relevant and admissible. **R v Kurasch** [1937] 2 130, CCA.

Separate counts—

Separate trials. *See* Criminal law (Separate trials—Separate counts—Evidence).

Sexual offence—

Complaint. *See* Complaints in sexual cases, *ante*.

Statement by victim—

Indecent assault on girl of tender years—Statement by girl to her mother shortly after alleged assault—Statement tending to show that accused not assailant—Girl not giving evidence—Whether girl's statement admissible. **Sparks v Regnam** [1964] 1 727, PC.

Sign language—

Statements by victim—

Murder—Throat wound—Victim conscious but unable to speak—Signs—Verbal evidence—Admissibility—Ceylon Evidence Ordinance (No 14 of 1895), s 32. **Chandarasekera v R** [1936] 3 865, PC.

Signature—

Disputed signature. *See* Handwriting—Signature disputed, *ante*.

Silence of accused—

Admission. *See* Admissions and confessions—Silence of accused, *ante*.

Comment in judge's summing-up—

Adverse comment. *See* Criminal law (Trial—Summing-up—Silence of accused—Adverse comment).

Form of comment. *See* Jury (Direction to jury—Comment by judge on failure of accused to give evidence).

Corroboration. *See* Corroboration—Silence of accused, *ante*.

Similar offences—

Commission by co-accused. *See* Co-accused—Similar offences committed by co-accused, *ante*.

Generally. *See* Improper conduct of accused on other occasions—Similar offences, *ante*.

Spouse—

Competence as witness for prosecution. *See* Competence as witness—Spouse as witness for prosecution, *ante*.

Spouses—

Communication between spouses—

Intended communication—Letter from prisoner to his wife intercepted before it reached wife—Letter tantamount to a confession—Whether admissible in evidence. **Rumping v Director of Public Prosecutions** [1962] 3 256, HL.

Stamp on goods—

Indication of place of origin. *See* Hearsay—Stamp on goods, *ante*.

Statement by accused—

Admission or confession. *See* Admissions and confessions, *ante*.

Bankruptcy proceedings—

Public examination—Charge of fraudulent conversion—Part of appellant's public examination in bankruptcy admitted on charge of fraudulent conversion—Evidence inadmissible—Larceny Act 1916, s 43(3). **R v Dawson, R v Wenlock** [1960] 1 558, CCA.

Cross-examination on statement—

Statement inadmissible—Questions put to accused as to statement—Questions improper. **R v Treacy** [1944] 2 229, CCA.

Statement not put in evidence by prosecution—Statement by accused to police—Co-defendant cross-examined by Crown on matter contained in statement although statement not put in evidence as part of prosecution's case—Whether cross-examination permissible. **R v Rice** [1963] 1 832, CCA.

Prosecution evidence. *See* Prosecution evidence—Statement by accused, *post*.

Statements to police. *See* Admissions and confessions—Answers and statements to police, *ante*.

Statutory declaration—

Stealing goods in possession of British Transport Commission—

Need to comply with exact terms of the statute—Criminal Justice Act 1948, s 41(3). **R v Marley** [1958] 2 359, CCA.

CRIMINAL EVIDENCE (cont)

- Summing-up by trial judge. *See* **Criminal law** (Trial—Summing-up).
- System—
 - Similar offences by co-accused. *See* Co-accused—Similar offences committed by co-accused, *ante*.
- Tape recording—
 - Best evidence. *See* Best evidence—Tape recording, *ante*.
 - Refreshing memory. *See* Witness—Refreshing memory—Tape recording, *post*.
- Theft—
 - Owner of goods not ascertained. *See* **Criminal law** (Larceny—Evidence of theft—Owner of goods not ascertained).
- Trial—
 - Witness—
 - Calling of witness after summing-up—Defence witness—Witness called after summing-up on application of defence—Whether permissible. *v* **Sanderson** [1953] 1 485, CCA.
 - Calling of witness after summing-up—Witness for prosecution—Witness called after summing-up at request of jury after retirement—Whether permissible. *R v* **Owen** [1952] 1 1040, CCA.
 - Court calling witness not called by parties—Defence having sought that prosecution should call two witnesses—Prosecution having declined to call both witnesses on ground of their unreliability, defence called one only—Case for defence closed—Matter not arising *ex improviso*—Judge seeking to ascertain truth called the other witness—Whether irregular and unjust to accused that court should call this witness—Conviction upheld. *R v* **Tregear** [1967] 1 989, CA.
 - Court calling witness not called by parties—Defence not having sought that prosecution should call witness—Case for defence closed—Matter not arising *ex improviso*—Trial taking on different aspect—Whether irregular and unjust to accused that court should call witness—Conviction quashed. *R v* **Cleghorn** [1967] 1 996, CA.
 - Generally. *See* **Criminal law** (Trial—Witnesses).
 - Recall of witness—Prosecution witness recalled after defence counsel's closing speech—Quarter sessions—Hearing of appeal by recorder—Recall of witness by recorder to refresh his memory of witness's testimony—Absence of note of witness's testimony—Whether recorder entitled to recall witness—Whether discretion to do so properly exercised. *Phelan v Back* [1972] 1 901, QBD.
- Unfitness to drive through drink or drugs. *See* **Road traffic** (Driving while unfit to drive through drink or drugs—Evidence).
- Voluntary statement—
 - Admission or confession. *See* Admissions and confessions—Voluntary statement, *ante*.
- Wife—
 - Accomplice's wife—
 - Corroboration. *See* Corroboration—Wife of accomplice, *ante*.
- Witness—
 - Committal proceedings. *See* **Criminal law** (Committal—Preliminary hearing before justices—Prima facie case—Evidence—Witnesses).
 - Competence. *See* Competence as witness, *ante*.
 - Failure of defence to call certain witnesses—
 - Comment by judge. *See* **Jury** (Direction to jury—Comment by judge on failure of defence to call certain witnesses).
 - Habitual criminal. *See* **Criminal law** (Habitual criminal—Witnesses).
 - Previous inconsistent statement—
 - Evidential value—Evidence of truth of matters stated—Previous statement by witness inconsistent with his evidence at trial—Deposition—Whether statement in deposition admissible as evidence of the truth of matters stated. *R v* **Golder**, *R v* **Jones**, *R v* **Porritt** [1960] 3 457, CCA.
 - Refreshing memory—
 - Notice to defence—Opportunity to consider weight to be attached to evidence—Witness refreshing memory from written statement made shortly after incident in question—Desirable but not essential that prosecutor should inform defence that witness has refreshed memory. *Worley v Bentley* [1976] 2 449, QBD.
 - Notice to defence—Opportunity to consider weight to be attached to evidence—Witness refreshing memory from written statement made shortly after incident in question—Effect of failure to notify defence that witness has refreshed memory. *R v* **Westwell** [1976] 2 812, CA.
 - Statement to police—Prosecution witness on initiative of prosecuting counsel re-reading statement before trial—Propriety—Statement made several weeks after offence committed—Trial 18 months after alleged commission of offence. *R v* **Richardson** [1971] 2 773, CA.
 - Tape recording—Police witness hearing incriminating conversations shouted by accused persons in separate cells of police station—Notes of witness checked with tape recording from machine placed in another cell—Whether witness could refresh his memory from such notes—Whether breach of Judges' Rules. *R v* **Mills**, *R v* **Rose** [1962] 3 298, CCA.
- Witnesses—
 - Collaboration—
 - Evidence as to collaboration—Police officers—Notes of interview with accused—Denial of collaboration in preparing notes—Refusal by court to allow jury to inspect notebooks—Whether refusal proper. *R v* **Bass** [1953] 1 1064, CCA.
- Written statement—
 - Admissibility—
 - Evidence tendered to court—Prepared statement based on original—Exclusion of prejudicial or inadmissible matter—Notice to defence—Criminal Justice Act 1967, ss 2, 9. **Practice Note** [1969] 3 1033, CA.

CRIMINAL EVIDENCE (cont)

Written statement (cont)—

Identity—

Proof of identity—Written statement admissible as evidence to the like extent as oral evidence—Accused charged with making false declaration for purpose of obtaining sickness benefit—Declaration that he had not been working during relevant period—Evidence by company director that accused had worked for him—Evidence in form of written statement including reference to 'Clive Jones'—Name of accused Clive Jones—Whether positive evidence that accused was the person referred to in statement—Criminal Justice Act 1967, s 9. **Ellis v Jones** [1973] 2 893, QBD.

CRIMINAL INJURIES

Compensation. *See* **Compensation** (Criminal injuries).

CRIMINAL INJURIES COMPENSATION BOARD

Certiorari to quash decision of. *See* **Certiorari** (Jurisdiction—Criminal Injuries Compensation Board).

CRIMINAL LAW

Abduction—

Unmarried girl under 18—

Intention to have unlawful sexual intercourse—Unlawful—Meaning—Outside bond of marriage—Sexual Offences Act 1956, s 19(1). **R v Chapman** [1958] 3 143, CCA.

Abnormality of mind—

Murder charge. *See* **Murder**—Diminished responsibility—Abnormality of mind, *post*.

Abolition of offence. *See* **Statute** (Penal statute—Abolition of offence).

Abortion—

Corroboration—

Direction to jury—Need for precise and clear direction—Issue whether doctor believed that patient was pregnant—Patient believing that she was pregnant with a child whom she did not wish to have. **R v Price** [1968] 2 282, CA.

Defence—

Danger to life—Young girl—Pregnancy due to rape—Operation by surgeon to procure miscarriage—Offences against the Person Act 1861, s 58. **R v Bourne** [1938] 3 615, CCC.

Medical practitioner—Opinion formed in good faith that termination of pregnancy necessary—Good faith—Evidence—Question of good faith to be determined by the jury—Medical evidence—Relevance—Abortion Act 1967, s 1(1). **R v Smith (John)** [1974] 1 376, CA.

Involuntary manslaughter—

Accessory before the fact. *See* **Accessory before the fact**—Involuntary manslaughter—Abortion, *post*.

Procuring drugs or instrument with intent to effect abortion—

Procuring—Meaning—Parting of possession from one person to another—Offences against the Person Act 1861, s 59. **R v Mills** [1963] 1 202, CCA.

Absolute liability—

Automatism as a defence. *See* **Automatism**—Offence of strict liability, *ante*.

Conspiracy to commit absolute offence. *See* **Conspiracy**—Statutory offence—Absolute offence, *post*.

Driving while disqualified. *See* **Road traffic** (Driving while disqualified for holding licence—Absolute prohibition).

Statutory offence—

Delivery of short weight—Act of agent—Delivery of short weight of coal by agent—Defendant not a party to agent's act—Whether liable—Weights and Measures Act 1889, s 29(2). **Brentnall and Cleland Ltd v London County Council** [1944] 2 552, KBD.

Premises used for smoking or dealing in cannabis—Being concerned in management—Accused concerned in management but having no knowledge that premises being used for smoking or dealing in cannabis. **Yeandel v Fisher** [1965] 3 158, QBD.

Premises used for smoking or dealing in cannabis—Being concerned in management—Presumption that mens rea required—Examination of relevant circumstances establishing intention of Parliament to create absolute offence. **Sweet v Parsley** [1969] 1 347, HL.

Disposal of goods by hire-purchase—Prohibition of disposal—Whether prohibition absolute—Hire-Purchase and Credit Sale Agreements (Control) Order 1956 (S.I. 1956 no 180), art 1. **R v St Margaret's Trust Ltd** [1958] 2 289, CA.

Absolute offence—

Interpretation of enactment. *See* **Statute** (Offence—Absolute offence).

Accessory after the fact—

Acquittal of principal—

Plea of guilty—Principal offenders subsequently acquitted. **R v Rowley** [1948] 1 570, CCA.

Conviction of principal—

Principal—Right of accessory to argue that crime had not been committed. **Mahadeo v R** [1936] 2 813, PC.

Direction to jury—

Specification of acts alleged to have been done to assist the felon—Statement made to avoid arrest on other charge. **R v Jones** [1948] 2 964, CCA.

Purpose—

Alleged accessory making money by his acts—Whether accessory after the fact. **R v Andrews, R v Craig** [1962] 3 961, CCA.

Store-breaking—

Receiving stolen goods—Charge of being accessory after the fact to store-breaking and charge of receiving stolen goods—Evidence—Corroboration. **R v Goddard** [1962] 3 582, CCA.

CRIMINAL LAW (cont)

Accessory after the fact (cont)—

Theft—

Receiving stolen goods—Charge of being accessory after the fact to theft as well as charge of receiving stolen goods—What evidence needed for conviction of being accessory as well as of receiving. **R v Thorley** [1962] 3 583, CCA.

Wife—

No coercion—Wife assisting husband and another felon—No coercion by husband—Whether wife can be found guilty of being accessory after the fact—Criminal Justice Act 1925, s 47. **R v Holley** [1963] 1 106, CCA.

Accessory before the fact—

Acquittal of principal—

Conviction of accessory—Whether conviction maintainable where persons charged as principals are acquitted. **Surujpaul called Dick v Reginam** [1958] 3 300, PC.

Named alleged principal felon charged with other persons unknown—Named principal acquitted—Whether accused can be guilty of being an accessory to felony so charged. **R v Anthony** [1965] 1 440, CCA.

Involuntary manslaughter—

Abortion—Involuntary manslaughter resulting from criminal abortion—Whether person can be accessory before the fact to involuntary manslaughter. **R v Creamer** [1965] 3 257, CCA.

Knowledge—

General unlawful purpose—Whether knowledge of general unlawful purpose or of particular proposed crime essential. **R v Bullock** [1955] 1 15, CCA.

Type of crime—Whether knowledge of type of crime or of precise crime essential. **R v Bainbridge** [1959] 3 200, CCA.

Murder. *See* Murder—Accessory before fact, *post*.

Principal in second degree—

Distinction. **R v Froggett** [1965] 2 832, CCA.

Accomplices—

Aiding and abetting. *See* Aiding and abetting, *post*.

Alternative offences—

Conviction of accomplice of graver offence—Conviction of principals of lesser offence—Propriety—Wounding with intent—Accused requesting co-accused to attack husband—Co-accused carrying out attack—Accused some distance from scene of attack—Accused and co-accused charged with wounding with intent—Accused convicted on ground of having required intent—Co-accused convicted of unlawful wounding—Whether accused in position of an abettor—Whether open to convict accused of graver offence. **R v Richards (Isabelle)** [1973] 3 1088, CA.

Acquittal—

Certiorari to quash. *See* **Certiorari** (Acquittal).

Administering poison or other destructive or noxious thing—

Maliciously administering poison etc—

Foresight—Absence of foresight—Direct act causing death—Injection of heroin into victim's body—Accused deliberately inserting syringe into victim's body knowing it contained noxious substance—Accused unaware that substance likely to cause death or serious bodily harm—Whether accused having acted 'maliciously'—Offences against the Person Act 1861, s 23. **R v Cato** [1976] 1 260, CA.

Maliciously—Meaning—Foresight—Need to prove—Theft of gas meter—Escape of gas—Inhabitant of house affected by gas—Whether accused having administered gas 'maliciously'—Offences against the Person Act 1861, s 23. **R v Cunningham** [1957] 2 412, CCA.

Noxious thing—

Substance likely to cause danger in common use—Heroin—Whether heroin a 'noxious thing'—Offences against the Person Act 1861, s 23. **R v Cato** [1976] 1 260, CA.

Admission. *See* **Criminal evidence** (Admission and confessions).

Admissions and confessions—

Imputation on character of police witness—

Allegation that confession concocted. *See* **Criminal evidence** (Character of accused—Imputation on character of prosecutor or witness—Police—Confession).

Affray—

Defence—

Unlawful arrest. *See* **Arrest** (Unlawful arrest—Defence to other charges—Accused unlawfully arrested—Accused resisting arrest—Accused charged with affray).

Principal in second degree—

Presence at affray—Person present with secret intention of helping should need arise—When person can properly be convicted of being a principal in the second degree to affray. **R v Allan** [1963] 2 897, CCA.

Public place—

Element of offence—Whether necessary that the fighting should have occurred in a public place. **Button v Director of Public Prosecutions** [1965] 3 587, HL.

Meaning of public place. **R v Mapstone** [1963] 3 930, Assizes, **R v Kane** [1965] 1 705, Assizes.

Terror—

Bystanders—Proof that bystanders might reasonably be expected to have been frightened—Unnecessary to prove actual fear—Whether necessary to prove presence of bystanders who could have been frightened. **Taylor v Director of Public Prosecutions** [1973] 2 1108, HL.

Evidence—Persons put in terror—Whether direct evidence of persons being put in terror necessary. **R v Sharp** [1957] 1 577, CCA.

Unlawful fighting—

Fight—Meaning—Display of force—Whether violence a necessary element. **Taylor v Director of Public Prosecutions** [1973] 2 1108, HL.

CRIMINAL LAW (cont)

Affray (cont)—

Unlawful fighting (cont)—

Only one person fighting unlawfully—Whether proper to convict one person alone of offence. **Taylor v Director of Public Prosecutions** [1973] 2 1108, HL.

Agent—

Corruption—

Transactions with agents. *See* Corruption—Transactions with agents, *post*.

Aiding and abetting—

Accessory after the fact. *See* Accessory after the fact, *ante*.

Accessory before the fact. *See* Accessory before the fact, *ante*.

Acquittal of principal—

Conviction of aiding and abetting offence of which principal acquitted—Validity of conviction—Road Traffic Act 1930, s 12(1). **Thornton v Mitchell** [1940] 1 339, KBD.

Misdemeanour—Effect of acquittal of principal offender—Whether prisoner could be convicted of aiding and abetting notwithstanding acquittal of alleged principal offender. **R v Humphreys and Turner** [1965] 3 689, Liverpool Crown Court.

Rape. *See* Rape—Aiding and abetting—Acquittal of principal, *post*.

Road traffic offence. *See* Road traffic (Offence—Aiding and abetting—Acquittal of principal).

Assisting offender. *See* Assisting offender, *post*.

Company. *See* Company—Aiding and abetting, *post*.

Elements of offence—

Presence at commission of principal offence—Encouragement—Intention—Necessity of proving intention to encourage principal offence and actual encouragement—Mere presence, although not accidental, insufficient. **R v Clarkson** [1971] 3 344, CMAC.

Illegal consumption of liquor. *See* Licensing (Consumption of intoxicating liquor after permitted hours—Aiding and abetting by licensee).

Illegal sale—

Purchaser—Liability—Aiding and abetting by purchaser—Sale of tobacco by unlicensed person. **Sayce v Coupe** [1952] 2 715, QBD.

Intention—

Particularity of intention—Whether help in preparation for particular type of crime becomes aiding and abetting when a crime of that type is subsequently committed. **Thambiah v Reginam** [1965] 3 661, PC.

Jurisdiction. *See* Jurisdiction—Aiding and abetting, *post*.

Mens rea—

Knowledge—Intended illegality—Carriage of goods—Overloading—Sales of goods completed with knowledge of intended illegality by using overloaded lorry on road. **National Coal Board v Gamble** [1958] 3 203, QBD.

Negligence—Failure to comply with conditions of B licence—Liability of hirer. **Carter v Mace** [1949] 2 714, KBD.

Reasonable enquiries—Carriage of goods for hire—Failure to comply with conditions of A licence—Hirer making reasonable inquiries. **Davies, Turner & Co Ltd v Brodie** [1954] 3 283, QBD.

Procuring commission of offence—

Knowledge by offender of procurer's acts—Communication between procurer and offender before commission of offence—Necessity—Procurer performing act which results in offender unwittingly committing absolute offence—A surreptitiously adding alcohol to B's drink—B ignorant of additional alcohol—B in consequence driving vehicle with blood-alcohol concentration above prescribed limit—Whether A may be convicted of having procured B to commit offence—Accessories and Abettors Act 1861, s 8—Road Traffic Act 1972, s 6(1). **Attorney-General's Reference (No 1 of 1975)** [1975] 2 684, CA.

Rape. *See* Rape—Aiding and abetting, *post*.

Receiving stolen goods—

Acquittal of theft—Conviction with other man of receiving—Accused liable to conviction for receiving as aider and abettor—Summary Jurisdiction Act 1848, s 5. **Wessel v Carter Paterson and Pickfords Carriers Ltd** [1947] 2 280, KBD.

Unlawful carriage of passengers by air by non-corporation companies for hire or reward. *See* Carriage by air (Carriage of passengers—Scheduled journey—Unlawful carriage by non-corporation companies for hire or reward—Aiding and abetting).

Alibi—

Direction to jury. *See* Jury (Direction to jury—Alibi).

Alternative charge—

Conviction. *See* Trial—Conviction—Alternative counts, *post*.

Larceny and receiving. *See* Larceny—Alternative offence—Receiving, *post*.

Manslaughter. *See* Manslaughter—Alternative charge, *post*.

Plea of guilty to lesser charge. *See* Trial—Plea—Guilty—Lesser charge, *post*.

Receiving and larceny. *See* Receiving stolen property—Alternative charges—Larceny and receiving, *post*.

Alternative offence—

Autrefois acquit. *See* Autrefois acquit—Alternative offence, *post*.

Substitution of verdict on appeal. *See* Appeal—Substitution of verdict—Alternative offence, *ante*.

Verdict. *See* Verdict—Alternative offence, *post*.

Amnesia. *See* Insanity—Amnesia, *post*.

CRIMINAL LAW (cont)

Appeal—

Abandonment of appeal—

Application to withdraw notice of abandonment—Bad legal advice—Accused acting under fundamental mistake in consequence of advice—Abandonment of appeal in consequence of mistake—Whether notice of abandonment should be treated as a nullity. **R v Munisamy** [1975] 1 910, CA.

Application to withdraw notice of abandonment—Circumstances in which court will entertain application. **R v Noble** [1971] 3 361, CA.

Application to withdraw notice of abandonment—Circumstances in which court will entertain application—Abandonment through fraud or ill-advice—Criminal Appeal Rules 1968 (S I 1968 No 1260), r 10. **R v Sutton** [1969] 1 928, CA.

Application to withdraw notice of abandonment—No power to entertain application unless abandonment through mistake—Appeal deemed to be dismissed when notice of abandonment given—Criminal Appeal Rules 1908 (S R & O 1908 No 227), r 23. **R v Moore** [1957] 2 703, CCA.

Hearing of appeal started—Whether appeal can be abandoned once hearing has started—Criminal Appeal Rules 1908 (S R & O 1908 No 227), r 23. **R v De Courcy** [1964] 3 251, CCA.

Withdrawal—Circumstances in which court will allow notice of abandonment to be treated as a nullity—Abandonment not the result of a deliberate and informed decision—Deliberate decision taken as result of bad legal advice not in itself capable of vitiating effectiveness of abandonment. **R v Medway** [1976] 1 527, CA.

Withdrawal—Jurisdiction—Abandonment a nullity—Court functus officio following abandonment—Jurisdiction to allow notice of abandonment to be treated as a nullity—Criminal Appeal Rules 1968 (SI 1968 No 1262), r 10(4). **R v Medway** [1976] 1 527, CA.

Application for leave to appeal. *See* Appeal—Leave to appeal—Application, *post*.

Application for leave to appeal—

Sentence of imprisonment—Application for leave to appeal against sentence—Death of prisoner before application heard—Whether widow allowed to continue application. **R v Rowe** [1955] 2 234, CCA.

Certificate for appeal—

Application—Attorney—General—Refusal to reconsider application for certificate—Whether under duty to reconsider—Criminal Appeal Act 1907, s 1(6)—Criminal Justice Act 1925, s 16(1), *ex parte Blackburn* [1956] 3 334, CA.

Certificate of trial judge—

Circumstances in which certificate should be granted—Doubt of trial judge—Judge having no doubt but granting certificate merely to obviate injustice—Whether certificate properly granted. **R v Boseley** [1937] 4 100, CCA.

Jurisdiction—Appeal on ground involving question of law alone—Right to appeal without certificate or leave—Judge having no jurisdiction to grant certificate—Criminal Appeal Act 1968, s 1(2). **R v Smith (David Raymond)** [1974] 1 632, CA.

Question of law—Appeal on question of law—Desirability of certificate from trial judge—Criminal Justice Act 1948, s 38(2)(a)—Criminal Appeal Act 1907, s 3(a). **R v Yindrich** [1953] 2 397, CCA.

Comment prejudicial to fair hearing—

Contempt of court.

Conduct of trial judge—

Evidence of conduct—Application to admit evidence of trial judge's conduct—Appeal on grounds that fairness of trial vitiated by conduct. **R v Hircock** [1969] 1 47, CA.

Court of Appeal. *See* Court of Appeal, *post*.

Criminal cause or matter—

Decision of Divisional Court—Appeal to House of Lords—Bail—Recognisance—Forfeiture of recognisance—Decision of justices to forfeit surety's recognisance—Application by surety for certiorari dismissed by Divisional Court—Whether dismissal a decision in a 'criminal cause or matter'—Whether appeal lying only to House of Lords against Divisional Court's decision—Administration of Justice Act 1960, s 1(1)(a). **R v Southampton Justices**, *ex parte Green* [1975] 2 1073, CA.

Death of appellant—

Effect—Death before application for leave to appeal heard—Whether personal representatives can pursue application for leave to appeal or become appellant—Possibility of personal representatives applying to Secretary of State in cases of hardship with a view to reference to the court—Criminal Appeal Act 1968, s 17. **R v Jefferies** [1968] 3 238, CA.

Defence certificate—

Lapse of certificate—Whether certificate lapses when conviction recorded—Poor Prisoners' Defence (Defence Certificate) Regulations 1960 (S I 1960 No 260), reg 6. **R v Mullins** [1962] 3 237, CCA.

Diminished responsibility. *See* Murder—Diminished responsibility—Appeal, *post*.

Dismissal—

No substantial miscarriage of justice—Certain evidence wrongly admitted—Jury would undoubtedly have convicted on evidence properly admissible—Criminal Appeal Act 1907, s 4(1), proviso. **Myers v Director of Public Prosecutions** [1964] 2 881, HL.

Fitness to plead—

Direction to jury—Onus of proof—Misdirection—Right of appeal—Reference by Secretary of State—Jurisdiction of Court of Appeal to determine question of onus of proof on issue of unfitness to plead—Criminal Appeal Act 1907, s 19(a). **R v Podola** [1959] 3 418, CCA.

CRIMINAL LAW (cont)

Appeal (cont)—

Fresh evidence—

Admission—Practice—Principles on which the Court of Appeal will act in exercising its discretion whether to allow fresh evidence to be called—Criminal Appeal Act 1907, s 9. **R v Parks** [1961] 3 633, CCA.

Appeal from court-martial. *See* **Court-martial** (Appeal—Fresh evidence).

Change of evidence—Evidence of prosecution witness given on appeal materially different from that given at trial—Practice of Court of Criminal Appeal—No acceptable reason given by witness for change of testimony—Appeal disposed of as if witness had given no evidence on appeal. **R v Flower (Richard)**, **R v Siggins**, **R v Flower (Eric)** [1965] 3 669, CCA.

Circumstances in which evidence will be admitted—Evidence likely to be credible—Criminal Appeal Act 1966, s 5. **R v Stafford** [1968] 3 752, CA.

Co-accused—Evidence of co-accused—Evidence not given at trial—Co-accused pleaded guilty at trial but was unwilling to testify, though competent and compellable—Willing to testify on appeal by his fellow prisoner—Whether evidence fresh evidence—Criminal Evidence Act 1898, s 1. **R v Boal** [1964] 3 269, CCA.

Evidence on an issue which is the subject of the appeal—Issue not raised in court below—Whether court obliged to hear fresh evidence on an issue not raised in court below—Criminal Appeal Act 1968, s 23(2). **R v Melville** [1976] 1 395, CA.

Expert evidence—Expert evidence foundation of charge—Evidence of pathologist—Subsequent challenge by expert of equal standing—Circumstances in which fresh evidence of scientific or medical opinion admitted—Criminal Appeal Act 1968, s 23. **R v Lomas** [1969] 1 920, CA.

Issue not raised at trial—Insanity—Plea of insanity not raised at trial—Power of Court of Appeal to consider evidence as to insanity—Criminal Appeal Act 1907, s 4(1). **R v Dashwood** [1942] 2 586, CCA.

Matters occurring after trial—Procedure—Reference by Home Secretary—Criminal Appeal Act 1907, s 9, s 19. **R v Thomas** [1959] 3 522, CCA.

Power to receive—Courts-Martial Appeal Court. *See* **Court-martial** (Appeal—Fresh evidence—Power to receive).

Reference by Home Secretary. *See* Appeal—Reference by Home Secretary—Fresh evidence, *post*.

Grounds of appeal—

Drafting. *See* Appeal—Notice of appeal—Grounds of appeal—Drafting, *ante*.

Reference by Home Secretary. *See* Appeal—Reference by Home Secretary—Grounds of appeal, *post*.

House of Lords—

Leave—Application—Jurisdiction of court to consider more than one application. *See* **House of Lords** (Leave to appeal—Application—Court of Appeal, Criminal Division—Jurisdiction—Applicant's first application refused).

Leave—Procedure. *See* **House of Lords** (Leave to appeal—Criminal cause or matter).

Insanity—

Special verdict—Guilty but insane—Special verdict of guilty of act but insane at time of its commission—Whether right of appeal against finding of guilty of act—Trial of Lunatics Act 1883, s 2(1)—Criminal Appeal Act 1907, s 3. **R v Duke** [1961] 3 773, CCA.

Irregularity at trial—

Constitution of court—Court of trial not properly constituted—Trial a nullity—New trial ordered—Deputy recorder not qualified for appointment. **R v Cronin** [1940] 1 618, CCA, [1940] 2 242, CCA.

Lack of representation by counsel—

Somaliland. *See* **Somaliland** (Criminal law—Representation by counsel—Appeal).

Leave to appeal—

Application—Extension of time for leave—Conviction involving sentence of death—No power to extend time—Conviction of murder not involving sentence of death—Accused under 18 at time of crime—Whether court having power to extend time for leave to appeal—Criminal Appeal Act 1907, s 7—Children and Young Persons Act 1933, s 53(1). **R v Collins** [1943] 1 203, CCA.

Application—Legal advice—Importance of intending appellant seeking legal advice—Necessity for grounds of appeal to be substantial and particularised—Discretion to direct loss of time on refusal of unmeritorious applications. **Practice Note** [1970] 1 1119, CA.

Application—Treatment as appeal—Consent—Application for leave to appeal not to be treated as the appeal unless counsel for the applicant consents. **Practice Note** [1961] 3 522, CCA.

Application—Validity—Appellant having absconded—Application by solicitors on appellant's behalf—Instructions to appeal given by appellant during trial—Appellant absconding during trial before verdict and sentence—Validity of notice of application—Criminal Appeal Rules 1968 (S I 1968 No 1262), r 2(5). **R v Jones (R E W)** [1971] 2 731, CA.

Grounds of appeal—Grounds settled by counsel—Grounds to be only those which counsel in position to uphold before Court of Criminal Appeal. **R v B**, **R v H** [1966] 3 496, CCA.

Order—Form of order—Reasons not to be given. **Practice Note** [1961] 3 522, CCA.

Practice—Time for submitting grounds of appeal. **R v Ellison** [1962] 1 417, CCA.

Refusal—Single judge—Refusal of leave by single judge—Right to have application determined by Court of Appeal—Time limit of 14 days for accused to give notice of wish to have application heard by court—Extension of time limit—Extension after expiry of 14 days—Circumstances in which time limit will be extended—Criminal Appeal Rules 1968 (S I 1968 No 1262), r 12(1), (4). **R v Doherty** [1971] 3 622, CA.

CRIMINAL LAW (cont)

Appeal (cont)—

Leave to appeal (cont)—

Refusal—Single judge—Refusal of leave by single judge—Right to have application determined by Court of Appeal—Time limit of 14 days for accused to give notice of wish to have application heard by court—Extension of time limit—Power to extend time limit exercisable by any judge—Power exercisable even though time limit of 14 days already expired—Criminal Appeal Act 1968, s 31—Criminal Appeal Rules 1968 (S I 1968 No 1262), r 12(1), (4). **R v Ward** [1971] 3 619, CA.

Malta. *See* Malta (Criminal law—Appeal).

Murder—

No miscarriage of justice. *See* Appeal—No miscarriage of justice—Murder, *post*.

Non-capital murder—Leave to appeal—Application—Procedure. **R v Xanthou**, **R v Attard** [1962] 1 863, CCA.

Sentence one fixed by law—No appeal against sentence—Criminal Appeal Act 1907, s 3—Homicide Act 1957, s 9(1). **Practice Note** [1957] 2 378, CCA.

No miscarriage of justice—

Alternative verdict—Power to substitute alternative verdict—No miscarriage of justice if jury had convicted of alternative offence—Finding by jury of facts essential to establish alternative offence—Conviction of murder—Evidence of accused's wife—Wife only eye-witness—Wife's evidence admissible—Ample other evidence to support a conviction of manslaughter—Whether court having power to substitute verdict of manslaughter—Criminal Appeal Act 1968, ss 2(1), proviso 3(1). **R v Deacon** [1973] 2 1145, CA.

Misdirection—Only reasonable and proper verdict guilty—Right of court to dismiss appeal notwithstanding misdirection—Criminal Appeal Act 1905, s 4(1). **R v Haddy** [1944] 1 319, CCA.

Murder—Application of proviso—Test to be applied—Jamaica—Judicature (Appellate Jurisdiction) Law 1962 (Jamaica), s 13(1) proviso. **Anderson v Reginam** [1971] 3 768, PC.

Murder—Application of proviso—Test to be applied by appellate court—Criminal Appeal Act 1968, s 2(1) proviso. **R v Cooper** [1969] 3 118, C-MAC.

Reasonable jury—Assumption that jury not perverse—Criminal Appeal Act 1907, s 4(1). **Stirland v Director of Public Prosecutions** [1944] 2 13, HL.

Retrial—Disagreement of jury at first trial—Appellate court not precluded from applying proviso—Test to be applied—Criminal Appeal Act 1907, s 4(1), proviso. **Commissioners of Customs and Excise v Harz** [1967] 1 177, HL.

Retrial—Disagreement of jury at first trial—Whether there should be, in relation to second trial, an application of the proviso—Criminal Appeal Act 1907, s 4(1). **R v Johnson** [1961] 3 969, CCA.

Notice of appeal—

Grounds of appeal—Drafting—Necessity for careful and accurate drafting—Appeal limited to grounds set out in notice of appeal. **R v Upton** [1973] 3 318, CA.

Obscene publication—

Forfeiture. *See* Obscene publications—Forfeiture—Appeal, *post*.

Order for retrial. *See* Trial—Retrial—Order for retrial—Power of appeal court, *post*.

Privy Council. *See* Privy Council (Criminal appeal).

Proviso. *See* Appeal—No miscarriage of justice, *ante*.

Reference by Home Secretary—

Fresh evidence—Consideration—Scope of court's power to consider fresh evidence on reference by Home Secretary—Criminal Appeal Act 1907, s 19(a)—Criminal Appeal Rules 1908 (S R & O 1908 No 227), r 48. **R v Sparkes** [1956] 2 245, CCA.

Fresh evidence—Consideration—Wide power to consider fresh evidence when hearing reference by Home Secretary—Criminal Appeal Act 1907, s 19(a). **R v McGrath** [1949] 2 495, CCA.

Grounds of appeal—Appeal confined to grounds stated in reference—Criminal Appeal Act 1907, s 19(a)—Criminal Appeal Rules 1908 (S R & O 1908 iNo 227), r 48. **R v Caborn-Waterfield** [1956] 2 636, CCA.

Whole case—Sentence—Reference for purpose of reviewing sentence—Whether only power is to refer whole case and therefore open to appellant to appeal against conviction—Criminal Appeal Act 1968, s 17(1)(a). **R v Bardoe** [1969] 1 948, CA.

Reference of point of law following acquittal of accused—

Form of reference—Point of law—Statement of facts giving rise to point of law—Question whether in circumstances killing criminal or justifiable—Not a question of law—Only question of law whether facts sufficient to raise an issue whether killing justifiable—Criminal Appeal (Northern Ireland) Act 1968, s 484 (as inserted by the Criminal Justice Act 1972, s 63(3), Sch 4). **Reference under s 484A of the Criminal Appeal (Northern Ireland) Act 1968 (No 1 of 1975)** [1976] 2 937, HL.

Reference to Courts-Martial Appeal Court by Service authorities. *See* Court-Martial (Appeal—Reference of cases by Service authorities).

Report sent to Court of Appeal—

Inquiries subsequent to trial—Report of inquires—Report not to be sent to Court of Criminal Appeal. **R v Williams** [1957] 1 689, CCA.

Right of appeal—

Irregularity at trial—Loss of right to appeal—Reference to previous conviction on indictment given to jury—Counsel given opportunity to ask for discharge of jury—Counsel electing to appeal—Course adopted by counsel depriving appellant of right to appeal—Criminal Appeal Act 1907, s 4(1). **R v Cutter** [1944] 2 337, CCA.

Mixed fact and law—Appeal on question of law and also on further grounds involving questions of fact or mixed law and fact—Need for leave to argue further grounds—Criminal Appeal Act 1907, s 3(a), (b). **R v Robinson** [1953] 2 334, CCA.

CRIMINAL LAW (cont)

Appeal (cont)—

Substitution of verdict—

Acquittal of alternative offence—Effect—Whether power to substitute verdict of guilty of offence of which appellant acquitted—Criminal Appeal Act 1907, s 5(2). **R v Melvin** [1953] 1 294, CCA.

Alternative offence—Jury discharged from giving verdict on count alleging alternative offence—Receiving stolen property—Verdict of guilty on a second count of receiving goods stolen outside United Kingdom substituted for verdict on first count of receiving where conviction on first count not upheld—Jury discharged at trial from giving verdict on second count—Power to substitute verdict of guilty of alternative offence—Criminal Appeal Act 1907, s 5(2). **R v Smith** [1962] 2 200, CCA.

Alternative offence—Jury discharged from giving verdict on count alleging alternative offence—Verdict of guilty on a second count of receiving substituted for verdict of guilty on first count of larceny where conviction on first count not upheld—Jury discharged at trial from giving verdict on second count—Criminal Appeal Act 1907, s 5(2). **R v Adair** [1958] 2 629, CCA.

Alternative offence—Jury must have been satisfied of facts proving appellant guilty of alternative offence—False pretences—Verdict of obtaining money by false pretences substituted for verdict of larceny by a trick—Criminal Appeal Act 1907, s 5(2)—Larceny Act 1916, s 44(3), (4). **R v Caslin** [1961] 1 246, CCA.

Unreasonable verdict—

Verdict set aside—No corroboration—Charge of having carnal knowledge with girls—Jury convicting on uncorroborated evidence—Criminal Appeal Act 1907, s 4(1). **R v Dent** [1943] 2 596, CCA.

Appellant—

Practice in Court of Appeal. *See* Court of Appeal—Practice—Appellant, *post*.

Arrest. *See* Arrest.

Arrest without warrant. *See* Arrest (Arrest without warrant).

Assault—

Assault on police constable in execution of duty. *See* Police (Assault on constable in execution of duty).

Defence—

Intoxication. *See* Intoxication as a defence—Capacity to form intent—Offence not requiring proof of specific intent—Self-induced intoxication—Assault, *post*.

Dismissal of charge—

Trifling assault—Assault so trifling as not to merit any punishment—Hearing on the merits—Plea of guilty—Facts outlined to justices by prosecution—Whether a hearing of the case 'upon the merits'—Whether justices having jurisdiction to dismiss charge—Offences against the Person Act 1861, s 44. **Ellis v Burton** [1975] 1 395, QBD.

Mens rea—

Recklessness—Whether proof of recklessness sufficient. **R v Venna** [1975] 3 788, CA.

Occasioning bodily harm—

Mental injury—Husband and wife—Enforcement of marital rights—Husband forcing wife to have intercourse—Injury to wife's state of mind—Offences against the Person Act 1861, s 47. **R v Miller** [1954] 2 529, Assizes.

Self-defence—

Unwillingness to fight—Whether obligation first to indicate unwillingness to fight. **R v Julien** [1969] 2 856, CA.

Assisting offender—

Conviction on indictment for principal offence—

Procedure—Issue to be raised before evidence closed in relation to principal offence—Separate count to be included in indictment where possibility of conviction of assisting offender foreseen—Issue to be raised in course of proceedings before evidence closed if not foreseen—Accused to be offered opportunity of adjournment—Criminal Law Act 1967, s 4(1), (2). **R v Cross and Channon** [1971] 3 641, CA.

Indictment—

Form of indictment—Necessity for court to specify particular offence committed by principal offender—Criminal Law Act 1967, s 4(1), (3). **R v Morgan** [1972] 1 348, CA.

Knowledge of accused—

Knowing or believing offender to be guilty of offence—Whether necessary to prove that accused knew identity of offender—Criminal Law Act 1967, s 4(1). **R v Brindley** [1971] 2 698, CA.

Attempt—

Acts constituting attempt—

Connection with commission of substantive offence—Proximity—Attempt to steal copper—Accused having cut wire of compound in which copper store situated. **Davey v Lee** [1967] 2 423, QBD.

Acts preparatory to offence—

Directly leading to commission of full offence—Gross indecency—Attempt to procure—Invitation to boy and subsequent meetings—Indecent suggestions made to boy—Accused arrested at that point—Whether overt acts capable of being capable of being attempt to procure boy to commit act of gross indecency. **R v Miskell** [1954] 1 137, C-MAC.

Proximity—Not sufficient to constitute attempt—Charge of attempting to sell meat above maximum price—False price tickets kept separately from meat—Employee instructed to substitute false price tickets before delivering meat. **Hope v Brown** [1954] 1 330, QBD.

Blackmail. *See* Demanding money with menaces—Attempt, *post*.

Full offence committed—

Merger—Charge of attempt—Conviction of attempt not open to court—Criminal Procedure Act 1851, s 9. **R v Harden** [1962] 1 286, CCA.

CRIMINAL LAW (cont)

Attempt

Full offence committed—

Merger—Charge of attempt—Conviction of attempt when evidence showed full offence (felony of housebreaking) committed—Whether conviction of the misdemeanour, the attempt, permissible—Criminal Procedure Act 1851, s 12. *R v Males* [1961] 3 705, CCA.

Impossible attempt—

Belief of accused that his acts constitute an offence—Acts not in fact an offence—Handling stolen goods—Goods having ceased to be stolen goods—Accused handling goods in belief that they were stolen goods—Whether accused guilty of an attempt to handle stolen goods. *Haughton v Smith* [1973] 3 1109, HL.

Intention—

Murder—Natural Consequences of act. *See* Intention—Natural Consequences of act—Attempted murder, *post*.

Jurisdiction. *See* Jurisdiction—Attempt, *post*.

Mens rea—

Intent—Proof of intent to commit complete offence—Knowledge that commission of complete offence likely consequence of accused's act—Charge of attempting by wanton driving to cause bodily harm—Whether sufficient to prove knowledge that bodily harm likely consequence of wanton driving—Whether necessary to prove intent to cause bodily harm. *R v Mohan* [1975] 2 193, CA.

Procuring gross indecency. *See* Gross indecency—Procuring gross indecency—Attempt to persuade commission act of gross indecency, *post*.

Sentence—

Maximum for substantive offence—Whether permissible to impose sentence for attempt exceeding maximum for substantive offence. *R v Pearce* [1952] 2 718, CCA.

Automatism—

Dangerous driving. *See* Road traffic (Dangerous driving—Mens rea—Automatism).

Insanity distinguished—

Burden of proof—Alternative defences of automatism and insanity—Evidence—No defence of automatism when only cause alleged for unconscious state is disease of the mind within the M'Naghten rules—Evidence forming a proper foundation for automatism necessary before issue can be left to jury—No other pathological cause than psychomotor epilepsy put forward—Psychomotor epilepsy a disease of the mind—Issue of automatism not left to jury. *Bratty v Attorney-General for Northern Ireland* [1961] 3 523, HL.

Offence of strict liability—

Mens rea not element of offence—Automatism a defence—Dangerous driving—Accused attacked by swarm of bees—Disabled from controlling vehicle—Whether driving. *Hill v Baxter* [1958] 1 193, QBD.

Unconscious act—

Cause other than disease of mind—Onus of proof—Accused suffering from cerebral tumour—Onus on Crown to prove act not an unconscious one arising from cerebral tumour. *R v Charlson* [1955] 1 859, Assizes.

Autrefois acquit—

Alternative offence—

General verdict of acquittal—Verdict sufficient to found plea of autrefois acquit of alternative offences—Partial verdict of acquittal good in respect of particular offence. *Director of Public Prosecutions v Nasralla* [1967] 2 161, PC.

Double plea. *See* Trial—Plea—Double plea—Autrefois acquit after plea of not guilty, *post*.

Issue determined by verdict in earlier proceedings—

Issue raised in subsequent trial for different offence arising out of same events—Quashing of conviction of murder in the course of theft, by Court of Criminal Appeal—Sole issue ventilated on appeal was as to accused's presence at scene of crime—Subsequent trial of accused on charge of robbery on same occasion—Whether quashing of murder conviction enabled him to maintain plea of autrefois acquit or *res judicata*. *Connelly v Director of Public Prosecutions* [1964] 2 401, HL.

Larceny—

Acquittal of unlawful possession—Subsequent charge of larceny of same items—Previous acquittal no defence to larceny charge—Metropolitan Police Courts Act 1839, s 24. *Flatman v Light* [1946] 2 368, KBD.

Manslaughter—

Acquittal—Dangerous driving—Accused found not guilty of manslaughter and jury not agreed on alternative verdict of dangerous driving—Case sent by judge to quarter sessions for trial of dangerous driving—Whether quarter sessions had jurisdiction to try issue of dangerous driving on indictment for manslaughter—Road Traffic Act 1934, s 34. *R v Shipton, Ex parte Director of Public Prosecutions* [1957] 1 206, QBD.

Murder—

Accused found not guilty of murder and jury not agreed on alternative verdict of manslaughter—Rule that jury entitled not to return a partial verdict obsolete—General verdict of acquittal sufficient to found plea for all alternative offences—Partial verdict of acquittal sufficient only for crimes in respect of which verdict returned—Jury not entitled to disregard judge's direction for a partial verdict and to return only a general verdict—Whether verdict of jury was a general verdict. *Director of Public Prosecutions v Nasralla* [1967] 2 161, PC.

Same offence—

Two summonses—First summons incorrectly drawn—Leave to amend summons refused on ground that amendment would be useless—Plea of autrefois acquit to second summons. *Halsted v Clark* [1944] 1 270, KBD.

CRIMINAL LAW (cont)**Autrefois acquit (cont)—****Verdict of jury—**

What constitutes verdict—Jury agreed on verdict—Verdict not formally delivered to court—Jury discharged before delivery of verdict—Accused tried again on same charge—Whether agreement of jury at first trial sufficient to found plea of autrefois acquit or convict. **R v Robinson (Adeline)** [1975] 1 360, CA.

Withdrawal of summons—

Summons withdrawn on ground of informality—Subsequent summons issued. **Owens v Minoprio** [1942] 1 30, KBD.

Autrefois convict—**Committal for trial after plea of guilty—**

No consent to summary trial—Whether plea of autrefois convict maintainable at trial—Criminal Justice Act 1925, s 24. **R v Briggs** [1938] 1 529, CCA.

Consideration of outstanding offences—

Conviction—Other offences taken into consideration at accused's request—No conviction in respect of other offence sufficient to establish plea of autrefois convict. **R v Nicholson** [1947] 2 535, CCA.

Conviction—

Conviction by justices in absence of accused—Conviction not recorded in court register—Further conviction and fine in respect of same charge—Summary Jurisdiction Act 1879, s 22(1), (4). **R v Manchester Justices, Ex parte Lever** [1937] 3 4 KBD.

Plea of guilty—Committal for trial—Accused already convicted—Whether plea of autrefois convict should be entered—Criminal Justice Act 1925, s 24(1). **R v Grant** [1936] 2 1156, CCA.

Summary trial—Committal for trial after adjudication—No sentence—Criminal Justice Act 1925, s 24. **R v Sheridan** [1936] 2 883, CCA.

Conviction by foreign court—

Relevance—Fugitive convicted in Louisiana of attempted armed robbery—Fresh charge of Louisiana offence of aggravated burglary—Whether autrefois convict. **United States Government v Atkinson** [1969] 2 1151, QBD.

Escape from prison—

Disciplinary proceedings before visiting justices—Punishment awarded by justices—Subsequent trial on indictment for prison breach—Separate count for simple escape struck out—Whether award of visiting justices a bar to indictment. **R v Hogan, R v Tompkins** [1960] 3 149, CCA.

Murder—

Wounding with intent—Conviction of wounding—Subsequent death of person assaulted—Autrefois convict not a good plea to charge of murder. **R v Thomas** [1949] 2 662, CCA.

Bail—

Appeal to House of Lords. *See* Appeal—Criminal causes or matter—Decision of Divisional Court—

Appeal to House of Lords—Bail, *ante*.

Appellant—

Appeal to House of Lords—Appeal dismissed by Court of Criminal Appeal—Application for fiat of Attorney-General for appeal to House of Lords—Whether prisoner entitled to bail before certificate granted—Criminal Appeal Act 1907, ss 14(2), 21. **R v Welham** [1960] 1 260, CCA.

Conviction by court of summary jurisdiction—Committal for sentence to quarter sessions—Notice of appeal to quarter sessions against conviction—Right to apply to High Court for bail—Criminal Justice Act 1948, s 29(1), s 37(1)(a). **Re Whitehouse** [1951] 1 353, KBD.

Application—

Jurisdiction—Central Criminal Court—When application made to Central Criminal Court or to High Court. **Practice Direction** [1965] 2 253.

Successive applications. *See* Bail—Successive applications, *post*.

Bail during trial—

Discretion of judge. **Practice Note** [1974] 2 794, CA.

Case stated for High Court—

Conviction by quarter sessions—Appeal to High Court by way of case stated for bail pending hearing of appeal—Jurisdiction of judge to grant bail. **Blyth v Lancaster Appeal Committee** [1944] 1 587, KBD.

Central Criminal Court—

Committal for trial—Committal by magistrates' court to Central Criminal Court for trial—Committal in custody—Application for bail—Information to person committed—Magistrates' Courts Rules 1952 (SI 1952 No 2190), r 9. **Practice Direction** [1965] 2 253.

Condition—

Validity—Justices' order that surety first deposit money with the court—Validity of order—Magistrates' Courts Act 1952, s 105—Criminal Justice Act 1967, s 21(1). **R v Harrow Justices, ex parte Morris** [1972] 3 494, QBD.

Recognition—

Forfeiture—Magistrates' court—Discretion—Recognition conditioned for appearance of accused before court—Surety's recognition—Failure of accused to appear—Discretion to forfeit surety's recognition in whole or in part—Exercise of discretion—Matters to be considered—Surety's culpability for accused's disappearance—Surety's means of paying amount of recognition—Wife having entered into recognition as surety for husband—Property owned by husband or by husband and wife jointly to be excluded from consideration—Magistrates' Courts Act 1952, s 96(1)(3). **R v Southampton Justices, Ex parte Green** [1975] 2 1073, CA.

CRIMINAL LAW (cont)

Bail (cont)—

Recognisance (cont)—

Forfeiture—Magistrates' court—Discretion—Recognisance conditioned for appearance of accused before court of trial—Surety's recognisance—Failure of accused to appear—Discretion to forfeit part only of recognisance—Culpability of surety—Prima facie liability of surety to forfeit whole recognisance—Efforts made by surety to secure attendance of accused—Duty of magistrate to take account of surety's efforts to discharge obligations before deciding whether to forfeit whole recognisance. **R v Horseferry Road Magistrates' Court, ex parte Pearson** [1976] 2 264, QBD.

Successive applications—

Jurisdiction of Lord Chancellor—Bail refused by magistrate—Successive applications made to judge in chambers, a Divisional Court and to the Lord Chancellor—Whether right to go from court to court or from judge to judge—Habeas Corpus Act 1679, s 2, s 9—Administration of Justice Act 1960, s 14(2). **Re Kray, Re Kray, Re Smith** [1965] 1 710, LC.

Bankrupt—

Gambling by bankrupt engaged in trade or business—

Income tax debt unpaid—Whether debt contracted in course and for the purposes of trade or business—Bankruptcy Act 1914, s 157(1). **R v Vaccari** [1958] 1 468, CCA.

Bankruptcy offences. *See* **Bankruptcy (Offences)**.

Barrister—

Appearance in court on own behalf. *See* **Counsel** (Appearance—Appearance in court on own behalf—Practice—Criminal matter).

Betting offence. *See* **Gaming (Betting)**.

Bigamy—

Defence—

Absence for seven years—Second marriage—Accused marrying a second time after seven years—Second or subsequent marriage—Second marriage after seven year period followed by third marriage—Availability of statutory defence in respect of third and subsequent bigamies—Offences against the Person Act 1861, s 57. **R v Treanor (or McAvoy)** [1939] 1 330, CCA.

Absence for seven years—Second marriage—More than one bigamy—Defence available notwithstanding previous bigamy—Offences against the Person Act 1861, s 57. **R v Taylor** [1950] 2 170, CCA.

Belief in invalidity of prior marriage—Belief that first wife already married at time of marriage with accused—Offences against the Person Act 1861, s 57. **R v Dolman** [1949] 1 813, Assizes.

Belief in invalidity of prior marriage—Reasonable grounds—Belief must be held on reasonable grounds—Absence of inquiry—No reasonable grounds—Question of existence of belief not left to jury—Offences against the Person Act 1861, s 57. **R v King** [1963] 3 561, CCA.

Belief that previous marriage dissolved—Honest belief on reasonable grounds—Belief that at the date of the second marriage former marriage had been dissolved—Whether a good defence—Offences against the Person Act 1861, s 57. **R v Gould** [1968] 1 849, CA.

Marriage—

Validity of previous marriage—Polygamous or potentially polygamous marriage—Whether capable of constituting a valid first marriage—Offences against the Person Act 1861, s 57. **R v Sarwan Singh** [1962] 3 612, QS.

Validity of previous marriage—Potentially polygamous marriage—Marriage subsequently becoming monogamous in character—Change in appellant's local law—Ordinance forbidding polygamous marriages prospectively—Appellant acquiring English domicile—Appellant subsequently going through ceremony of marriage while first marriage still subsisting—Whether second marriage bigamous—Offences against the Person Act 1861, s 57. **R v Sagoo** [1975] 2 926, CA.

Validity of prior marriage—

Prima facie validity—Accused married before prior marriage—Accused having last seen first husband ten years before prior marriage—Accused marrying for third time five days after second marriage. **R v Morrison** [1938] 3 787, CCA.

Validity of subsequent marriage—

Marriage ceremony invalid apart from bigamous nature—Whether offence of bigamy committed. **R v Robinson** [1938] 1 301, CCA.

Bill of indictment—

Preferment—

Indictment containing counts upon which accused not committed—Counts 'founded on facts or evidence disclosed in ... examination' before magistrates—Power of trial judge to decide whether counts properly included—Previous consent of court or inclusion of counts not necessary—Validity of indictment where counts so added to be raised on motion to quash—Administration of Justice (Miscellaneous Provisions) Act 1933, s 2. **R v Morry** [1945] 2 632, CCA.

No committal for trial—Application to judge in chambers—Discretion of judge—Inquiry into exercise of discretion—Administration of Justice (Miscellaneous Provisions) Act 1933, s 2. **R v Rothfield** [1937] 4 320, CCA.

Blackmail. *See* **Demanding money with menaces, post**.

Breach of the peace—

Public order. *See* **Public order**.

CRIMINAL LAW (cont)**Brothel—****Keeping a brothel—**

Management—Evidence—Women visiting premises with different men—Whether relevant and admissible that women were prostitutes—Observations on form of evidence. *R v Korie* [1966] 1 50, Liverpool Crown Court.

Meaning of brothel—House let off in single room apartments with exclusive occupation, but not converted structurally—Rooms used for purposes of prostitution, but no room used by more than one woman—Whether house a brothel—Sexual Offences Act 1956, s 33. *Abbott v Smith* [1964] 3 762, Liverpool Crown Court.

Meaning of brothel—Necessary element that more than one woman should use premises for bringing men there—Assisting in the management of a brothel—Tenant of premises occupying premises with stepdaughter—Both women using premises for purpose of having illicit sexual intercourse with men—Whether fact of one of two women so using premises being a tenant prevented premises being a brothel—Whether stepdaughter was assisting in its management—Sexual Offences Act 1956, s 33. *Gorman v Standen, Palace-Clark v Same* [1963] 3 627, QBD.

Meaning of brothel—Premises used by one woman for purposes of prostitution—Whether a brothel—Criminal Law Amendment Act 1885, s 13(3). *Strath v Foxon* [1955] 3 398, QBD.

Right to trial by jury—Charge under Criminal Law Amendment Act 1885, s 13(1). *Waroquiers v Marsden* [1950] 1 93, KBD.

Landlord letting premises for use as brothel—

Separate lettings—User of premises the subject of separate independent lettings—Part used as 'brothel'—Landlord wilfully party to use continuing—Prostitutes occupied separate rooms the subject of separate lettings—Nest of prostitutes—Prostitutes solicited in or near the house, and used the premises for prostitution to landlord's knowledge—Whether fact that rooms were separately let was of weight—Whether user was dominant consideration—Sexual Offences Act 1956, s 34. *Donovan v Gavin* [1965] 2 611, QBD.

Buggery—

Length of sentence. *See Sentence* (Imprisonment—Length of sentence—Buggery).

Building—

Offence against building regulations. *See Building* (Building regulations—Offence against 1965 regulations).

Burden of proof—**Customs offence—**

Improper importation of goods—Forfeiture of goods *See Customs and excise* (Forfeiture—Imported goods—Goods on which duty chargeable and unpaid—Onus of proof).

Generally. *See Criminal evidence* (Burden of proof).

Burglary—

Alternative offence. *See Verdict*—Alternative offence—Burglary, *post*.

Entering a building as a trespasser—

Mens rea—Knowledge of trespass—Entering with intent to commit specified offence—Knowledge that entry a trespass—Necessity of proving that at moment of entry accused knew he was a trespasser or reckless whether or not he had owner's consent to enter—Theft Act 1968, s 9(1). *R v Collins* [1972] 2 1105, CA.

Permission to enter building—Entry in excess of permission—Knowledge of accused that or recklessness whether entry in excess of permission—Accused entering premises with intent to commit theft—Whether entering premises 'as a trespasser'—Theft Act 1968, s 9(1)(b). *R v Jones (John)* [1976] 3 54, CA.

Trespass ab initio—Common law doctrine of trespass ab initio inapplicable—Theft Act 1968, s 9(1). *R v Collins* [1972] 2 1105, CA.

Insurance. *See Insurance* (Burglary insurance).

Capital murder. See Murder—Capital murder, post.**Careless driving. See Road traffic (Careless driving).****Causing death by dangerous driving. See Road traffic (Dangerous driving—Causing death by dangerous driving).****Causing vehicle to be used on road in breach of regulations. See Road traffic (Motor vehicle—Causing vehicle to be used on road in breach of regulations).****Chance-medley—****Existence of defence—**

Homicide—Doctrine abolished—Offences against the Person Act 1861, s 7. *R v Semini* [1949] 1 233, CCA.

Provocation—

Murder charge. *See Murder*—Provocation—Chance-medley, *post*.

Child—**Cruelty—**

Abandonment in manner likely to cause unnecessary suffering or injury to health—Defendant leaving children in childrens' court—Children and Young Persons Act 1933, s 1. *R v Whibley* [1938] 3 777, CCA.

Fine—

Court's power to order parent or guardian to pay fine incurred by child. *See Children and young persons* (Fine—Imposition—Court's power to order parent or guardian to pay fine instead of child or young person).

Wilful neglect of child—

Manslaughter. *See Manslaughter*—Neglect of child, *post*.

Wilful—Neglect causing unnecessary suffering and injury to health of child—Accused failing to realise possible consequences of neglect—Neglect deliberate in sense of not being inadvertent—Whether neglect wilful—Children and Young Persons Act 1933, s 1(1). *R v Lowe* [1973] 1 805, CA.

Civil action for offence—

Duty to prosecute before bringing action. *See Action* (Criminal offence—Duty to prosecute before bringing civil action).

CRIMINAL LAW (cont)

Coinage offence—

Possessing counterfeit coins with intent to utter or put them off—

Utter—Coins resembling gold sovereigns—Coins sold as 'genuine reproductions'—Whether intent that coins should pass as genuine necessary ingredient of offence—Coinage Offences Act 1936, s 5(3). *Selby v Director of Public Prosecutions* [1971] 3 810, HL.Collecting from house to house without licence. *See* *Charity* (House to house collection—Collection—Appeal to public by means of visits from house to house—Collecting without licence).Colonial legislation. *See* *Statute* (Colonial legislation—Criminal law).

Committal—

Assizes or quarter sessions—

Demanding money with menaces—Committal to assizes unless a compelling reason to contrary—Magistrates' Courts Act 1952, s 10. *R v Hacker* [1957] 1 608, CCA.

Convenient assizes—

Foreign court—Power of justices to commit for trial at convenient assizes—Duty to commit to nearest convenient court—Magistrates' Courts Act 1952, s 10(1). *R v Streams* [1956] 3 421, CCA.Crown Court. *See* *Crown Court* (Committal for trial at Crown Court).

Depositions—

Signature—Absence of signature—Effect—Some depositions not signed by examining justice—Whether committal for trial invalidated where other signed depositions are sufficient to justify committal on some charges—Magistrates' Courts Rules 1952 (SI 1952 No 2190), r 5(2). *R v Edgar, R v Parr, R v Pontika, R v Rooney* [1958] 2 494, CCA.Validity—Evidence given in answer to leading questions—Validity of committal—Indictable Offences Act 1948, s 17. *R v Walker* [1950] 2 911, CCA.

Newspaper report—

Previous convictions—Disclosure—Committal for trial—Conviction—Whether publication of newspaper report of previous convictions ground for quashing conviction. *R v Armstrong* [1951] 2 219, CCA.

Order—

Stamp of court—Court of summary jurisdiction having no seal—Written order of court committing accused for trial—No seal of court affixed—Whether order irregular. *R v Deputy Recorder of Wolverhampton, ex parte Director of Public Prosecutions* [1951] 1 627, KBD.

Preliminary hearing before justices—

Addition of co-defendant—Addition after evidence given—Co-defendant added after evidence given—Depositions read to witnesses and approved—Irregularity—Indictable Offences Act 1848, s 17—Administration of Justice (Miscellaneous Provisions) Act 1933, s 2(2). *R v Philips, R v Quayle* [1938] 3 674, CCA.Depositions—Compliance with statute—Form prescribed by statute imperative—Depositions to be taken down in writing in presence of accused—Depositions to be read over to and signed by accused—Indictable Offences Act 1848, s 17—Administration of Justice (Miscellaneous Provisions) Act 1933, s 2(1), (2). *R v Gee, Bibby and Dunscombe* [1936] 2 89, CCA.Jurisdiction to state a case. *See* *Case stated* (Magistrates' courts—Jurisdiction—Power of examining justices to state a case—Committal proceedings).Prima facie case—Evidence—Witnesses—Crown not calling principal witness for prosecution—Whether committal invalid. *R v Epping and Harlow Justices, ex parte Massaro* [1973] 1 1011, QBD.Publicity—Order lifting restrictions—Application before commencement of taking depositions—Subsequent joinder of further accused—Order applicable to totality of proceedings—Accused subsequently joined subject to order as if they had applied for it—Criminal Justice Act 1967, s 3(2). *R v Blackpool Justices, Ex parte Beaverbrook Newspapers Ltd* [1972] 1 388, QBD.Publicity—Order lifting restrictions—Jurisdiction to make order in formal remand proceedings—Charges grouped for purposes of committal proceedings—Order relating to each group—Criminal Justice Act 1967, ss 3(2), 35, 36. *R v Bow Street Magistrate, ex parte Reginald Kray* [1968] 3 872, QBD.Publicity—Order lifting restrictions—Order must apply to totality of proceedings—Criminal Justice Act 1967, s 3(2). *R v Russell, Ex parte Beaverbrook Newspapers Ltd* [1969] 3 695, QBD.Summary trial distinguished—Functions of examining justices exercisable after acquittal at summary trial which was a nullity for want of jurisdiction. *R v West* [1962] 2 624, CCA.

Proceedings—

Grant of legal aid. *See* *Legal aid* (Criminal cases—Grant—Committal proceedings).Sentence. *See* *Magistrates* (Committal for sentence).

Trial—

Crown Court. *See* *Crown Court* (Committal for trial at Crown Court).

Validity—

Chairman of examining magistrates also deputy chairman of quarter sessions—Course which should be followed at quarter sessions—Deputy chairman sitting in court of quarter sessions—Whether ground for interfering with conviction. *R v Powell* [1953] 2 1202, CCA.Inadmissible evidence given before examining justices—Whether invalidating committal. *R v Norfolk Quarter Sessions, Ex parte Brunson* [1953] 1 346, QBD.Young persons. *See* *Children and young persons* (Trial of persons under 17—Committal for trial).

Common design—

Murder. *See* *Murder*—Common design, *post*.

CRIMINAL LAW (cont)**Common gaming house—**

Unlawfully resorting to. *See* **Gaming** (Gaming-house—Unlawfully resorting to common gaming house).

Company—**Aiding and abetting—**

Knowledge of company—Overloading heavy motor car—Lorry over permitted weight allowed by servant of company to drive away from weighbridge—Oversight by servant of company—No knowledge of circumstances by any responsible officer of company—Lorry driven by independent contractor—Whether company guilty of aiding and abetting—Motor Vehicles (Construction and Use) Regulations 1955 (SI 1955 No 482), reg 68. **John Henshall (Quarries) Ltd v Harvey** [1965] 1 725, QBD.

Criminal liability—

Act of servant—Identification of servant with company—Status and authority of servant—'Responsible agent' or 'high executive' not necessarily identifiable with company—Corrupt practices—Necessity for jury to find as a fact that servant had status which would in law identify his acts with those of company. **R v Andrews Weatherfoil Ltd** [1972] 1 65, CA.

Act of servant—Identification of servant with company—Trade description—Failure of servant to exercise supervisory function properly. *See* **Trade description** (Defence to proceedings—Reasonable precautions and due diligence to avoid commission of offence—Company).

Act of servant—Scope of authority—Intention of servant to defraud company—Sales of company's goods intended to benefit servant—Servant making false purchase tax returns in respect of sales—Whether company criminally liable for false returns. **Moore v I Bresler Ltd** [1944] 2 515, KBD.

False statement—

Prospectus—Omission of fact—Partial and fragmentary statement of fact—Omission of fact such as to render what was stated false—Larceny Act 1861, s 84. **R v Bishirian, R v Howeson, R v Hardy** [1936] 1 586, CCA.

Mens rea—

Conspiracy to defraud—Intention—Agents of company—Conspiracy by agents to make false returns in respect of income tax—Whether intention of company's agent imputable to company. **R v ICR Haulage Ltd** [1944] 1 691, CCA.

Intent to deceive—Servant of company—Transport manager—Whether intention of servant to be imputed to company. **Director of Public Prosecutions v Kent and Sussex Contractors Ltd** [1944] 1 119, KBD.

Offer of shares for subscription or sale—

Shares—Shares including debentures—Founder units offered for sale—Subscribers receiving 'founder's unit guarantee certificate'—Whether certificate a debenture—Companies Act 1929, ss 356(1), (7), 380(1). **R v Findlater** [1939] 1 82, CCA.

Compensation—

Victims of crimes of violence. *See* **Compensation** (Criminal injuries).

Compensation order. *See* **Sentence (Compensation).****Concerted action—****Common purpose—**

Murder—Deceased struck by both appellants in course of quarrel—Uncertainty who struck fatal blow—Principals in first or second degree—Proof of pre-arranged plan unnecessary. **Mohan v Reginam** [1967] 2 58, PC.

Gross indecency. *See* Gross indecency—Both parties guilty—Acting in concert, *post*.

Manslaughter. *See* Manslaughter—Concerted action, *post*.

Murder. *See* Murder—Concerted action, *post*.

Consent—**Attorney-General—**

Prosecution for offence under Explosive Substances Act 1883. *See* **Explosives** (Offence—Prosecution for offence—Consent of Attorney-General).

Rape. *See* Rape—Consent, *post*.

Theft. *See* Theft—Dishonesty—Consent of owner, *post*.

Conspiracy—**Acquittal of other alleged conspirator—**

Evidence that others involved in conspiracy—Conspiracy to commit robbery with co-accused and others unknown—Co-accused acquitted—Evidence that others also were concerned with whom accused could conspire—Whether appellant can be convicted of conspiracy. **R v Anthony** [1965] 1 440, CCA.

Act injurious to public interest—

Immigration controls—Evasion—Conspiracy to evade controls on immigration—Evasion of examination on landing—Whether unlawful as tending to defeat intent and purpose of statute—Commonwealth Immigrants Act 1962, Sch 1, Part 1, para 1. **Director of Public Prosecutions v Bhagwan** [1970] 3 97, HL.

Burial—

Prevention—Conspiracy to prevent burial of a corpse—Offence—Ingredients of offence. **R v Hunter** [1973] 3 286, CA.

Common law cheat—

Public element—Conspiracy to commit common law cheat—Agreement to commit fraud in wagering—Gaming Act 1845, s 17. **R v Fountain** [1965] 2 671, Assizes.

Company—

Director—Alleged conspiracy between director and company—Director person solely responsible for company's acts—Whether conspiracy count bad. **R v McDonnell** [1966] 1 193, Assizes.

Mens rea. *See* Company—Mens rea—Conspiracy to defraud, *ante*.

CRIMINAL LAW (cont)

Conspiracy (cont)—

Conspiracy to commit crime abroad—

Fugitive offender—Whether conspiracy would be indictable in United Kingdom. *See* **Extradition** (Fugitive offender—Relevant offences—Extra-territorial offence—Charge alleging conspiracy in Canada to defraud public—United States residents induced to purchase shares in companies).

Conspiracy to murder—

India. *See* **India** (Criminal law—Conspiracy to murder).

Corrupt bargain—

Agreement to do an unlawful act—Payment by third party to debenture holder for support of scheme of arrangement. **R v Potter** [1953] 1 296, Assizes.

Corruption of public morals—

Corruption—Homosexual acts in private between consenting adults no longer criminal—Advertisements in magazine inviting readers to take part in homosexual acts—Accused publishers of magazine—Whether agreement to insert advertisements in magazine capable of constituting conspiracy to corrupt public morals. **Kneller (Publishing, Printing and Promotions) Ltd v Director of Public Prosecutions** [1972] 2 898, HL.

Publication—Directory of prostitutes—Defence of public good—Relevance—Whether conspiracy to corrupt public morals an indictable misdemeanour at common law—Obscene Publications Act 1959, s 2(4). **Shaw v Director of Public Prosecutions** [1961] 2 446, HL.

Fraud—

Conspiracy to defraud—Abolition—Cheating—Statute abolishing 'any offence at common law of cheating'—Whether statute abolishing offence of conspiracy to defraud—Theft Act 1968, s 32(1)(a). **Scott v Comr of Police for the Metropolis** [1974] 3 1032, HL.

Conspiracy to defraud—Economic loss—Relevance—Conspiracy to defraud person performing public duties—Ingredients of offence—Purpose of conspiracy to cause person to act contrary to public duty—Whether necessary to prove that purpose involved economic loss to someone. **Scott v Comr of Police for the Metropolis** [1974] 3 1032, HL.

Elements of fraud—Deceit—Agreement dishonestly to deprive someone of something to which he was entitled—Whether deceit a necessary ingredient of fraud—Whether necessary that accused had agreed to deceive victim and by such deceit to defraud him. **Scott v Comr of Police for the Metropolis** [1974] 3 1032, HL.

Person performing public duties—Conspiracy to defraud person—Public duties—Officials of banks and building societies—Whether persons performing public duties. **Director of Public Prosecutions v Withers** [1974] 3 984, HL.

Test of fraud—Conspiracy to cheat and defraud—Director and others concerned in take-over of shell company—Assets of company used to provide funds for paying assenting shareholders—Test of fraud on the part of a director and others in such a transaction. **R v Sinclair** [1968] 3 241, CA.

Husband and wife—

Polygamous marriage—Whether rule that husband and wife cannot be guilty of conspiracy may apply to a potentially polygamous marriage. **Mawji v Reginam** [1957] 1 385, PC.

Indictment—

Auction—Illegal bidding agreement—Competency of proceedings on indictment. *See* **Auction** (Illegal bidding agreement—Conspiracy—Indictment).

Conspiracy to commit offence triable only summarily—Whether triable on indictment. **R v Blamires Transport Services Ltd** [1963] 3 170, CCA.

Duplicity. *See* **Indictment** (Duplicity—Conspiracy).

Individual conspiracies distinguished from one aggregate conspiracy. **R v Griffiths** [1965] 2 448, CCA.

Particulars of offence—Conspiracy to trespass—Necessity of alleging circumstances which render agreement indictable—Indictment Rules 1971 (SI 1971 No 1253), r 5(1). **Kamara v Director of Public Prosecutions** [1973] 2 1242, HL.

Particulars of offence—Overt acts—Application by accused for particulars of count in indictment—Particulars not ordered where opening speech and depositions show sufficiently the charge that accused have to meet—Indictment Act 1915, s 3, Sch 1, r 10. **R v Churchill** [1965] 2 793, CCC.

Separate conspiracies—Several conspiracies included in the same count—Invalidity—Whether other specific charges vitiated. **R v Davey** [1960] 3 533, CCA.

Separate conspiracies—Three separate conspiracies charged in one count—One count charging several prisoners with conspiring together to contravene, between 1940 and 1946—Orders made under Defence (General) Regulations, 1939, for control of toilet preparations—Material alterations of the law between relevant dates. **R v West, R v Northcott, R v Weizman, R v White** [1948] 1 718, CCA.

Substantive offences charged—Separate trial—Whether conspiracy should be charged where there are substantive charges in relation to the same conduct—Separate trial for conspiracy count. **R v Griffiths** [1965] 2 448, CCA.

Substantive offences charged—Whether conspiracy should also be charged where there are substantive charges in relation to the same conduct. **R v Dawson, R v Wenlock** [1960] 1 558, CCA.

Ingredients of conspiracy—

Single charge against several individuals—Proof that each individual conspired with at least one other guilty party. **R v Ardalan** [1972] 2 257, CA.

Jurisdiction. *See* **Jurisdiction—Conspiracy, post.**

Mens rea—

Knowledge act unlawful—Conspiracy to contravene statute—Statute imposing maximum price—Plea that defendants did not know maximum permitted price—Whether necessary for prosecution to prove knowledge—Prices of Goods Act 1939, ss 1, 10(1),(3),(5), 15. **R v Jacobs, Carr and Fairhurst** [1944] 1 485, CCA.

CRIMINAL LAW (cont)

Conspiracy (cont)—

Mens rea (cont)—

Necessity for—Conspiracy to contravene statute—Supply of controlled goods in excess of quota—Supply an offence under statute irrespective of knowledge—Whether on charge of conspiracy necessary to prove mens rea—Limitation of Supplies (Miscellaneous) Order 1940 (SR & O 1940 No 874) **R v Sorsky, Bresler and H Bresler & Sons Ltd** [1944] 2 333, CCA.

Obstruction of course of justice—

Bribery of witness—Witness—Proceedings not initiated at time of attempted bribery—Inducement to person in position to initiate proceedings not to do so—Allegation of rape—Agreement between suspect and friend to offer complainant money as an inducement to withdraw allegation—Complainant having already reported matter to police—Whether complainant in position of prosecutor or witness—Whether conspiracy to pervert course of justice by bribery of witness. **R v Panayiotou** [1973] 3 112, CA.

Gravity of offence—Distinction from conspiracy to obstruct police in execution of duty—Concealment of identity of purchaser of house used as base for mail robbery. **R v Field** [1964] 3 269, CCA.

Outrage to public decency—

Outrage—Publicity—Advertisements on inside pages of magazine—Advertisements inviting readers to take part in homosexual acts with advertisers—Advertisements read individually by different people in different places—Outraging public decency going considerably beyond shocking reasonable people—Whether conspiracy to outrage public decency—Whether agreement to publish outrageously indecent matter on inside pages of magazine capable of constituting offence. **Knüller (Publishing, Printing and Promotions) Ltd v Director of Public Prosecutions** [1972] 2 898, HL.

Public mischief—

Conspiracy to effect public mischief—Scope of offence—Prejudice to community or general public rather than state—Acts constituting public mischief—Acts not unlawful in sense of being criminal or tortious—Whether acts relied on as constituting public mischief must be unlawful—Whether conspiracy to effect a public mischief confined to one which has the object or effect of being prejudicial to the state. **Director of Public Prosecutions v Withers** [1974] 3 984, HL.

Deception of persons responsible for a public duty—Deception inducing them to do something they would not otherwise have done—Meaning of public duty—Persons responsible for public duty—Officers of banks and building societies—Accused running investigation agency—Accused making reports about status and financial standing of third parties—For purposes of reports accused making enquiries of banks and building societies—Accused, by telling lies, inducing officers of those institutions to part with confidential information—Whether accused guilty of any offence—Whether offence correctly described as conspiracy to effect a public mischief. **Director of Public Prosecutions v Withers** [1974] 3 984, HL.

Injury to public—Conspiracy to effect a public mischief—Agreement to do acts extremely injurious to the public—Acts not unlawful—Agreement to obtain confidential information about private individuals by deceit—Information obtained from banks, building societies and government departments—Whether conspiracy to effect public mischief an offence at common law. **Director of Public Prosecutions v Withers** [1974] 3 984, HL.

Unlawful purpose—Conspiracy to effect unlawful purpose, defeat purpose of statute, or work to prejudice of state—Conspiracy to obtain and sell in England pottery restricted to sale for export—Domestic Pottery (Manufacture and Supply) Order 1947 (SR & O 1947 No 373), art 1, art 2, art 5 (as amended by SI 1948 No 1616). **R v Newland** [1953] 2 1067, CCA.

Separate trials—

Different verdicts—Effect—Two accused charged with conspiring with each other and with no one else—First accused pleading guilty—Second accused pleading not guilty—Second accused subsequently tried and acquitted—Whether conviction of first accused invalidated by subsequent acquittal of second accused. **R v Shannon** [1974] 2 1009, HL.

Statutory offence—

Absolute offence—Mens rea of conspiracy—Conspiracy to commit absolute statutory offence—Whether mens rea an element of conspiracy—Customs and Excise Act 1952, s 200(2). **Churchill v Walton** [1967] 1 497, HL.

Knowledge—Conspiracy to commit statutory offence of which knowledge an element. **R v Curr** [1967] 1 478, CA.

Newly created offence—Specific remedy provided—Remedy precluding conspiracy charge—Statutory offence punishable on summary conviction—Particulars of conspiracy in same terms as statutory offence—Charge of illegal agreement relating to bidding at auction—Competency of proceedings on indictment—Auctions (Bidding Agreements) Act 1927, s 1(1). **R v Barnett** [1951] 1 917, CCA.

Time limit—Continuing single offence—Particulars in terms of a statutory offence, prosecution for which was subject to a time limit—Whether time limit applied to charge of common law conspiracy so laid—Purchase Tax Act 1963, s 33(1), s 34(4). **R v Simmonds** [1967] 2 399, CA.

Unlawful act—

Tort—Agreement to do unlawful act—Trespass—Circumstances in which agreement to commit a tort indictable—Invasion of public domain—Intention to inflict more than purely nominal damage on victim—Agreement to enter and occupy building of High Commission of Sierra Leone. **Kamara v Director of Public Prosecutions** [1973] 2 1242, HL.

Construction of colonial statute—

West Africa. *See* **West Africa** (Statutes—Construction of colonial statute—Criminal law).

Constructive murder. *See* **Murder**—Intent—Constructive murder, *post*.Contempt of court. *See* **Contempt of court** (Criminal contempt).

Conviction—

Certiorari to quash. *See* **Certiorari** (Conviction—Quashing).

CRIMINAL LAW (cont)

Conviction (cont)—

Conviction under repealed statute. *See* **Statute** (Offence—Conviction under repealed statute).

Disqualification for holding driving licence—

Severable from conviction. *See* **Road traffic** (Disqualification for holding licence—Severable from conviction).

Magistrates—

Procedure. *See* **Magistrates** (Procedure—Conviction).

Corruption—

Ingredients of offence—

Acceptance of bribe—Whether necessary to show that person accepting bribe did what was required—Prevention of Corruption Act 1906, s 1(1). **R v Carr** [1956] 3 979, C-MAC.

Proper direction by judge advocate. *See* **Court-Martial** (Civil offence—Corruption—

Ingredients of offence—Proper direction by judge advocate).

Misbehaviour in public office. *See* **Misbehaviour in public office, post.**

Offer of gift, loan, fee etc—

Corrupt offer—Gift offered to officer of public body in respect of transaction in which the public body was concerned—No intention on part of offeror of carrying out transactions—Whether gift 'corruptly' offered—Public Bodies Corrupt Practices Act 1889, s 1(2). **R v Smith** [1960] 1 256, CCA.

Reward—Reward to officer of public body in respect of transaction in which public body concerned—Payment in respect of past favours—No future favours contemplated at time of making agreement for payment—Whether necessary to establish a corrupt agreement for reward in contemplation of future favours—Public Bodies Corrupt Practices Act 1889, s 1. **R v Andrews Weatherfoil Ltd** [1972] 1 65, CA.

Presumption of corruption—

Gift to person employed by Crown or public body—Presumption of corruption unless contrary proved—Onus of disproving corruption—Balance of probabilities—Prevention of Corruption Act 1916, s 2. **R v Carr-Braint** [1943] 2 156, CCA.

Public body—

Meaning—Body having public or statutory duties to perform—Body carrying on activities for public benefit and not for private profit—Body established pursuant to statute—Area gas board—Whether a 'public body'—Public Bodies Corrupt Practices Act 1889, s 7—Prevention of Corruption Act 1916, ss 2, 4(2)—Gas Act 1948, s 1. **R v Manners** [1976] 2 96, CA.

Meaning—Local and public authorities of all descriptions—National Coal Board—Whether a 'public body'—Prevention of Corruption Act 1916, s 4(2). **R v Newbould** [1962] 1 693, Assizes.

Transactions with agents—

Act by person in relation to his principal's affairs—Company employee also trade union official—Employee when acting as union official convicted of corruptly obtaining money as inducement for doing an act—Whether employee's act in relation to union affairs also act in relation to company affairs—Prevention of Corruption Act 1906, s 1(1). **Morgan v Director of Public Prosecutions** [1970] 3 1053, QBD.

Agent—Person serving under the Crown—Additional superintendent registrar of births, deaths and marriages—Registrar carrying out functions of Crown although not appointed, paid or liable to be dismissed by Crown—Whether a 'person serving under the Crown'—Prevention of Corruption Act 1906, s 1(1)(3). **R v Barrett (George)** [1976] 3 895, CA.

Costs—

Acquittal—

Costs of defence—Award of costs against prosecution—Discretion—Prosecution properly brought—No reflection on conduct of prosecution. **R v Sansbury** [1959] 3 472, Assizes.

Discretion. **Practice Direction** [1959] 3 471, CCA, **R v Sansbury** [1959] 3 472, Assizes.

Discretion—Appeal—Costs of successful appellant—Payment of costs out of central funds—Appellant legally aided—Criminal Appeal Act 1968, s 24(1), (3) (as amended by the Criminal Justice Act 1972, s 39, Sch 3). **R v Arron** [1973] 2 1221, CA.

Discretion—Costs of successful defendant—Costs out of central funds unless positive reasons for making different order—Reasons for making different order. **Practice Note** [1973] 2 592, QBD.

Quantum—Principle—No discretion to award a proportion only—By whom amount to be ascertained—Costs in Criminal Cases Act 1952, s 1(1)(b), (2), (5). **Practice Direction** [1968] 1 778, CA.

Award out of central funds—

Defendant acquitted—Order made for payment of defence costs out of central funds—Scope of order—Whether order including costs of committal proceedings—Costs in Criminal Cases Act 1973, s 3(1)(b)(9). **R v Michael** [1976] 1 629, Crown Ct.

Difference between costs in civil and criminal cases. *See* **Costs** (Criminal cases—Difference between costs in civil and criminal cases).

Magistrates' court—

Information or complaint not proceeded with—Payment of costs by prosecutor—Appeal—Decision by justices to order prosecutor to pay costs—Whether prosecutor having right of appeal to Crown Court—Courts Act 1971, s 52(3). **R v Crown Court at Lewes, ex parte Rogers** [1974] 1 589, QBD.

Police prosecutor—Police not legally represented—Jurisdiction to award costs—Discretion and amount—Costs in Criminal Cases Act 1952, ss 6, 17. **R v Burt, ex parte Presburg** [1960] 1 424, QBD.

Withdrawal of summons—'Withdrawal' before commencement of trial or of inquiry—Whether jurisdiction to award costs to accused—Costs in Criminal Cases Act 1952, s 5(2), s 6(3). **R v Phipps, ex parte Alton** [1964] 1 972, QBD.

Order to pay—

Enforcement—No power in court to prescribe method of enforcement—Costs in Criminal Cases Act 1908, s 6(5). **R v McClelland** [1951] 1 557, CCA.

CRIMINAL LAW (cont.)

Costs (cont)—

Order to pay (cont)—

Form of order—Several accused. *See* Costs—Several accused—Form of order, *post*.

Police prosecutor. *See* Police (Prosecutor—Costs).

Prosecution costs—

Order for payment—Factors to be considered—Order for one quarter of prosecution costs—Propriety—Costs in Criminal Cases Act 1952, s 2(1), as substituted by Criminal Justice Act 1967, s 32(1). *R v Judd* [1971] 1 127, CA.

Order for payment—Factors to be considered—Costs in Criminal Cases Act 1952, s 2(1), as substituted by Criminal Justice Act 1967, s 32(1). *R v Gaston* [1971] 1 128, CA.

Order for payment—Order by magistrates' court for payment of costs out of central funds—Costs payable to be such sums as appear to the court reasonably sufficient to compensate prosecutor—Costs to be ascertained by proper officer of the court—Meaning of 'such sums as appear to the court reasonably sufficient'—Meaning of 'proper officer of the court'—Prosecutor applying for costs to be ascertained by proper officer and paid out of central funds—Justices summarily awarding £10 as costs—Whether justices having jurisdiction to make award—Costs in Criminal Cases Act 1952, s 5, as amended by the Courts Act 1971, s 51, Sch 6, para 1(1). *R v Chertsey Justices, ex parte Edwards & Co (The Provision Market) Ltd* [1974] 1 156, QBD.

Quantum—Conviction—Sentence of fine (£500) and order to pay prosecution's taxed costs—Amount of taxed costs (£952) nearly double amount of fine—Appeal—Reduction of amount ordered to be paid for costs £400. *R v Davis* [1962] 1 409, CCA.

Several accused—

Form of order—Joint and several order for payment—Matters to be taken into consideration in awarding costs against particular accused—Costs in Criminal Cases Act 1952, s 2(1). *R v Simmonds* [1967] 2 399, CA.

Counsel—

Appearance in court on own behalf. *See* Counsel (Appearance—Appearance in court on own behalf—Practice—Criminal matter).

Court of Appeal—

Adjournment—

Several grounds of appeal—Grounds of law, of fact, and of mixed law and fact—Adjournment for hearing of appeal on ground of law where leave refused on other grounds—Criminal Appeal Act 1907, s 3. *Ex parte Hinds* [1961] 1 707, QBD.

Constitution of court—

Members—Trial judge—Whether trial judge may sit as member of court. *R v Lovegrove* [1951] 1 804, CCA.

Disposal of groundless appeal—

Power of registrar of criminal appeals—Reference of appeal to court for summary determination—Scope of registrar's power—Ministerial not judicial—Ground of appeal involving question of law alone which does not show any substantial ground of appeal—Substantial ground of appeal—Meaning—Appeal likely to be considered frivolous or vexatious by court—Point of law unlikely to succeed not thereby not 'substantial'—Criminal Appeal Act 1968, s 20. *R v Majewski* [1975] 3 296, CA.

Examination of witnesses—

Person appointed by court—Examination before person appointed—Procedure—Criminal Appeal Act 1968, s 23(4)—Criminal Appeal Rules 1968 (SI 1968 No 1262), r 9(2). *R v Stafford* [1973] 1 190, CA.

Jurisdiction—

Accused convicted after visual identification—Accused disputing identification—Whether Court of Appeal having jurisdiction to retry case—Circumstances in which Court of Appeal will interfere with jury's findings. *R v Turnbull* [1976] 3 549, CA.

Appeal against conviction—Ground of appeal—Plea of guilty—No decision on question of law—Accused indicted with one other person for conspiracy—Accused pleading guilty—Co-accused pleading not guilty—Co-accused subsequently tried and acquitted—Accused appealing on ground that his conviction invalidated by subsequent acquittal of co-accused—Jurisdiction of Court of Appeal to allow appeal—Criminal Appeal Act 1968, s 2(1). *R v Shannon* [1974] 2 1009, HL.

Appeal against conviction—Verdict of jury unsafe or unsatisfactory—Accused given leave to adduce fresh evidence on appeal—Court considering no grounds for holding verdict of jury unsafe or unsatisfactory—Court not expressly asking itself what jury might have done if they had heard fresh evidence—Court not bound to decide what they think jury might have done had they heard the fresh evidence—Criminal Appeal Act 1968, s 2(1)(a). *Stafford v Director of Public Prosecutions* [1973] 3 762, HL.

Decision on question of law—Judgement of court of trial grounded on decision—Ruling on question of law before commencement of trial—Accused called on to answer name and indictment—Argument before arraignment on question of law based on agreed facts—Accused subsequently pleading guilty on arraignment in consequence of judge's ruling—Whether Court of Appeal having jurisdiction to entertain appeal against conviction—Criminal Appeal Act 1968, s 2(1). *R v Vickers* [1975] 2 945, CA.

Interlocutory appeal—Refusal of further particulars of count in an indictment—Whether Court of Appeal can entertain interlocutory appeal. *R v Collins* [1969] 3 1562, CA.

Validity of sentence—Accused wishing to challenge validity of sentence rather than merits—Accused committed to Crown Court for sentence following deferment of sentence—Appropriate remedy—Application for leave to appeal against sentence—Whether Court of Appeal having jurisdiction to consider validity of committal to Crown Court. *R v Birtles* [1975] 3 395, CA.

Validity of sentence—Accused wishing to challenge validity of sentence rather than merits—Offender convicted by court of summary jurisdiction of indictable offence—Committal to quarter sessions for sentence—Right of appellant to question validity of committal—Criminal Justice Act 1948, s 29(1), (3)(d). *R v Warren* [1954] 1 597, CCA.

CRIMINAL LAW (cont)

Court of Appeal (cont)—

Jurisdiction (cont)—

Verdict of jury unsafe or unsatisfactory—Basis of court's decision—Criminal Appeal Act 1968, s 2(1)(a). **R v Cooper** [1969] 1 32, CA.

Order of court—

Alteration—Jurisdiction of court to alter its own judgment or order. **R v Cross (Patrick)** [1973] 2 920, CA.Error in order—Power to set aside order—Venire de novo ordered—Clerical error—Order directing acquittal—Inherent power of court to ensure that its own orders are properly carried out. **R v Gatenby** [1951] 1 173, CCA.

Practice—

Appellant—Absence—Appellant having escaped from prison before appeal heard—Whether appeal should be decided or adjourned. **R v Flower (Richard)**, **R v Siggins**, **R v Flower (Eric)** [1965] 3 669, CCA.Appellant—Movements of appellant—Movements subject to control of Court of Appeal once appeal started—No privileges to be accorded, save in most exceptional circumstances, without leave of court. **R v De Courcy** [1964] 3 251, CCA.Borstal training—Appeal against sentence—Information for court. **R v Harris (Trevor)** [1969] 3 274, CA.Sentence following committal—Committal order—Appeal against sentence passed by quarter sessions on offender committed for sentence—Committal order with sentence indorsed to be sent to Court of Appeal. **R v Perfect** [1957] 2 250, CCA.Transcript—Transcript of shorthand note of trial—Supply of full transcripts and passages of the evidence. **R v Lurie** [1951] 2 704, CCA.

Production of documents—

Document, exhibit or other thing connected with the proceedings necessary for the determination of the case—Tape recording—Refusal of possessor of tape recording to hand it over to police or Director of Public Prosecutions—Whether production should be ordered—Criminal Appeal Act 1907, s 9(a)—Criminal Appeal Rules 1908 (SR & O 1908 No 227), r 32(b), (c). **R v Gordon** [1963] 3 175, CCA.Criminal contempt. *See Contempt of court* (Criminal contempt).Criminal libel. *See Libel and slander* (Criminal libel).Crown Court. *See Crown Court*.

Damage to property—

Arson—

Trial—Summary trial—Destroying or damaging property by fire—No intent to endanger life—Whether arson a separate offence—Whether triable summarily—Criminal Damage Act 1971, ss 1, 7. **R v Aylesbury Crown Court, ex parte Simons** [1972] 3 574, QBD.

Property belonging to another—

Belief of accused—Honest but mistaken belief that property belonging to himself—Whether belief negating necessary mens rea—Criminal Damage Act 1971, s 1(1). **R v Smith (David Raymond)** [1974] 1 632, CA.Dangerous driving. *See Road traffic* (Dangerous driving).Dangerous drugs. *See Drugs* (Dangerous drugs).

Dangerous weapons—

Manufacture, sale or hire—

Offer to sell or hire—Display for sale—Flick knife—Knife displayed in shop window with price attached—Whether 'offer for sale'—Restriction of Offensive Weapons Act 1959, s 1(1). **Fisher v Bell** [1960] 3 731, QBD.

Dealing in securities without a licence—

Transactions relating to company not yet formed—

Operation of Act not confined to existing companies—Prevention of Fraud (Investments) Act 1939, ss 1(1)(a), 26(1). **R v Hamid** [1945] 2 456, CCA.

Deception—

Obtaining pecuniary advantage. *See Obtaining pecuniary advantage by deception, post*.

Defence—

Abortion. *See Abortion—Defence, ante*.Automatism. *See Automatism, ante*.Bigamy. *See Bigamy—Defence, ante*.Burden of proof. *See Criminal evidence* (Burden of proof—Defence).

Certificate—

Appeal. *See Appeal—Defence certificate, ante*.Chance-medley. *See Chance-medley, ante*.

Claim of right—

Robbery. *See Robbery—Defence—Claim of right, post*.Theft. *See Theft—Dishonesty—Claim of right, post*.Dangerous driving. *See Road traffic* (Dangerous driving—Defence).

Diminished responsibility—

Murder charge. *See Murder—Diminished responsibility, post*.Drunkenness. *See Intoxication as a defence, post*.Duress. *See Duress as a defence, post*.

Ignorance—

Intercourse with mental defective. *See Sexual intercourse—Mental defective—Ignorance as defence, post*.Intoxication. *See Intoxication as a defence, post*.Mistake. *See Mistake as a defence, post*.

Provocation—

Murder charge. *See Murder—Provocation, post*.Robbery. *See Robbery—Defence, post*.

Self-defence—

Assault. *See Assault—Self-defence, ante*.Wounding. *See Wounding—Self-defence, post*.

CRIMINAL LAW (cont)**Defence (cont)—**

Sexual intercourse with girl under age—

Reasonable belief as to age. *See* Sexual intercourse—Girl under 16—Reasonable belief as to age, *post*.

Statutory defence—

Food and Drugs Act. *See* Food and drugs (Sale—Food—Not of substance demanded).**Demanding money with menaces—**

Attempt—

Verdict impossible—Demand not complied with—Full offence—Intention to make demand not an attempt—Larceny Act 1916, s 30. **R v Moran** [1952] 1 803, CCA.

Committal for trial—

Assizes or quarter sessions. *See* Committal—Assizes or quarter sessions—Demanding money with menaces, *ante*.

Demand—

Time when demand made—Communication of demand—Demand sent by letter—Whether demand made when letter posted or when received—Theft Act 1968, s 21(1). **Treacy v Director of Public Prosecutions** [1971] 1 110, HL.

Intent to steal—

Steal—Claim of right—Whether honest belief in right sufficient—Larceny Act 1916, ss 1(1), 30. **R v Bernhard** [1938] 2 140, CCA.Jurisdiction. *See* Jurisdiction—Demanding with menaces, *post*.

Menaces—

Reasonable or probable cause—Trade protection association—Stop list—Fine as alternative—Letter demanding payment of fine—Larceny Act 1916, s 29(1). **Thorne v Motor Trade Assn** [1937] 3 157, 323, HL.Words or conduct constituting menaces—Words or conduct likely to operate on mind of person of reasonable firmness and courage so as to make him accede to demand—Intent to steal accompanying demand—No need to prove intended victim was alarmed—Larceny Act 1916, s 30. **R v Clear** [1968] 1 74, CA.

Trial—

Assizes or quarter sessions—Whether committal for trial should be to assizes—Larceny Act 1916, s 30—Magistrates' Courts Act 1952, s 10. **R v Hacker** [1957] 1 608, CCA.

Witness—

Disclosure of identity. *See* Trial—Witnesses—Identity—Disclosure—Blackmail proceedings, *post*, proceedings).Detention order. *See* Mental health (Mental defective—Detention order).**Dishonesty—**

Belief of accused—

Recklessness—Cheque—Representation by defendant that there are or will be sufficient funds in account to meet cheque on first presentation—Application for shares—Cheque drawn by defendant for full amount of price of shares applied for—Defendant relying on fact that issuing house would not allot full number of shares applied for—Defendant relying on return cheque from issuing house to provide sufficient funds to meet cheque drawn by him—Whether jury entitled to conclude defendant had acted dishonestly—Theft Act 1968, s 15(1). **R v Greenstein** [1976] 1 1, CA.Obtaining pecuniary advantage. *See* Obtaining pecuniary advantage by deception—Dishonesty, *post*.Obtaining property by deception. *See* Obtaining property by deception—Dishonesty, *post*.Theft. *See* Theft—Dishonesty, *post*.**Disorderly house—**

Indecent performances and exhibitions—

Offence of keeping a disorderly house by giving such performances—Whether essential that persons viewing such performances should participate in acts of indecency—Whether common nuisance an essential element of offence. **R v Quinn, R v Bloom** [1961] 3 88, CCA.**Driving offences—**Driving under age. *See* Road traffic (Driving under age).Driving while disqualified. *See* Road traffic (Driving while disqualified for holding licence).Driving without licence. *See* Road traffic (Driving without licence).Failure of goods vehicle driver to keep records. *See* Road traffic (Goods vehicle—Driver's records—Driver failing to keep proper record).Speeding. *See* Road traffic (Excessive speed).Stopping on motorway. *See* Road traffic (Motorway—Restrictions on stopping).Traffic signs. *See* Road traffic (Traffic sign).Unfit to drive through drink or drugs. *See* Road traffic (Driving while unfit to drive through drink or drugs).Using vehicle on road in breach of regulations. *See* Road traffic (Motor vehicle—Using vehicle on road in breach of regulations).**Drugs—**Offences. *See* Drugs.Offer to supply controlled drug. *See* Drugs (Dangerous drugs—Supply—Offer to supply controlled drug).**Drunkenness—**Defence to criminal charge. *See* Intoxication as a defence, *post*.Disorderly conduct in public place. *See* Intoxicating liquor (Offences—Drunk and disorderly in a public place).**Duress as a defence—**

Accomplice—

Defence that accused acted under duress by accomplice—Burden of proof—Onus on prosecution of negating duress. **R v Bone** [1968] 2 644, CA.

CRIMINAL LAW (cont)

Duress as a defence (cont)—

Burden of proof—

Accused bound to adduce sufficient evidence to make duress a live issue—Burden on Crown to destroy defence once raised. **R v Gill** [1963] 2 688, CCA.

Intent—

Burden of proof—Assisting enemy with intent—Defendant broadcasting on behalf of enemy under threats—Circumstances in which duress negatives intent—Direction to jury—Defence (General) Regulations 1939, reg 2A. **R v Steane** [1947] 1 813, CCA.

Murder—

Principal in first degree—Accused charged with murder as principal in first degree—Accused alleging that he had acted under threats of death—Whether defence of duress available to accused as defence to the charge. **Abbott v The Queen** [1976] 3 140, PC.Principal in second degree—Accused charged with murder as principal in second degree—Accused alleging that he had acted under threat of death or serious bodily injury—Whether open to accused to plead duress as a defence to the charge. **Lynch v Director of Public Prosecutions for Northern Ireland** [1975] 1 913, HL.

Opportunity to render threat ineffective—

Reasonable opportunity—Circumstances relevant in determining whether opportunity reasonably open to accused. **R v Hudson** [1971] 2 244, CA. Opportunity to render threat ineffective

Present immediate threat—

Effective threat—Threat must be effective to neutralise will of accused at material time—Not essential that threat should be capable of being given effect to immediately—Perjury—Threat of physical violence unless false evidence given—Accused in court under protection of judge and police at time of giving evidence—Prospect of threat being given effect to after an interval. **R v Hudson** [1971] 2 244, CA.Election for summary trial. *See* **Magistrates** (Summary trial for indictable offence).

Embezzlement—

Indictment—

Alternative verdict—Conviction upheld—Larceny Act 1916, s 44(2). **R v O'Driscoll** [1967] 1 632, CA.General deficiency—Several sums received at different times—Impossible to split up aggregate sum and trace individual items—Whether count charging embezzlement of general deficiency good in law. **R v Tomlin** [1954] 2 272, CCA.

Embracery—

Interference with administration of justice—

Witness speaking during trial to juror about defendant—Whether charge of embracery against witness appropriate. **R v Owen** [1976] 3 239, CA.

Emergency legislation—

Malaysia. *See* **Malaysia** (Criminal law—Emergency legislation).

Employment—

Failure to pay statutory minimum remuneration. *See* **Master and servant** (Remuneration—Statutory minimum—Charge of failure to pay minimum remuneration).

Estoppel—

Issue estoppel—

Application of doctrine to criminal proceedings—Perjury—Issue clearly raised and pronounced on by jury in earlier proceedings—Charge of perjury in respect of evidence given by accused at his earlier trial—Evidence in support of perjury charge same as evidence impliedly rejected by jury's verdict at earlier trial—Accused acquitted of driving on particular date whilst disqualified but denied he had driven motor vehicle at all during relevant year—Evidence of police constable that accused had been driving on occasion of alleged offence—Subsequent evidence indicating accused had driven vehicle during year—Accused charged with perjury—Whether doctrine of issue estoppel applicable to criminal proceedings—Whether prosecution estoppel from adducing evidence of police constable in support of perjury charge. **Director of Public Prosecutions v Humphrys** [1976] 2 497, HL.Application to criminal proceedings—Operation in favour of prosecution as well as defendant—Circumstances in which issue estoppel applicable—Defendant convicted of causing grievous bodily harm with intent—Victim subsequently dying—Defendant charged with murder—Issues of grievous bodily harm, intent, and absence of lawful excuse determined by verdict of jury in earlier proceedings—Whether defendant precluded from raising those issues at trial for murder. **R v Hogan** [1974] 2 142, Crown Court.Application to criminal proceedings—Whether doctrine applicable in English criminal law. **Connelly v Director of Public Prosecutions** [1964] 2 401, HL.Obstruction of highway—Camping by gipsy on highway—Information alleging offence in December 1965 dismissed—Magistrates not satisfied accused a gipsy—Subsequent information charging a like offence in March 1966—Whether issue estoppel—Whether second information an abuse of process of court—Highways Act 1959, s 127(c). **Mills v Cooper** [1967] 2 100, QBD.Evasion of customs duty. *See* **Customs and excise** (Dealing with goods chargeable to duty which has not been paid).Evasion of prohibition on importation of prohibited goods. *See* **Customs and excise** (Importation of prohibited goods—Evasion of prohibition).Evasion of restriction or requirement imposed by Exchange Control Act. *See* **Currency control** (Exchange control—Evasion of restrictions or requirements imposed by Act).Evidence. *See* **Criminal evidence**.Explosives. *See* **Explosives**.

Extradition—

Generally. *See* **Extradition**.

Republic of Ireland—

Indorsement of Irish warrant. *See* **Magistrates** (Indorsement of Irish warrant).

CRIMINAL LAW (cont)

False pretences—

Effective cause of payment—

Pretence not effective cause—Bookmaker induced to accept bet by false pretence as to identity—Money paid on horse winning—Whether pretence effective cause of payment—Larceny Act 1916, s 32(1). **R v Clucas** [1949] 2 40, CCA.

Indictment—

Particulars—Person to whom pretences made—Whether necessary to state to whom pretences made—Larceny Act 1916, s 32(1)—Indictments Act 1915, s 3(2), Sch 1, appendix, form 12. **R v Johnstone** [1950] 1 830, CCA.

Intent to defraud—

Chattel obtained for another—Driving certificate—Accused a qualified driver—Accused impersonating unqualified driver—Intent to obtain driving certificate in name of unqualified driver—Certificate obtained for use of another driver—Whether intent to defraud—Larceny Act 1916, s 32(1). **R v Potter** [1958] 2 51, Assizes.

Onus of proof—Moneys in effect repaid—Bank induced to pay money against cheques known to be worthless by representation that cheques were good—Money obtained used to enable other worthless cheques on which bank had advanced money to be met—Whether intent to defraud established. **R v Kritz** [1949] 2 406, CCA.

Jurisdiction. *See* Jurisdiction—False pretences, *post*.

Larceny by a trick distinguished. *See* Larceny—Trick—False pretences distinguished from larceny by a trick, *post*.

Obtaining—

Property distinguished from possession of property—Property alleged to have been obtained—Evidence that property obtained for benefit of other person—Proof of obtaining possession of property alleged to have been obtained not sufficient—Larceny Act 1916, s 32(1). **R v Lurie** [1951] 2 704, CCA.

Pretence—

Future conduct—Intention—Statement of intention to do future act—Defendant having no intention to do act—Defendant contracting to destroy vermin and obtaining payment in advance—Defendant subsequently doing no work—Whether false statement as to intention to do work capable or constituting a false pretence. **R v Dent** [1955] 2 806, CCA.

Future conduct—Offer of prostitution and available accommodation—Conviction of larceny by a trick—Verdict of guilty of obtaining money by false pretences substituted. **R v Caslin** [1961] 1 246, CCA.

Valuable security—

Inducing by false pretence a person to affix name to document—Servant of bank induced to witness bill of sale charging cars—Cars not property of signer of bill of sale—No liability imposed on servant or bank to pay money or perform obligation to advantage of signer—Whether contravention of Larceny Act 1916, s 32(2). **R v Thornton** [1963] 1 170, CCA.

False representation of medical qualifications. *See* Medical practitioner (Wilfully and falsely pretending to be a registered person).

False statement—

Statement to person acting in execution of Immigration Act. *See* Immigration (False statement—Statement to person lawfully acting in execution of statute).

False trade description. *See* Trade description.

Falsification of accounts—

Intent to defraud—

Avoidance of dismissal—Accounts falsified to make gross profit of department appear higher than it was—Object to avoid dismissal—Whether intent to defraud employer—Falsification of Accounts Act 1875, s 1. **R v Wines** [1953] 2 1497, CCA.

Family allowances—

Wrongful receipt. *See* Family allowance (Payment—Wrongful receipt).

Fighting—

Affray. *See* Affray—Unlawful fighting, *ante*.

Fiji. *See* Fiji (Criminal Law).Firearms. *See* Firearms.

Fish—

Offences in respect of fish. *See* Fish.

Fitness to plead. *See* Trial—Fitness to plead, *post*.

Food—

Offences in respect of food. *See* Food and drugs.

Forcible entry and detainer—

Detainer of property—

Forcible detainer following peaceable entry—Accused peaceably entering unoccupied property—Accused taking steps to fortify property to resist eviction—Whether an indictable offence—Forcible Entry Act 1429. **R v Mountford** [1971] 2 81, CA.

Entry—

Forcible entry—No intention to occupy premises—Whether intention to occupy an essential element of offence—Forcible Entry Act 1381. **R v Brittain** [1972] 1 353, CA.

Force—

Barricades erected to prevent entry of lawful owner—Evidence of intention to use force—Forcible Entry Act 1429. **R v Robinson** [1970] 3 369, CA.

Foresight—

Maliciously administering poison etc. *See* Administering poison or other destructive or noxious thing—Maliciously administering poison etc—Foresight, *ante*.

Murder. *See* Murder—Mens rea—Foresight, *post*.

CRIMINAL LAW (cont)**Forgery—**

Acknowledging recognisance in name of another—

Any recognisance—Validity of recognisance—Relevance—Recognisance not one into which accused could lawfully be required to enter—Whether acknowledging recognisance an offence—Forgery Act 1861, s 34. **R v McKenzie** [1971] 1 729, Assizes.

Cheque—

Bank account opened in fictitious name—Cheque drawn on account signed in fictitious name—Whether cheque forgery—Forgery Act 1913, ss 1(2)(b), 2(2)(a). **R v Hassard** [1970] 2 647, CA.

Coinage offence. *See* Coinage offence, *ante*.

Demanding property on forged instrument—

Obtaining property under, upon or by virtue of a forged instrument—By virtue of—Hire-purchase proposal form for motor vehicle signed at office of finance company—Signature forged—Motor vehicle subsequently released by dealers—Whether obtained 'by virtue of' forged proposal form—Forgery Act 1913, s 7(a). **R v Hurford**, **R v Williams** [1963] 2 254, CCA.

False document—

Intent that it should be used as genuine—Proof of intent that document should in fact be used as genuine—Proof required that untrue statement was reason why document was accepted as genuine when used by maker—Obtaining security for money by virtue of forged instrument—Use of fictitious name—Application to open National Savings Bank account—Application in false name—Proof that identity of applicant a material factor—Forgery Act 1913, ss 1(1)(2), 7. **R v Gambling** [1974] 3 479, QBD.

Statement in document—Need to show that statement telling lie about document—Bond—Bond duly executed but containing false statement—Whether forgery—Forgery Act 1913, s 1. **R v Dodge and Harris** [1971] 2 1523, CA.

Implements of forgery—

Possession—Possession of plates engraved with words, letters etc resembling words, letters etc of document—Document evidencing title to interest in public fund—'Interest' including contingent interest—National insurance stamp—National insurance card with stamps affixed a document evidencing title—Forgery of stamp—Stamp not affixed to card—Whether offence complete even though document forged incomplete—Forgery Ordinance (Hong Kong), ss 3(3)(b), 11(c), (d). **Attorney-General of Hong Kong v Pat Chiuk-Wah** [1971] 2 1460, PC.

Intent to defraud—

Economic loss—No intent to cause economic loss—Hire-purchase and credit-sale agreements forged and used to obtain loans from hire-purchase finance companies—No intention to cause loss to finance companies—Intention to evade current credit restrictions by deceit—Whether an intent to defraud—Forgery Act 1913, s 4, s 6(2). **Welham v Director of Public Prosecutions** [1960] 1 805, HL.

Fraud distinguished from deceit—Intent to deceive insufficient—Sale of land—Letter forged by employee to cause employer who was prospective purchaser to believe that land belonged to third person—Forgery Act 1913, s 4(1). **R v Moon** [1967] 3 962, CA.

Making false document—

Signature on driving certificate—Signature in driving examiner's journal—Impersonation at driving test to enable another person to obtain driving licence—Forgery Act 1913, s 1—Criminal Justice Act 1925, s 35(1). **R v Potter** [1958] 2 51, Assizes.

Material particular—

Date—Indorsement on deed—False date—Date falsified to avoid effect of pending legislation—Materiality. **R v Wells** [1939] 2 169, CCA.

Possession of forged document—

Lawful authority or excuse—Forged banknotes—Defence that possession retained to give banknotes to police—Banknotes not handed over to police at first available opportunity—Whether 'lawful excuse'—Forgery Act 1913, s 8(1). **R v Wuyts** [1969] 2 799, CA.

Procuring. *See* Procuring with intent—Intent to commit crime—Common law offence—Forgery, *post*.

Uttering a forged document—

Jurisdiction. *See* Jurisdiction—Uttering a forged document, *post*.

Use of document—Photostat copy of forgery made and sent with intent to deceive or defraud—Whether a use of the forgery—Forgery Act 1913, s 6(2). **R v Harris** [1965] 3 206, CCA.

Valuable security—

National insurance stamp—Whether insurance stamp an 'instrument'—Whether a receipt or other instrument evidencing the payment of money—Forgery Ordinance (Hong Kong), ss 2, 4(2)(a). **Attorney-General of Hong Kong v Pat Chiuk-Wah** [1971] 2 1460, PC.

Found by night in building. *See* Night offences—Found by night in any building, *post*.

Found on premises about to commit crime. *See* Prevention of crime—Found on premises about to commit crime, *post*.

Fraud—**Company—**

Fraudulent trading. *See* Company (Winding-up—Fraudulent trading).

Company going into liquidation—

Fraud by officer of company—Fraudulent transfer by director—Attempted cancellation of indebtedness to company—Whether transfer of property—Companies Act 1948, s 330(b). **R v Davies** [1954] 3 335, CCA.

Conspiracy. *See* Conspiracy—Fraud, *ante*.

Crown and public—

Fraud on the Crown and public—False accounts and certificate with intent to defraud the Revenue—Whether an offence at common law. **R v Hudson** [1956] 1 814, CCA.

False pretences. *See* False pretences, *ante*.

Falsification of accounts.

See Falsification of accounts, *ante*.

CRIMINAL LAW (cont)

Fraud (cont)—

Forgery—

Intent to defraud. *See* Forgery—Intent to defraud, *ante*.

Importation of prohibited goods—

Fraudulent evasion of restriction on importation of certain goods. *See* Customs and excise (Importation of prohibited goods—Evasion of prohibition).

Inducement to invest money. *See* Inducement to invest money—Fraud, *post*.

Obtaining credit. *See* Obtaining credit by fraud, *post*.

Obtaining pecuniary advantage by deception. *See* Obtaining pecuniary advantage by deception, *post*.

Obtaining property by deception. *See* Obtaining property by deception, *post*.

Vehicle excise licence—

Fraudulent use of licence, *See* Road traffic (Excise licence—Fraudulent use of licence).

Wagering. *See* Gaming (Fraud in wagering).

Fraudulent conversion—

Bailee—

Dishonest sale—Attempt at dishonest sale—No sale effected—Complete offence—Acquittal of attempt—Larceny Act 1916, s 1(1), proviso. *Rogers v Arnott* [1960] 2 417, QBD.

Director of public company—

Public company—Meaning—Company a private company within Companies Act—Private company included in term 'public company'—Larceny Act 1916, s 20(1)(ii). *R v Davies* [1954] 3 335, CCA.

Indictment—

General balance—Impossible to trace individual items—Solicitor—Sums drawn from clients' accounts and paid into office account—Some of that money used subsequently for solicitor's own purposes—Sufficiency of evidence as to date of conversion—Propriety of court alleging conversion of general balance. *R v Lawson* [1952] 1 804, Assizes.

Solicitor—

Moneys received from clients—Moneys received in respect of counsels' and shorthand-writers' fees—Fees not paid but used for solicitor's own use and benefit—Whether an offence—Larceny Act 1916, s 20(1)(iv)(b). *R v Yule* [1963] 2 780, CCA.

Trustee—

Protection from prosecution—Act first disclosed on oath in consequence of compulsory process of court of law or equity—Conversion by executor of assets comprised in the estate—First disclosed in affidavit made by executor to secure release from imprisonment for contempt of court in failing to comply with order for accounts—Larceny Act 1916, s 43(2). *R v Maywhort* [1955] 2 752, Assizes.

Fugitive offender. *See* Extradition (Fugitive offender).

Gaming and wagering. *See* Gaming.

Gaming licence—

Offence. *See* Gaming (Gaming licence—Offence by body corporate committed with consent etc of director etc).

Gibraltar. *See* Gibraltar (Criminal law).

Going equipped for stealing—

Article for use in course of theft etc—

Accused having article for use in course of or in connection with burglary, theft or cheat—Scope of offence—Accused in possession of articles used in connection with theft—Whether offence limited in cases where it is intended to use article for offence to be committed in future—Whether necessary to prove intention by accused to use article himself in connection with specific offence—Theft Act 1968, s 25(1). *R v Ellames* [1974] 3 130, CA.

Gold—

Offences relating to. *See* Currency control (Gold).

Grievous bodily harm—

Engine calculated to inflict harm. *See* Trap—Setting engine calculated to inflict harm, *post*.

Intent—

Murder. *See* Murder—Intent—Grievous bodily harm, *post*.

Maliciously causing grievous bodily harm—

Maliciously—Direction to jury—Whether direction to jury on meaning of maliciously is necessary—Offences against the Person Act 1861, s 18. *R v Mowatt* [1967] 3 47, CA.

Meaning—

Harm seriously interfering with health or comfort—Direction to jury—Intent only to interfere seriously with health or comfort not sufficient—Offences against the Person Act 1861, s 18. *R v Metharam* [1961] 3 200, CCA.

Ordinary and natural meaning—Whether harm not limited to that which seriously interferes with health or comfort. *Director of Public Prosecutions v Smith* [1960] 3 161, HL.

Wounding with intent to cause grievous bodily harm—

Intent—Foresight or recklessness—Whether foresight of or recklessness as to consequences of wounding sufficient to constitute 'intent'—Offences against the Person Act 1861, s 18. *R v Belfon* [1976] 3 46, CA.

Gross indecency—

Act of gross indecency with another man in public—

Two men masturbating in public lavatories—One watching the other—Both men charged with gross indecency with another—Meaning of 'with another'—Whether participation of both men required—Sexual Offences Act 1956, s 13. *R v Preece* [1976] 2 690, CA.

Attempt. *See* Attempt—Acts preparatory to offence—Directly leading to commission of full offence—Gross indecency, *ante*.

Both parties guilty—

Acting in concert—Evidence of action in concert with consent of both—Conviction of one party and acquittal of other—Criminal Law Amendment Act 1885, s 11. *R v Pearce* [1951] 1 493, CCA.

CRIMINAL LAW (cont)**Gross indecency (cont)—****Both parties guilty (cont)—**

Acting in concert—Need to prove accused persons were acting in concert. **R v Hornby and Peaple** [1946] 2 487, CCA.

Child—

With or towards a child under 14—'With or towards'—Whether one offence—Indecency with Children Act 1960, s 1(1). **Director of Public Prosecutions v Burgess** [1970] 3 266, QBD.

Physical contact—

Necessity for—No actual physical contact proved—Accused persons indulging in grossly indecent exhibition—Whether necessary to prove physical contact—Criminal Law Amendment Act 1885, s 11. **R v Hunt** [1950] 2 291, CCA.

Proceedings—

Consent of Director of Public Prosecutions—Court-martial proceedings. *See Court-martial* (Civil offence—Consent of Director of Public Prosecutions required for institution of proceedings—Gross indecency between males one of whom under 21 years of age).

Consent of Director of Public Prosecutions—Failure to obtain consent—Effect—One party to offence under 21—Consent to institution of proceedings not obtained—Trial a nullity—Conviction quashed—Sexual Offences Act 1967, s 8. **R v Angel** [1968] 2 607, CA.

Consent of Director of Public Prosecutions—Necessity for—Indecent conduct towards child under 14—Gross indecency with boy—Whether consent of Director of Public Prosecutions required to institute proceedings—Indecency with Children Act 1960, s 1(1)—Sexual Offences Act 1967, s 8. **Director of Public Prosecutions v Burgess** [1970] 3 266, QBD.

Consent of Director of Public Prosecutions—Necessity for—Indecent conduct towards child under 14—Inciting child under 14 to commit act of gross indecency—Whether consent required to institute proceedings—Indecency with Children Act 1960, s 1(1)—Sexual Offences Act 1967, s 8. **R v Assistant Recorder of Kingston-Upon-Hull, ex parte Morgan** [1969] 1 416, QBD.

Procuring gross indecency—

Attempt to persuade commission of act of gross indecency—Boy told to commit indecent act—Whether offence of procuring gross indecency—Criminal Law Amendment Act 1885, s 11. **R v Burrows** [1952] 1 58, CCA.

With another man—

With—Meaning—Against or directed towards another—Not meaning 'with consent of'—Sexual Offences Act 1956, s 13. **R v Hall** [1963] 2 1075, CCA.

Habitual criminal—**Efforts to obtain work—**

Numerous efforts to obtain work since release from prison—Facts not fully put before the jury—Onus of proof—Insufficiency of direction to jury. **R v Jones** [1939] 1 181, CCA.

Notice of charge—

Service on prisoner—Whether proof of service must appear upon the face of the proceedings. **R v Triffitt** [1938] 2 818, CCA.

Procedure at trial—

Trial of charges by same court—**R v Vale** [1938] 3 355, CCA.

Witnesses—

Right to call witnesses—Prisoner not informed that he might call witnesses—Prisoner not represented by counsel—Legal aid for prisoner. **R v Andrews** [1938] 4 869, CCA.

Handling stolen goods—**Attempt—**

Goods having ceased to be stolen. *See Attempt*—Impossible attempt—Belief of accused that his acts constitute an offence—Acts not in fact an offence—Handling stolen goods, *ante*.

Evidence—

Previous conviction for same offence—Admissibility of evidence of previous conviction—Knowledge or belief that goods stolen—Evidence only admissible in relation to issue as to knowledge or belief—Procedure where accused charged on several counts in some of which possession in issue and in some guilty knowledge. **R v Wilkins** [1975] 2 734, CA.

Indictment—

Amendment—Particulars of charge—Name of owner of goods—Evidence establishing that goods could not have belonged to person named—Amendment by direction of judge at conclusion of evidence—Amendment by striking out name of owner in particulars of charge—Goods of a common and indistinctive type—Whether name of alleged owner of goods should be inserted in particulars of handling charge—Whether amendment resulting in injustice. **R v Gregory** [1972] 2 861, CA.

Ingredients of offence—Dishonestly undertaking or assisting in retention by or for the benefit of another person—'By or for the benefit of another person'—Essential ingredient of offence—Need for inclusion of those words in indictment—Theft Act 1968, s 22(1). **R v Sloggett** [1971] 3 264, CA.

Particulars of offence—Disclosure of particulars of form of handling in count—Theft Act 1968, s 22(1). **R v Willis, R v Syme** [1972] 3 797, CA.

Particulars of offence—Dishonestly undertaking or assisting in retention etc of goods—Formulation—Theft Act 1968, s 22(1). **R v Deakin** [1972] 3 803, CA.

Practice—Alternative methods of committing offence—Maximum number of counts in ordinary case of handling—Theft Act 1968, s 22(1). **R v Willis, R v Syme** [1972] 3 797, CA.

Information—

Magistrates' court—Information in general terms—Whether information bad for duplicity—Magistrates' Courts Rules 1968 (SI 1968 No 1920), r 83(1)—Theft Act 1968, s 22(1). **Griffiths v Freeman** [1970] 1 1117, QBD.

CRIMINAL LAW (cont)**Handling stolen goods (cont)—****Knowledge or belief goods stolen goods—**

Mistaken belief—Accused believing goods to be stolen goods—Goods not in fact stolen goods—Whether accused guilty of handling—Theft Act 1968, s 22. **Haughton v Smith** [1973] 3 1109, HL.

Knowledge or belief that goods stolen goods—

Suspicious circumstances—Accused refraining from making enquiry—Necessity of showing accused was suspicious and deliberately refrained from making enquiry—Not sufficient to prove suspicious circumstances irrespective of whether accused appreciated that they were suspicious—Theft Act 1968, s 22(1). **R v Grainge** [1974] 1 928, CA.

Test to be applied—Subjective test—Not sufficient to prove accused ought to have known goods had been stolen—Theft Act 1968, s 22(1). **Atwal v Massey** [1971] 3 881, QBD.

Time of knowledge or belief—Receiving—Indictment alleging receiving stolen goods—Necessity of proving knowledge or belief at moment of receipt—Theft Act 1968, s 22(1). **R v Grainge** [1974] 1 928, CA.

Old law. See Receiving stolen goods, post.**Stolen goods—**

Goods having ceased to be stolen goods—Restored to lawful possession or custody—Taking into possession or custody—What amounts to—Relevance of intention—Discovery of goods by police officer—Officer suspecting goods stolen and taking steps to prevent removal—Officer keeping goods under observation—Whether conduct of officer amounting to taking possession or custody of goods—Theft Act 1968, s 24(3). **Re Attorney-General's Reference (No 1 of 1974)** [1974] 2 899, CA.

Theft—

Facts consistent with either offence. *See* Theft—Handling stolen goods, *post*.

Travelling in vehicle known to have been stolen. *See* Road traffic (Travelling in vehicle known to have been stolen).

Undertaking or assisting in retention etc—

Assisting—Failure to reveal presence of stolen goods to police—Whether amounting to or evidence of assisting—Theft Act 1968, s 22(1). **R v Brown** [1969] 3 198, CA.

Realisation of goods—Accused purchasing goods from thief knowing them to have been stolen—Whether accused undertaking the realisation of the goods for the benefit of the thief—Theft Act 1968, s 22(1). **R v Deakin** [1972] 3 803, CA.

Harassment—**Occupier of land—**

Civil liability. *See* Statutory duty (Breach—Civil liability—Landlord and tenant—Harassment).

Residential occupier of land—

Caravan occupier—Caravan in two parts joined together not attached to soil but connected with main services—Caravan occupied for ten years with consent of landowner—Inference of contract for occupation of land and caravan together—Whether premises in which respondent resided were land and caravan—Whether occupier a residential occupier—Rent Act 1965, s 30(2), (5). **Norton v Knowles** [1967] 3 1061, QBD.

Harbour—**Nature reserve—**

Mooring within reserve—Offence. *See* Harbour (Nature reserve—Mooring within reserve).

Harbouring uncustomed goods. *See* Customs and excise (Harbouring uncustomed goods).

Highway—

Danger or annoyance to users. *See* Highway (Danger or annoyance to users).

Pitching stall. *See* Highway (Obstruction—Pitching stall on highway).

Straying animals—

Offence. *See* Highway (Straying animals—Offence).

Touting in street. *See* Highway (Street—Touting).

Wilful damage to highway. *See* Highway (Damage to highway—Wilful damage).

Wilful obstruction of free passage. *See* Highway (Obstruction—Obstruction of free passage).

Homicide—**Causation—**

Cause of death—Act of breaking chain of causation—Act of victim—Refusal of victim to accept medical treatment because of religious belief—Victim stabbed by accused—Blood transfusion necessary to save victim's life—Victim refusing to have transfusion because of religious beliefs—Death of victim following refusal—Whether stabbing an operative cause of victim's death. **R v Blaue** [1975] 3 446, CA.

Cause of death—Bayonet wound resulting in haemorrhage of lung—No time for proper medical examination—Incorrect medical treatment—Death two hours after stabbing—Good chance of recovery if proper medical treatment had been given—Whether death was caused by the wound. **R v Smith** [1959] 2 193, C-MAC.

Causing death by dangerous driving. *See* Road traffic (Dangerous driving—Causing death by dangerous driving).

Manslaughter. *See* Manslaughter, *post*.

Murder. *See* Murder, *post*.

House of Lords—**Jurisdiction—**

Point of law certified—Whether appeal limited to point of law certified by court below—Administration of Justice Act 1960, s1(2). **Attorney-General for Northern Ireland v Gallagher** [1961] 3 299, HL.

Leave to appeal—

Application to Court of Appeal—Practice as regards legal aid and leave to be present when no point of law of general public importance seems to be involved—Administration of Justice Act 1960, s 1. **R v Daines, R v Williams** [1961] 1 290, CCA.

Certificate—Certificate granted by Court of Appeal—Refusal of leave to appeal—Administration of Justice Act 1960, s 1(2). **R v Thompson** [1962] 1 65, CCA.

CRIMINAL LAW (cont)

House of Lords (cont)—

Leave to appeal (cont)—

Certificate—Court of Appeal—No jurisdiction to grant certificate in relation to application for leave to appeal to Court of Appeal as distinct from substantive appeal to that court—Administration of Justice Act 1960, s 1. **R v Jefferies** [1968] 3 238, CA.

Certificate—Form—Question of law—Certificate of Court of Criminal Appeal—Question of law should be stated. **Jones v Director of Public Prosecutions** [1962] 1 569, HL.

Certificate—Fugitive offender—Application for habeas corpus or discharge—Certificate of Divisional Court—Leave to appeal granted by House of Lords—Certificate of Divisional Court not required—Fugitive Offenders Act 1881, s 10—Administration of Justice Act 1960, ss 1(2), 15(3). **Zacharia v Republic of Cyprus, Arestidou v Same** [1962] 2 438, HL.

Certificate—Necessity for—Appeal from Court of Appeal—Certificate necessary before question of application to House of Lords for leave arises. **Gelberg v Miller** [1961] 1 291, QBD.

Certificate—Necessity for—Refusal of Divisional Court to grant certificate that point of law of general public importance involved—Application to House of Lords for leave to appeal does not lie—Administration of Justice Act 1960, s 1(2). **Gelberg v Miller** [1961] 1 681, HL.

House to house collections—

Unauthorised collectors. *See* **Charity** (House to house collection).

Housebreaking—

Constructive breaking—

Trick—Obtaining entry by trick—Accused gaining entry by pretending he was official of BBC employed to locate disturbances on wireless. **R v Boyle** [1954] 2 721, CCA.

Implements—

Possession of housebreaking implements by night—Burden of proof—Direction to be given to jury—Larceny Act 1916, s 28(2). **R v Patterson** [1962] 1 340, CCA.

Housing—

Overcrowding. *See* **Housing** (Overcrowding—Circumstances rendering tenant guilty of offence).

Ignorance as a defence—

Intercourse with mental defective. *See* **Sexual intercourse—Mental defective—Ignorance as defence, post**.

Illegal entry into United Kingdom and similar offences. *See* **Immigration** (Illegal entry and similar offences).

Immigration—

Mens rea—

Contravention of order prohibiting entry. *See* **Singapore** (Criminal law—Mens rea—Immigration). operation—Retrospective

Offences—

Statute—Retrospective operation. *See* **Immigration** (Statute controlling operation@retrospective operation).

Impersonation of police officer. *See* **Police** (Impersonation).

Incest—

Knowledge of relationship—

Evidence. *See* **Criminal evidence** (Incest—Relationship).

Relationship—

Proof—Evidence that accused father of wife's daughter—Suggested adultery during lifetime of wife's first husband—Necessity for evidence of non-access by first husband as well as intercourse by accused at time of conception of wife's daughter. **R v Hemmings** [1939] 1 417, CCA.

Incitement—

Disaffection—

Indictment—Duplicity. *See* **Indictment** (Duplicity—Incitement to disaffection).

Indictable offence—

Incitement to commit summary offence—Whether indictable offence—Magistrates' Courts Act 1952, Sch 1, para 20. **R v Curr** [1967] 1 478, CA.

Obstructing course of justice. *See* **Obstructing course of justice—Incitement, post**.

Racial hatred. *See* **Public order—Incitement to racial hatred, post**.

Incorrigible rogue—

Continuing state of affairs—

Sentence as an incorrigible rogue—No power to sentence for offences on which deemed to be an incorrigible rogue—Vagrancy Act 1832, s 10. **R v Walters** [1968] 3 863, CA.

Sentence—

Probation—Committal to Crown Court—Power of Crown Court—Power of court by or before which person convicted of offence to make probation order—Whether Crown Court having power to make probation order in respect of person committed as incorrigible rogue—Vagrancy Act 1824, ss 5, 10 (as amended by the Courts Act 1971, s 56(1), Sch 8, para 5—Criminal Justice Act 1948, s 3(1). **R v Jackson (Alan Victor)** [1974] 2 211, CA.

Indecency—

Evidence of similar offences. *See* **Criminal evidence** (Improper conduct of accused on other occasions—Similar offences—Indecency).

Gross indecency. *See* **Gross indecency, ante**.

Indecent performances and exhibitions. *See* **Disorderly house—Indecent performances and exhibitions, ante**.

Indecent assault—

Assault as ingredient of offence—

Absence of hostile act—Child told to commit indecent act by father—Father telling child to masturbate him—No compulsion or force—Child complying—Whether indecent assault on child. **Director of Public Prosecutions v Rogers** [1953] 2 644, QBD.

CRIMINAL LAW (cont.)

Indecent assault (cont.)—

Assault as ingredient of offence (cont.)—

Absence of hostile act—Invitation to commit indecent act—Accused inviting young girl to touch his penis—Girl doing so—Whether an indecent assault on girl. *Fairclough v Whipp* [1951] 2 834, KBD.

Consent of victim—Act done with victim's consent—Girl aged 16 or under—Indecent act done to girl with her consent and without hostility—Whether an indecent assault. *R v McCormack* [1969] 3 371, CA.

Indecency of assault—

Invitation to commit indecent act—Refusal—Hostile act following refusal—Boy asked to act indecently—Hostile act by accused on boy's refusal—Whether necessary to prove assault itself was indecent—Whether sufficient that assault was made in circumstances of indecency—Offences against the Person Act 1861, s 62. *Beal v Kelley* [1951] 2 763, KBD.

Indecent exposure—

Wilfully, openly, lewdly and obscenely exposing person—

Openly—Exposure in private room—Whether necessary ingredient of offence that exposure occurred in public place—Vagrancy Act 1824, s 4, as amended by the Criminal Justice Act 1925, s 42. *Ford v Falcone* [1971] 2 1138, QBD.

Person—Meaning—Vagrancy Act 1824, s 4. *Evans v Ewels* [1972] 2 22, QBD.

Indictable offence—

Committal of young person for trial. *See Children and young persons* (Trial of persons under 17—Committal for trial).

Indictable offence triable summarily—

Committal for sentence. *See Magistrates* (Committal for sentence—Sentence for indictable offence tried summarily).

Generally. *See Magistrates* (Summary trial for indictable offence).

Indictment. *See Indictment.*

Inducement to invest money—

Arrangement—

Purpose or pretended purpose—Participation in profits arising from management of property—Circulars distributed inviting participation in 'L plan', whereby a participant subscribed a 'bank' which provided security for bets on horses selected by promoters—Percentage of profits, if any, to promoters, balance to be dealt with as subscriber wished—Whether there was a participation in profits arising from the management of property other than securities—Prevention of Fraud (Investments) Act 1958, s 13(1)(b), s 14(1)(a), (b). *Hughes v Trapnell, Trapnell v J R Berman Ltd* [1962] 3 616, QBD.

Fraud—

Need to prove fraud—Reckless but honest statement insufficient—Prevention of Fraud (Investments) Act 1939, s 12(1). *R v Bates* [1952] 2 842, CCC.

Inducement to take part or to offer to take part in prescribed arrangement—

Inducement resulting in victim offering to take part in arrangement—Inducement also resulting in victim taking part following acceptance of offer—Whether separate offences—Whether commission of one offence precluding commission of the other—Prevention of Fraud (Investments) Act 1958, s 13(1)(b) (as amended by the Protection of Depositors Act 1963, s 21(1)). *Secretary of State for Trade v Markus* [1975] 1 958, HL.

Investment on deposit—

Advertisement issued to public—Advertisements for deposits with mutual benefit society—Advertisement sent to member of society—Variety of benefits offered to depositor—Whether loan repayable at a premium—Whether advertisement issued to the public—Protection of Depositors Act 1963, s 2(1), s 26(1). *R v Delmayne* [1969] 2 980, CA.

Jurisdiction. *See Jurisdiction*—Fraudulent inducement to invest money, *post*.

Reckless making of statement or promise—

Recklessness—Meaning of 'reckless'—No offence independent of fraud—Prevention of Fraud (Investments) Act 1939, s 12(1). *R v Mackinnon* [1958] 3 657, CCA.

Recklessness—Need to prove that statement or promise rash and unsupported by any real basis of facts—Prevention of Fraud (Investments) Act 1958, s 13(1). *R v Grunwald* [1960] 3 380, CCC.

Information. *See Magistrates* (Information).Injunction. *See Injunction* (Criminal proceedings).

Insanity—

Amnesia—

Fitness to plead—Hysterical amnesia—Whether hysterical amnesia can amount to such insanity as renders an accused unfit to stand trial. *R v Podola* [1959] 3 418, CCA.

Automatism distinguished. *See Automatism*—Insanity distinguished, *ante*.

Burden of proof—

Burden on accused to prove insanity—No higher than burden on party in civil proceedings. *Sodeman v R* [1936] 2 1138, PC.

Defect of reason—

Defect from disease of mind—Meaning—Malfunctioning of mind—Malfunctioning caused by disease and not by external factor—Defence of automatism where malfunctioning caused by external factor—Accused suffering from diabetes—Onset of hypoglycaemia—Hypoglycaemia caused by use of insulin prescribed by doctor and not by disease—Hypoglycaemia resulting in loss of consciousness—Assault committed whilst accused unconscious—Accused entitled to plead automatism but not insanity. *R v Quick* [1973] 3 347, CA.

Necessity of proving that accused was deprived of power of reasoning—No defence where accused retains power of reasoning but in moment of confusion fails to use it. *R v Clarke* [1972] 1 219, CA.

Temporary defect—Defect of reason from disease of the mind—Accused unaware of nature and quality of his act—Temporary defect of reason caused by physical disease—Trial of Lunatics Act 1883, s 2(1). *R v Kemp* [1956] 3 249, Assizes.

CRIMINAL LAW (cont)

Insanity (cont)—

Diminished responsibility—

Murder charge. *See* Murder—Diminished responsibility, *post*.

Diminished responsibility raised as defence—

Evidence of insanity—Direction to jury—Whether jury should be directed to consider verdict of guilty but insane. *R v Price* [1962] 3 957, Assizes.

Evidence of insanity—Proposal by prosecution to tender evidence—Ruling that prosecution entitled to cross-examine and to call medical evidence as to insanity of accused where diminished responsibility to be raised by the defence. *R v Russell* [1963] 3 603, CCC.

Evidence of insanity—Prosecution—Duty of prosecution to set up insanity where defence of diminished responsibility raised. *R v Bastian* [1958] 1 568, CCC.

Evidence tendered by prosecution—

No defence of diminished responsibility—Defence should be raised by accused and witnesses called on his behalf. *R v Dixon* [1961] 3 460, Assizes.

Fitness to plead. *See* Trial—Fitness to plead, *post*.

Irresistible impulse—

Knowledge that act wrong—Accused forced to do act by irresistible impulse caused by disease—Whether defence of insanity established. *Sodeman v R* [1936] 2 1138, PC.

Knowledge of right and wrong—

Wrong—Knowledge that act wrong in law—Lack of knowledge that act causing death was morally wrong—Whether sufficient to establish that accused knew act was wrong in law. *R v Windle* [1952] 2 1, CCA.

Medical evidence—

Condition of mind at time of act—Medical witness—Form of questions to be put to witness—Question whether particular facts if true indicative of insanity—Improper to ask witness whether on whole of evidence given he is of opinion accused was insane at relevant time. *R v Holmes* [1953] 2 324, CCA.

Time to which test of insanity should be related—

Time of commission of offence—Disease of the mind not impairing knowledge when quiescent—Psychopathic condition—Explosive outburst induced by drink. *Attorney-General for Northern Ireland v Gallagher* [1961] 3 299, HL.

Uncontrollable impulse—

Murder charge. *See* Murder—Uncontrollable impulse—Evidence of insanity, *post*.

Insulting behaviour—

Behaviour whereby breach of the peace may be occasioned—

Touting by woman for customers for non-alcoholic refreshment house—London—Metropolitan Police Act 1839, s 54, para 13. *Bryan v Robinson* [1960] 2 173, QBD.

Intention—

Aiding and abetting. *See* Aiding and abetting—Intention, *ante*.

Article intended for use for causing injury. *See* Offensive weapons—Article intended for use for causing injury, *post*.

Attempt. *See* Attempt—Mens rea—Intent, *ante*.

Company—

Intent to deceive. *See* Company—Mens rea—Intent to deceive, *ante*.

Defence of duress. *See* Duress as a defence—Intent, *ante*.

Inference of intent—

Test to be applied—Subjective or objective test. *Hardy v Motor Insurers' Bureau* [1964] 2 742, CA.

Intoxication negating intention. *See* Intoxication as a defence—Capacity to form intent, *post*.

Larceny. *See* Larceny—Intent permanently to deprive owner, *post*.

Murder. *See* Murder—Intent, *post*.

Natural consequences of act—

Attempted murder—Accused attempting to strangle and suffocate wife—Direction to jury—Presumption of intending natural consequence of acts—Whether applicable to attempted murder—Offences against the Person Act 1861, s 14. *R v Grimwood* [1962] 3 285, CCA.

Murder—Child's death caused by prisoner—Defence that prisoner had no intention to kill or to do grievous bodily harm—Whether test of intention is what a reasonable man would have contemplated as likely to result from the act done. *R v Ward* [1956] 1 565, CCA.

Presumption—Presumption that accused intended natural consequences of act. *Director of Public Prosecutions v Smith* [1960] 3 161, HL.

Obscene publications. *See* Obscene publications—Intention of publisher, *post*.

Subjective test—

Inference from evidence—Summing-up containing passages reminiscent of objective test—Conviction of murder—Substitution of conviction of manslaughter—Criminal Justice Act 1967, s 8. *R v Walllett* [1968] 2 296, CA.

Theft—

Intention to make restitution. *See* Theft—Dishonesty—Intention to make restitution, *post*.

Intention permanently to deprive owner of property. *See* Theft—Intention permanently to deprive owners of property, *post*.

Wounding with intent to cause grievous bodily harm. *See* Grievous bodily harm—Wounding with intent to cause grievous bodily harm—Intent, *ante*.

Interference with administration of justice—

Embracery. *See* Embracery, *ante*.

Intoxication as a defence—

Capacity to form intent—

Offence not requiring proof of specific intent—Self-induced intoxication—Assault—Intention to commit assault—Self-induced intoxication rendering accused incapable of forming intent to commit assault—Whether defence to charge of assault—Criminal Justice Act 1967, s 8. *Director of Public Prosecutions v Majewski* [1976] 2 142, HL.

CRIMINAL LAW (cont.)

Intoxication as a defence (cont)—

Causing death by unlawful act. *See* Manslaughter—Mens rea—Causing death by unlawful act—Intoxication, *post*.Murder. *See* Murder—Intent—Drunkenness, *post*.

Provocation—

Murder charge. *See* Murder—Provocation—Drunkenness, *post*.

Involuntary manslaughter—

Accessory before the fact. *See* Accessory before the fact—Involuntary manslaughter, *ante*.

Issue estoppel—

Application to criminal proceedings. *See* Estoppel—Issue estoppel—Application to criminal proceedings, *ante*.

Joinder of accused—

Indictment. *See* Indictment (Joinder of two or more accused).

Joinder of charges—

Indictment. *See* Indictment (Joinder of charges).

Joint charge—

Indictment. *See* Indictment (Joinder of two or more accused—Joint charge).Separate trials. *See* Separate trials—Joint charge, *post*.

Joint enterprise—

Common design—

Murder. *See* Murder—Common design, *post*.Concerted action. *See* Concerted action, *ante*.Manslaughter. *See* Manslaughter—Concerted action—Joint enterprise, *post*.Separate trials. *See* Separate trials—Common enterprise, *post*.

Jurisdiction—

Aiding and abetting—

Causing death by dangerous driving—Unsafe condition of vehicle—Foreign vehicle—Accident in England—Death caused by accident in England through unsafe condition of vehicle—Employer and owner in Scotland—Whether employer and owner aided and abetted and counselled and procured in England. *R v Robert Millar (Contractors) Ltd and Robert Millar* [1970] 1 577, CA.

Aircraft—

British aircraft outside England—Larceny—Civil Aviation Act 1949, s 62(1). *R v Naylor* [1961] 2 932, CCA.British aircraft outside England—Unlawful possession of raw opium—Plea to jurisdiction before arraignment—Indictment quashed—Civil Aviation Act 1949, s 60, s 62(1)—Dangerous Drugs Regulations 1953 (S I 1953 No 499), reg 3. *R v Martin* [1956] 2 86, CCC.

Attempt—

Attempt to obtain property by deception—Letter posted abroad addressed to persons in England—Letter containing fraudulent claim to football pool winnings—Letter received by football pool promoters in England—Whether attempt occurring within jurisdiction. *R v Baxter* [1971] 2 359, CA.

Conspiracy—

Acts to be carried out abroad—Acts criminal in foreign country—Acts not indictable if committed in England—Whether conspiracy in England to carry out crime abroad indictable. *Board of Trade v Owen* [1957] 1 411, HL.Agreement made by parties abroad—Agreement to perform acts in England—Acts unlawful under English law—Acts performed in England in pursuance of agreement—Whether English court having jurisdiction to try charge of conspiracy. *Director of Public Prosecutions v Doot* [1973] 1 940, HL.Goods fraudulently obtained abroad—No agreement to commit any criminal act in England—Allegation that goods to be sold in England but nothing to show that sale of such goods was criminal offence in England—Whether indictment for conspiracy lay. *R v Cox (Peter)* [1968] 1 410, CA.

Demanding with menaces—

Demand by letter—Letter posted in England—Addressed to person abroad—Demand made within jurisdiction—Theft Act 1968, s 21(1). *Treacy v Director of Public Prosecutions* [1971] 1 110, HL.

False pretences—

Obtaining—Posting of cheque by victim abroad—Arrangement by defendant in England with company registered abroad for discounting of hire-purchase agreements—Agreement by defendant that sending of cheques by post would complete transaction—Whether cheque obtained on posting or on receipt by defendant. *R v Harden* [1962] 1 286, CCA.

Firearms—

Possession with intent to endanger life—Life of person outside the United Kingdom—Possession of firearms in England with intent to endanger life—Whether necessary to establish intent to endanger life of person in United Kingdom—Firearms Act 1968, s 16 (as amended by the Criminal Damage Act 1971, s 11(8), Sch, Pt I). *R v El-Hakkaoui* [1975] 2 146, CA.

Fraudulent inducement to invest money—

Inducement made in England to persons abroad—Inducement to take part in prescribed arrangement—Inducement made to investor overseas—Inducement resulting in investor completing written application to take part in arrangement—Application sent to company in England to be processed—Investor authorising steps to be taken on his behalf in England for the purpose of processing the application—Whether investor induced 'to take part...in [an] arrangement' in England—Whether offence of fraudulently inducing investor to take part committed in England—Prevention of Fraud (Investments) Act 1958, s 13(1)(b) (as amended by the Protection of Depositors Act 1963, s 2(1)). *Secretary of State for Trade v Markus* [1975] 1 958, HL.

Receiving stolen goods—

Goods stolen abroad. *See* Receiving stolen property—Stolen—Abroad, *post*.

CRIMINAL LAW (cont)

Jurisdiction (cont)—

Ship—

Foreign ship in British territorial waters—Murder on board ship—Murder of the captain on board by one of the crew—Arrest of accused by Hong Kong police—No request made by foreign government for his surrender to them—Waiver of immunity—Jurisdiction of Hong Kong court. **Chung Chi Cheung v R** [1938] 4 786, PC.

High seas—Offences on board ship—Offence committed by British subject on board ship on high seas—Meaning of 'high seas'—Whether including port of Commonwealth country—Merchant Shipping Act 1894, s 686. **R v Liverpool Justices, ex parte Molyneux** [1972] 2 471, QBD.

Uttering forged document—

Posting in England—Forged document posted to authority abroad—Intention to deceive foreign authority—Posting in England an overt criminal act—Whether offence committed in England—Forgery Act 1913, s 6(2). **R v Owen** [1956] 3 432, CCA.

Juror—

Challenge. *See* **Jury** (Juror—Challenge).

Jury. *See* **Jury**.

Kidnapping—

Force or fraud—

Consent of victim—Child—Secreting child—Accused alleged to have secreted child against will of her parents—No allegation that child secreted by force, fraud or against her will—Whether an offence. **R v Hale** [1974] 1 1107, Crown Court.

Husband and wife—

Wife cohabiting with husband—Wife seized and carried away against her will—Whether crime of kidnapping may be committed by husband against wife. **R v Reid** [1972] 2 1350, CA.

Ingredients of crime—

Crime complete on seizure and carrying away of victim—Not a continuing offence—Concealment of victim not a necessary ingredient. **R v Reid** [1972] 2 1350, CA.

Knowledge—

Handling stolen goods. *See* Handling stolen goods—Knowledge or belief that goods stolen, *ante*.

Offensive weapon. *See* Offensive weapons—Having offensive weapon in a public place, *ante*.

Larceny—

Addition of charge—

Indictment for receiving—Charge of larceny added—Evidence of previous conviction of fraud or dishonesty inadmissible—Larceny Act 1916, s 43(1)(b). **R v Davies** [1953] 1 341, CCA.

Alternative offence—

Receiving—Allegations including receiving—Accused acquitted on count indicting him with breaking and entering office and stealing jacket—Conviction of receiving an alternative verdict—Whether allegations in count expressly or impliedly included offence of receiving—Criminal Law Act 1967, s 6(3). **R v Woods** [1968] 3 709, CA.

Receiving—Alternative charge of receiving—Case of larceny or nothing—Direction to the jury. **R v Christ** [1951] 2 254, CCA.

Warehousebreaking. *See* Verdict—Alternative offence—Larceny—Warehousebreaking, *post*.

Asportation—

Goods handed to accused by owner—Conspiracy to steal disclosed to owner—Property handed over on instructions from owner for purposes of apprehension—Absence of asportation. **R v Turvey** [1946] 2 60, CCA.

Permission of owner—Supermarket—Customer obtaining meat from assistant and failing to pay for it at cash counter—Customer allowed to leave store after manager had seen meat in customer's bag—Whether customer had permission to take away meat—Whether larceny—Larceny Act 1916, s 1(1). **Martin v Puttick** [1967] 1 899, QBD.

Receipt of property—Money—Proceeds of cheque—Cheques drawn on employer's account—Accused making cheques payable to own creditors and not employer's creditors—Money subject of charge belonging to employer's bank—No carrying away of money. **R v Davenport** [1954] 1 602, CCA.

Autrefois acquit. *See* Autrefois acquit—Larceny, *ante*.

Charge—

Form—Larceny for which special punishment provided—Larceny Act 1916, s 2—Magistrates' Courts Act 1952, Sch I. **R v Bryant** [1956] 1 340, C-MAC.

Evidence of theft—

Owner of goods not ascertained—Evidence from which reasonable person could draw inference that theft had taken place—Whether prosecution had established *prima facie* case. **Noon v Smith** [1964] 3 895, QBD.

Finding—

Innocent finding—Belief that owner could be found by taking reasonable steps—Subsequent fraudulent intention to keep goods—Whether finder a 'bailee'—Larceny Act 1916, s 1(1), proviso. **Thompson v Nixon** [1965] 2 741, QBD.

Lost property—Ownership—Golf balls picked up on golf links after being lost by original owners—Possession of landowners—Larceny Act 1916, s 1(2)(i)(d). **Hibbert v McKiernan** [1948] 1 860, KBD.

Fixtures. *See* Larceny—Property capable of being stolen—Fixtures, *post*.

CRIMINAL LAW (cont)

Larceny (cont)—

Indictment—

Alternative counts—Larceny or receiving—Submission of no case—Whether one count should be withdrawn on submission of no case. **R v Plain** [1967] 1 614, CA.

Alternative counts—Larceny or receiving—Recent possession of stolen property—No positive evidence of theft. **R v Seymour** [1954] 1 1006, CCA.

Duplicity—*See* Indictment (Duplicity—Larceny).

Intent permanently to deprive owner—

Intent formed subsequently to taking—Original taking a trespass—Whether larceny committed when intent formed. **Ruse v Read** [1949] 1 398, KBD.

Intent to return items taken—Money taken from employer's till—Intention to replace money by means of cheque which accused would receive—Intention to spend coins or notes taken—Intention to repay ground of mitigation but not defence—Larceny Act, 1916, s 17(1)(a). **R v Cockburn** [1968] 1 466, CA.

Intent to return items taken—Money taken from till by servant or agent—Intention to replace money—Whether a defence—Larceny Act 1916, s 1(1). **R v Williams** [1953] 1 1068, CCA.

Larceny by person subject to military law—

Whether charge to be laid under Army Act. *See* Court-martial (Charge—Larceny by person subject to military law).

Modern law. *See* Theft, *post*.

Owner—

Special property in goods—Bailee—Taking from bailee—Deposit of goods as security—Goods taken away by depositor—Larceny Act 1916, s 1. **Rose v Matt** [1951] 1 361, KBD.

Property capable of being stolen—

Fixtures—Property attached to or forming part of realty—Wooden hut bolted to concrete base—Larceny Act 1916, s 1(3)(a). **Billing v Pill** [1953] 2 1061, QBD.

Fixtures—Stealing of fixtures—Floorboards in building ripped up to expose water pipes underneath—Whether an offence—Larceny Act 1916, s 8(1)(a). **R v Harlow and Winstanley** [1967] 1 683, CA.

Servant—

Larceny as a servant—General deficiency in employers' moneys—Money not banked by employee and in law in possession of employers—Separate counts for specific sums—Not larceny—No statutory provision for an alternative verdict. **R v O'Driscoll** [1967] 1 632, CA.

Taking—

Accepting delivery in ignorance of mistake—Accepting delivery of excessive quantity of goods—Subsequent discovery of excess—Intention to appropriate formed when excess discovered—Whether excess taken when accepted or when discovered—Larceny Act 1916, s 1(2)(i). **Russell v Smith** [1957] 2 796, QBD.

Accepting delivery in ignorance of mistake—Subsequent appropriation—No animus furandi at time of taking—Whether larceny. **Moynes v Cooper** [1956] 1 450, QBD.

Accepting delivery in ignorance of mistake—Subsequent appropriation—Whether there was animus furandi at time of taking. **R v Hudson** [1943] 1 642, CCA.

Trick—

False pretences distinguished from larceny by a trick—Wharfinger delivering goods against forged delivery order—Whether larceny by a trick or obtaining goods by false pretences. **R v Sutton** [1966] 1 571, CCA.

Leave to appeal. *See* Appeal—Leave to appeal, *ante*.

Legal aid. *See* Legal aid (Criminal cases).

Licensed betting office—

Offences in respect of conduct of. *See* Gaming (Betting—Licensed betting office—Conduct).

Licensing offences—

Knowingly selling liquor. *See* Licensing (Knowingly selling liquor).

Litter—

Depositing and leaving litter—

Time offence committed—Appellant charged with depositing and leaving litter on or before a specified date—Information laid three months after date specified—No proof of date on which litter deposited—Jurisdiction of justices to hear information—Whether a continuing offence—Magistrates' Courts Act 1952, s 104—Litter Act 1958, s 1(1). **Vaughan v Biggs** [1960] 2 473, QBD.

Loitering—

Prostitution. *See* Prostitution—Loitering or soliciting for purposes of prostitution, *post*.

Lottery—

Printing, possessing or distributing tickets in connection with the lottery. *See* Gaming (Lottery—Offence—Printing, possessing or distributing tickets in connection with the lottery).

Unlawfully conducting lottery. *See* Gaming (Lottery—Unlawfully conducting lottery, contrary to Betting and Lotteries Act 1934, s 21).

Malice—

Grievous bodily harm. *See* Grievous bodily harm—Maliciously causing grievous bodily harm, *ante*.

Malicious wounding. *See* Wounding—Unlawful and malicious wounding, *post*.

CRIMINAL LAW (cont)

Manslaughter—

Alternative charge—

Substitution of verdict—Ill treatment of child—Death in consequence of ill-treatment—Counts of manslaughter and wilful ill-treatment—Conviction of manslaughter—Appeal—Substitution of verdict of guilty on second count—Undesirability of joining second count with count of manslaughter—Criminal Appeal Act 1907, s 5(2)—Children and Young Persons Act 1933, s 1(4). *R v Large* [1939] 1 753, CCA.

Autrefois acquit. *See* Autrefois acquit—Manslaughter, *ante*.

Cause of death. *See* Homicide—Causation, *ante*.

Causing death by unlawful act—

Mens rea. *See* Manslaughter—Mens rea—Causing death by unlawful act, *post*.

Unlawful act—Injection of heroin—Unlawful act constituted by injecting into victim heroin which at the time and for the purposes of the injection accused had unlawfully taken into his possession. *R v Cato* [1976] 1 260, CA.

Civil action—

Defence—Availability of defence—Conviction of defendant of manslaughter. *See* Tort (Availability of defence—Criminal conviction of defendant—Judgment on admission of facts—Assault resulting in death—Defendant having pleaded guilty to manslaughter).

Concerted action—

Collateral act—Act causing death done by one of several participants in unlawful concerted action—Brawl in public house—Barman stabbed to death by one of several persons acting in concert to break up the premises—Appellant outside public house at the time but knew that the killer was in possession of a knife—Whether appellant guilty of manslaughter. *R v Smith (Wesley)* [1963] 3 597, CCA.

Joint enterprise—Death following act of one joint adventurer going beyond tacit agreement—Agreement to commit robbery with violence—Lack of evidence as to which accused inflicted injuries causing death—Lack of evidence of degree or type of violence contemplated in concerted action—Each accused properly convicted of robbery with violence—Whether either could be convicted of manslaughter. *R v Lovesey* [1969] 2 1077, CA.

Joint enterprise—Death following act of one joint adventurer going beyond tacit agreement—Whether co-adventurer who took no part in killing guilty of manslaughter. *R v Anderson and Morris* [1966] 2 644, CCA.

Dangerous driving—

Acquittal of manslaughter. *See* Road traffic (Dangerous driving—Acquittal on charge of manslaughter).

Indictment—

Joinder of charges—Charges found on same facts. *See* Indictment (Joinder of charges—Charges founded on same facts—Manslaughter).

Joinder of charges—Practice. *See* Indictment (Joinder of charges—Practice—Murder or manslaughter counts may be joined with other counts).

Involuntary manslaughter—

Accessory before the fact. *See* Accessory before the fact—Involuntary manslaughter, *ante*.

Mens rea—

Causing death by unlawful act—Dangerous act—Knowledge of accused—Accused doing unlawful and dangerous act—Whether necessary to prove that accused knew act was dangerous. *Director of Public Prosecutions v Newbury* [1976] 2 365, HL.

Causing death by unlawful act—Intent—No specific intent necessary for conviction—Death caused by acts performed while under influence of drugs—General references to mens rea in manslaughter—Misleading. *R v Lipman* [1969] 3 410, CA.

Causing death by unlawful act—Intoxication—Self-induced intoxication—Accused incapable of forming intent to cause harm to victim—Whether defence to charge of manslaughter. *R v Howell* [1974] 2 806, Crown Court.

Causing death by unlawful act—Necessity for some degree of mens rea. *R v Church* [1965] 2 72, CCA.

Criminal negligence—Accident—Unintentionally causing death by pulling trigger of revolver in jest when bullet was not opposite barrel—No knowledge that pulling trigger would rotate chamber to bring bullet in line with barrel thus causing it to fire—Defence of accident not put to jury—Conviction quashed. *R v Lamb* [1967] 2 1282, CA.

Negligence. *See* Manslaughter—Negligence, *post*.

Murder—

Reduction to manslaughter. *See* Murder—Manslaughter—Reduction to manslaughter, *post*.

Neglect of child—

Neglect causing death of child—Wilful neglect—Accused having failed to foresee consequences of neglect—Neglect deliberate in sense of not being inadvertent—Whether death of child automatically giving rise to charge of manslaughter. *R v Lowe* [1973] 1 805, CA.

Negligence—

Act of carelessness—Ill-treatment of young person—Death from suffocation attributable to concussion from blows to head—Whether act of carelessness capable of justifying charge of manslaughter. *R v Large* [1939] 1 753, CCA.

Criminal negligence. *See* Manslaughter—Mens rea—Criminal negligence, *ante*.

Degree of negligence—Dangerous driving of motor car—Death caused by reckless driving—Road Traffic Act 1930, s 11—Road Traffic Act 1934, s 34. *Andrews v Director of Public Prosecutions* [1937] 2 552, HL.

Degree of negligence—Reckless or dangerous driving—Indictment of manslaughter—Verdict of guilty of reckless or dangerous driving—Whether distinction in degree of negligence—Road Traffic Act 1930, s 11—Road Traffic Act 1934, s 34. *R v Leach* [1937] 1 319, CCA.

CRIMINAL LAW (cont)

Manslaughter (cont)—

Negligence (cont)—

Professional man—Negligence of professional man in the course of his profession—Degree of negligence necessary to constitute criminal offence—Injection of too strong a drug by doctor. *Akerele v R* [1943] 1 367, PC.

Provocation. *See* Murder—Provocation, *post*.

Recklessness or gross negligence—

Consent of victim—Consent no defence—Relevance of victim's consent to accused's act—Whether consent should be taken into account for the purpose of determining whether accused guilty of recklessness or gross negligence. *R v Cato* [1976] 1 260, CA.

Marriage ceremony—

Offences relating to solemnisation of marriages. *See* **Marriage** (Solemnisation).

Mens rea—

Absolute liability. *See* Absolute liability, *ante*.

Aiding and abetting. *See* Aiding and abetting, *ante*.

Assault. *See* Assault—Mens rea, *ante*.

Attempt. *See* Attempt—Mens rea, *ante*.

Belief of accused—

Mistake—Damage to property. *See* Damage to property—Property belonging to another—

Belief of accused, *ante*.

Burglary—

Entering a building as a trespasser. *See* Burglary—Entering a building as a trespasser—Mens rea, *ante*.

Causing vehicle to be used on road in breach of regulations. *See* **Road traffic** (Motor vehicle—

Causing vehicle to be used on road in breach of regulations—Mens rea of offence).

Company. *See* Company—Mens rea, *ante*.

Conspiracy. *See* Conspiracy—Mens rea, *ante*.

Construction of statute. *See* **Statute** (Offence—Mens rea).

Dangerous driving. *See* **Road traffic** (Dangerous driving—Mens rea).

Driving while disqualified for holding licence. *See* **Road traffic** (Driving while disqualified for holding licence—Mens rea).

Driving while unfit through drink or drugs. *See* **Road traffic** (Driving while unfit to drive through drink or drugs—Mens rea).

Immigration—

Contravention of order prohibiting entry. *See* **Singapore** (Criminal law—Mens rea—Immigration).

Intention. *See* Intention, *ante*.

Knowledge—

Imputation of knowledge of servant to master. *See* **Licensing** (Knowingly selling liquor in breach of condition of licence).

Larceny. *See* Larceny—Intent permanently to deprive owner, *ante*.

Maliciously administering poison etc. *See* Administering poison to other destructive or noxious thing—Maliciously administering poison etc, *ante*.

Manslaughter. *See* Manslaughter—Mens rea, *ante*.

Mistake—

Defence. *See* Mistake as a defence, *post*.

Murder. *See* Murder—Mens rea, *post*.

Obstructing police—

Wilful obstruction. *See* Obstructing constable in execution of duty—Wilful obstruction—Deliberate acts of defendant causing obstruction, *post*.

Receiving—

Knowledge. *See* Receiving stolen goods—Knowledge that goods stolen, *post*.

Statutory offence—

Drugs. *See* **Drugs** (Dangerous drugs—Unauthorised possession—Mens rea).

Using vehicle on road in breach of regulations. *See* **Road traffic** (Motor vehicle—Using vehicle on road in breach of regulations—Mens rea).

Mental defective—

Sexual intercourse. *See* Sexual intercourse—Mental defective, *post*.

Misbehaviour in public office—

Common law offence—

Use of office for personal advantage—County court registrar—Indictment charged intention of gaining improper personal advantage without proper regard to interests of beneficiaries in funds in court—No express mention of dishonesty or fraud—Accused obtaining mortgage on his house out of moneys paid out of court by way of investment of such moneys—Whether common law offence constituted by matters charged in the counts of the indictment. *R v Llewellyn-Jones* [1967] 3 225, CA.

Misprison of felony—

Common law offence—

Active concealment—Whether offence exists—Whether active concealment essential ingredient of offence. *Sykes v Director of Public Prosecutions* [1961] 3 33, HL.

Concealment of facts relating to felony—

Limitation on duty of disclosure. *R v King* [1965] 1 1053, CCA.

Constituents of offence—

Benefit of accused person. *R v Aberg* [1948] 1 601, CCA.

Misrepresentation as to quantity of goods—

Weights and measures. *See* **Weights and measures** (Misrepresentation as to quantity of goods).

CRIMINAL LAW (cont)

Mistake as a defence—

Consequences of committing offence—

Mistake as to consequences—Defendant distributing leaflets to members of armed forces—Leaflets encouraging troops to desert or to refuse to obey orders if posted to Northern Ireland—Director of Public Prosecutions refusing to consent to prosecution for incitement to disaffection—Defendant mistakenly believing consent would not be given to prosecution for distributing leaflets on future occasions—Whether mistaken belief a defence to prosecution for subsequent distribution of leaflets. **R v Arrowsmith** [1975] 1 463, CA.

Rape—

Mistaken belief as to victims consent. *See* Rape—Consent—Belief of accused—Mistake, *post*.

Motor vehicle—

Driving while uninsured. *See* **Motor insurance** (Compulsory insurance against third party risks).

Sale in unroadworthy condition. *See* **Road traffic** (Motor vehicle—Sale in unroadworthy condition).

Murder—

Accessory before fact—

Suicide pact—Survivor not present when suicide committed by other party—Whether accessory before the fact—Countermanding of agreement—Conduct required. **R v Croft** [1944] 2 483, CCA.

Appeal. *See* Appeal—Murder, *ante*.Autrefois acquit. *See* Autrefois acquit—Murder, *ante*.Autrefois convict. *See* Autrefois convict—Murder, *ante*.

Capital murder—

Diminished responsibility—Plea of guilty of manslaughter not to be accepted on indictment for capital murder—Homicide Act 1957, s 2. **R v Matheson** [1958] 2 87, CCA.

Indictment—Form—Separate counts unnecessary for alternate forms of capital murder—Homicide Act 1957, s 5(1), (2)—Indictments Act 1915, Sch 1, r 4a, as added by Indictment Rules 1957 (SI 1957 No 669), r 1. **R v Masters** [1964] 2 623, CCA.

Intent—Police officer acting in execution of his duty—Defence that prisoner had no intention to kill or do grievous bodily harm—Direction to jury—Presumption of intending natural consequence of acts—Objective test—‘Reasonable man’—‘Grievous bodily harm’—Offences against the Person Act 1861, s 18. **Director of Public Prosecutions v Smith** [1960] 3 161, HL.

Murder in course or furtherance of theft—Implied malice—Woman killed from blows inflicted by burglar—Direction to jury that malice implied from voluntary act causing grievous bodily harm—Implied malice still sufficient to constitute murder—Causing grievous bodily harm not ‘another offence’ within Homicide Act 1957, s 1(1). **R v Vickers** [1957] 2 741, CCA.

Murder in course or furtherance of theft—Intent—Intent to steal necessary—Not necessary that theft should actually have been committed—Homicide Act 1957, s 5(1)(a), s 5(5)(e). **R v Masters** [1964] 2 623, CCA.

Murder in course or furtherance of theft—Theft already committed—Murder committed in order to avoid detection and to escape—Homicide Act 1957, s 5(1)(a). **R v Jones** [1959] 1 411, CCA.

Murder in course or furtherance of theft—Theft in the course of murder—Distinction—Homicide Act 1957, s 5(1)(a). **R v King** [1963] 3 930, CCA.

Cause of death. *See* Homicide—Causation—Cause of death, *ante*.

Common design—Acquittal of one accused—

196210816

Concerted action—

Common purpose. *See* Concerted action—Common purpose—Murder, *ante*.

Robbery with violence—Concerted action to rob with violence—Death inflicted in course of robbery—Lack of evidence as to which accused inflicted injuries causing death—Lack of evidence of degree of violence contemplated in concerted action—Each accused properly convicted of robbery with violence—Whether either could be convicted of murder. **R v Lovesey** [1969] 2 1077, CA.

Diminished responsibility—

Abnormality of mind—Condition bordering on insanity—Insanity in broad popular sense—Bahama Islands Homicide (Special Defences) Act 1959, s 2(1). **Rose v Reginam** [1961] 1 859, PC.

Abnormality of mind—Explanation of defence in summing-up—Medical evidence—Explanation of defence of diminished responsibility to be given—Medical evidence to be analysed in case of conflict—Insufficient to hand transcript of voluminous medical evidence to jury—Homicide Act 1957, s 2(1), (2). **R v Terry** [1961] 2 569, CCA.

Abnormality of mind—Medical evidence showing accused suffering from emotional abnormality—Whether jury should be directed on the meaning of abnormality of mind—Homicide Act 1957, s 2(1). **R v Spriggs** [1958] 1 300, CCA.

Abnormality of mind—Question whether abnormality substantially impairing mental responsibility—Question for jury—Homicide Act 1957, s 2(1). **R v Byrne** [1960] 3 1, CCA.

Abnormality of mind—Racial mentality not abnormality. **R v King** [1963] 3 930, CCA.

Abnormality of mind—Substantially impairing mental responsibility—Substantially—Meaning—Homicide Act 1957, s 2(1). **R v Lloyd** [1966] 1 107, CCA.

Appeal—Leave to appeal—Conflict in medical evidence—Mental responsibility a question for the jury, after proper direction by judge—Leave to appeal refused—Homicide Act 1957, s 2(1). **R v Jennion** [1962] 1 689, CCA.

Burden of proof—Preponderance of probability—Homicide Act 1957, s 2(2). **R v Dunbar** [1957] 2 737, CCA.

Capital murder. *See* Murder—Capital murder—Diminished responsibility, *ante*.

CRIMINAL LAW (cont)

Murder (cont)—

Diminished responsibility (cont)—

Direction to jury—Whether direction to jury may include illustration of what can constitute abnormality of mind—Homicide Act 1957, s 2(1). **R v Walden** [1959] 3 203, CCA.

Evidence of insanity. *See* Insanity—Diminished responsibility raised as a defence—Evidence of insanity, *ante*.

Failure of accused to give evidence—Comment by judge in summing-up—Comment on failure to give evidence—Accused's truthfulness in giving information to medical experts not challenged—Conviction of murder set aside—Comment on such failure only rarely proper—Form which comment might take—Homicide Act 1957, s 2(1). **R v Bathurst** [1968] 1 1175, CA.

Medical evidence—Calling of evidence after prosecution case closed. *See* Criminal evidence (Prosecution evidence—Adducing evidence before close of case—Fresh evidence after prosecution's case closed—Medical evidence—Murder—Diminished responsibility).

Medical evidence—Evidence not challenged but based on accused's having had no grounds for belief in wife's infidelity—Factual basis not a question for medical opinion—Duty to probe issue of diminished responsibility—Homicide Act 1957, s 2(1). **R v Ahmed Din** [1962] 2 123, CCA.

Medical evidence—Evidence of abnormality of mind not challenged—Verdict of capital murder—Verdict set aside as unsupported by the evidence—Homicide Act 1957, s 2. **R v Matheson** [1958] 2 87, CCA.

Plea—Guilty to manslaughter—When proper to accept plea of guilty to manslaughter—Medical evidence plainly showing that plea of diminished responsibility can be accepted. **R v Cox (Maurice)** [1968] 1 386, CA.

Sentence—Treatment—Convicted person in need of mental treatment but local hospital not sufficiently secure—Sentence of life imprisonment imposed, not as punishment, but to leave Secretary of State with discretion to place prisoner in secure mental hospital—Whether hospital order should have been made—Mental Health Act 1959, s 60, s 65, s 72. **R v Morris** [1961] 2 672, CCA.

Duress as a defence. *See* Duress as a defence—Murder, *ante*.

Evidence—

Circumstantial evidence—Corpus delicti—Body of murdered man not found—Proof by circumstantial evidence. **R v Onufrejczyk** [1955] 1 247, CCA.

Statements by victim—Sign language. *See* Criminal evidence (Sign language—Statements by victim—Murder).

Foreign national abroad—

Jurisdiction of court-martial. *See* Court-Martial (Civil offence—Jurisdiction—Murder—Murder of foreign national abroad).

India—

Criminal evidence—Admissions and confessions. *See* India (Criminal evidence—Admissions and confessions—Murder).

Indictment—

Form—Repeated murders—Different occasions—When evidence of different occasions to be left to jury—Homicide Act 1957, s 6. **R v King** [1963] 3 930, CCA.

Joinder of charges. *See* Indictment (Joinder of charges—Murder).

Intent—

Capital murder. *See* Murder—Capital murder—Intent, *ante*.

Constructive murder—No intention to kill—Intention to commit rape—Death resulting—Whether accused guilty of murder. **R v Stone** [1937] 3 920, CCA.

Drugs—Effect of taking drugs—No distinction in law from effect of drunkenness. **R v Lipman** [1969] 3 410, CA.

Drunkenness—Effect—Proper direction to jury—Defence that accused so affected by drink that he did not have requisite intent—Drunkenness one factor to be taken into account in determining whether accused in fact had requisite intent—Onus not on accused to show that drink rendered him incapable of forming necessary intent. **R v Sheehan, R v Moore** [1975] 2 960, CA.

Grievous bodily harm—Intent to cause grievous bodily harm—Meaning of 'grievous bodily harm'—Serious bodily harm—Whether limited to harm likely to endanger life. **Hyam v Director of Public Prosecutions** [1974] 2 41, HL.

Natural consequence of act.

Provocation. *See* Murder—Provocation—Intention, *post*.

Malice aforethought—

No presumption of malice—Unlawful killing—Improper performance of lawful act—Accused separating two boys fighting—Accused causing death of one boy—Conviction of murder reduced to manslaughter. **Mahadeo v R** [1936] 2 813, PC.

Manslaughter—

Reduction to manslaughter—Direction to jury—Defence not asking for reduction of crime to manslaughter—Facts showing possible case of manslaughter. **Mancini v Director of Public Prosecutions** [1941] 3 272, HL.

Reduction to manslaughter—Direction to jury—Accused not seeking to show crime one of manslaughter—Facts showing reasonable provocation—Duty to direct jury that they may return verdict of manslaughter—Duty only arising where material on which jury can properly find verdict of manslaughter. **Mancini v Director of Public Prosecutions** [1941] 3 272, HL.

Reduction to manslaughter—Facts raising possibility of manslaughter verdict—Duty of judge to direct jury accordingly even though manslaughter verdict improbable—Failure to give direction—Appeal—Substitution of verdict of manslaughter—Criminal Appeal Act 1907, s 5(2). **R v Roberts** [1942] 1 187, CCA.

CRIMINAL LAW (cont)

Murder (cont)—

Mens rea—

Foresight—Probable consequences—Proof that accused had foreseen death or grievous bodily harm as a probable consequence of his act—Not accused's motive or desire to cause death or grievous bodily harm—Whether foresight of probable consequences sufficient mens rea. **Hyam v Director of Public Prosecutions** [1974] 2 41, HL.

Inadvertent act resulting in death—Firearms—Violence—Offence involving personal violence—Use of loaded firearm a violent measure—Violence resulting in death of victim—Inadvertent use of firearm not reducing offence to manslaughter. **R v Jarmain** [1945] 2 613, CCA.

Intent. *See* Murder—Intent, *ante*.

Malice aforethought. *See* Murder—Malice aforethought, *ante*.

Series of acts—Erroneous belief that death caused by first act—Death actually caused by second act—Accused inflicting injuries on woman—Subsequently threw body in river believing her to be dead—Woman killed by drowning—Whether defence no mens rea accompanying act causing death. **Thabo Meli v Reginam** [1954] 1 373, PC.

Provocation—

Accused's conduct—Provocation itself provoked by accused's conduct—Availability to accused of plea of provocation—Accused blackmailing victim—Victim attacking accused with knife—Accused wresting knife from victim and killing him—Accused pleading provocation—Circumstances in which plea of provocation available to blackmailer. **Edwards v Reginam** [1973] 1 152, PC.

Acts constituting provocation—Acts of person other than victim—Whether acts of other person capable of amounting to provocation—Homicide Act 1957, s 3. **R v Davies** [1975] 1 890, CA.

Burden of proof—Burden on prosecution—Burden to disprove provocation. **R v Wheeler** [1967] 3 829, CA.

Burden of proof—Direction to jury—Failure to direct on burden of proof as to provocation—Whether verdict of manslaughter should be substituted. **R v Cascoe** [1970] 2 833, CA.

Chance-medley—Distinction between manslaughter and chance-medley. **Mancini v Director of Public Prosecutions** [1941] 3 272, HL.

Defence not raised—No direct evidence of loss of control—No direction to jury on extenuating matters—Penal Code of the Bahamas, s 345, s 346, s 347. **Rolle v Reginam** [1965] 3 582, PC.

Direction by judge to assessors—Fiji. *See* Fiji (Criminal law—Judge sitting with assessors—Direction to assessors—Murder—Provocation).

Direction to jury—Defence not raised—Issue to be left to jury although defence of provocation not raised and although accused did not testify that he was provoked—Homicide as culmination of evening of gang warfare—Homicide Act 1957, s 3. **R v Porritt** [1961] 3 463, CCA, **Bullard v R** [1961] 3 470, PC, **Mancini v Director of Public Prosecutions** [1941] 3 272, HL.

Drunkenness—Test of behaviour of reasonable, sober man—Drunkenness leading accused to act in manner in which no reasonable, sober man would do. **R v McCarthy** [1954] 2 262, CCA.

Elements of defence—Sudden and temporary loss of self control—Resulting from acts by dead man—Acts such as would cause reasonable man to lose self-control. **R v Duffy** [1949] 1 932, CCA.

Intention—Intent of accused at time of act—Test of effect of provocation on reasonable man still applicable—Homicide Act 1957, s 3—Criminal Justice Act 1967, s 8. **R v Ives** [1969] 3 470, CA.

Intention—Sudden passion involving loss of self-control—Defence available where intent to kill or cause grievous bodily harm arose from sudden passion involving loss of self-control caused by provocation. **R v Martindale** [1966] 3 305, C-MAC.

Intention—Sudden passion involving loss of self-control—Defence available where loss of control led to intent to kill arising out of sudden passion caused by act of provocation. **Lee Chun-Chuen v Reginam** [1963] 1 73, PC.

Intent to kill—Onus of proof of requirements of statutory defence of provocation—Withdrawal of issue of provocation from jury—Issue wrongly withdrawn—Whether murder reduced to manslaughter in spite of intent to kill due to provocation—Crimes Act 1900, s 23(2), proviso (c). **Parker v Reginam** [1964] 2 641, PC.

Reasonable doubt—Prisoner's evidence not accepted—Right of jury to acquit in case of reasonable doubt. **R v Prince** [1941] 3 37, CCA.

Relationship between provocation and retaliation—Reasonable relationship—Proportion between provocation and retaliation to be considered by jury—Whether reasonable relationship rule replaced—Homicide Act 1957, s 3. **R v Walker** [1969] 1 767, CA.

Relationship between provocation and retaliation—Test to be applied—Test in determining whether reasonable man would have reacted to provocation in way accused did—Relationship between provocation and retaliation a factor to be considered by jury—Homicide Act 1957, s 3. **R v Brown** [1972] 2 1328, CA.

Self-control of reasonable man—Physical peculiarity of accused—Sexual impotence—Ineffective attempt to have intercourse with prostitute—Prostitute jeering and kicking him—Accused kicking prostitute—Reasonable man not to be invested with physical peculiarities of accused for purpose of determining whether there was provocation. **Bedder v Director of Public Prosecutions** [1954] 2 801, HL.

Standards to be applied—Contemporary standards—Chance-medley—Relevance of doctrine. **R v Semini** [1949] 1 233, CCA.

CRIMINAL LAW (cont)**Murder (cont)—****Provocation (cont)—**

Wife's confession of adultery—Whether sufficient provocation to reduce murder to manslaughter—Functions of judge and jury. **Holmes v Director of Public Prosecutions** [1946] 2 124, HL.

Withdrawal of defence—Proof of self-defence. *See* **Criminal evidence** (Burden of proof—Defence—Self-defence—Provocation—Murder—Withdrawal of defence of provocation from jury).

Self-defence—

Burden of proof—Burden on prosecution—Burden to disprove self-defence. **R v Wheeler** [1967] 3 829, CA.

Duty to retreat—Not essential that accused must retreat as far as possible—Material factor in judging reasonableness of accused's conduct. **R v McInnes** [1971] 3 295, CA.

Excessive force—Manslaughter—Accused acting in self-defence—Accused's honest belief that force necessary—Force more than reasonable man would consider necessary—Plea of self-defence failing—Whether finding of excessive force giving rise to verdict of manslaughter. **Palmer v Reginald** [1971] 1 1077, PC.

Excessive force—Manslaughter—Plea of self-defence failing by reason of use of excessive force—Whether finding of excessive force necessarily giving rise to verdict of manslaughter rather than murder. **R v McInnes** [1971] 3 295, CA.

Swaziland. *See* **Swaziland** (Murder).

Uncontrollable impulse—

Defence—No defence per se. **R v King** [1963] 3 930, CCA.

Evidence of insanity—Whether uncontrollable impulse presumed in law to afford evidence of insanity. **Attorney-General for the State of South Australia v Brown** [1960] 1 734, PC.

National insurance—**Arrears of contributions—**

Recovery. *See* **National insurance** (Arrears of contributions—Recovery).

Negligence—

Aiding and abetting. *See* **Aiding and abetting—Mens rea—Negligence, ante**.

Manslaughter. *See* **Manslaughter—Negligence, ante**.

Night offences—**Armed with dangerous or offensive weapon—**

Dangerous or offensive—Weapon not adapted or intended for causing injury to person—Piece of stone—Whether dangerous or offensive weapon—Larceny Act 1916, s 28(1). **Smaje v Balmer** [1965] 2 248, Liverpool Crown Court.

Found by night in any building—

Found in—Prisoner seen to enter building and later to run out of it—Larceny Act 1916, s 28(4). **R v Lumsden** [1951] 1 1101, CCA.

Found at night in any building—

In any building—Person discovered with arm through window attempting to enter building—Larceny Act 1916, s 28(4). **R v Parkin** [1949] 2 651, CCA.

Obscene publications—**Defence of public good—**

Expert evidence—Weight—Absence of rebutting evidence—Court entitled to look at book—Expert evidence of opinion favourable to defence not rebutted by other oral evidence—Court should weigh up merits and demerits—Expert evidence may be rejected although not rebutted by other oral evidence—Obscene Publications Act 1959, s 4. **John Calder (Publications) Ltd v Powell** [1965] 1 159, QBD.

Publication justified on ground that article in interests of science, literature, art or learning or other objects of general concern—Objects of general concern—Therapeutic benefit to certain classes of people with particular sexual tendencies—Evidence that publication of pornographic articles of psychological benefit to such persons by relieving their sexual tensions and diverting them from anti-social activities—Whether an 'object of general concern'—Whether publication justified as being for the public good on ground that it was in interests of an object of general concern—Obscene Publications Act 1959, s 4. **Director of Public Prosecutions v Jordan** [1976] 3 775, HL.

Witnesses—Onus of proof—Order in which witnesses should be called—Onus to make out defence on balance of probabilities—Proper direction to jury—Failure to put defence case on obscenity to jury—Obscene Publications Act 1959, s 1(1), s 4(1). **R v Calder and Boyars Ltd** [1968] 3 644, CA.

Destruction—

Limitation of time—Complaint to justices—Summons issued more than six months after matter of complaint arose—Whether time limit applicable. **Cox v Stinton** [1951] 2 637, KBD.

Onus of proof—Occupier of premises when publications found—Onus to show cause why publications should not be destroyed. **Thomson v Chain Libraries Ltd** [1954] 2 616, QBD.

Whole publication—Cover only obscene—Whether whole publication should be destroyed. Obscene Publications Act 1957, s 1. **Paget Publications Ltd v Watson** [1952] 2 1256, QBD.

Enforcement of law. *See* **Mandamus** (Chief officer of police—Enforcement of law—Obscene publications).

CRIMINAL LAW (cont)

Obscene publications

Evidence—

Indecency or obscenity—Postal packet—Sending postal packet containing indecent or obscene article—Evidence on issue whether article indecent or obscene inadmissible—Evidence on current standards of propriety by which question of indecency or obscenity to be determined inadmissible—Issue of indecency or obscenity and the current standards of propriety entirely a matter for jury—Post Office Act 1953, s 11. **R v Stamford** [1972] 2 427, CA.

Issue of obscenity—Expert evidence—Opinion evidence of experts whether article tends to deprave or corrupt inadmissible—Expert evidence admissible only on issue whether, although obscene, publication justified as being for the public good—Question of obscenity exclusively for jury—Obscene Publications Act 1959, ss 1(1), 4. **R v Anderson** [1971] 3 1152, CA.

Forfeiture—

Appeal—Case stated—Appeal against refusal to order forfeiture—Forfeiture of certain articles ordered but not of other similar articles—Right of informant to appeal by case stated against refusal of forfeiture of the similar articles—Obscene Publications Act 1959, s 3—Magistrates' Courts Act 1952, s 87(1). **Burke v Copper** [1962] 2 14, QBD.

Assumption as to publication—Publication in manner likely having regard to circumstances in which found—Nature and method of defendant's business as well as circumstances in which articles found relevant for deciding what publication was likely and whether articles would deprave and corrupt—Obscene Publications Act 1959, s 1(3), s 3(7). **Morgan v Bowker** [1963] 1 691, QBD.

Indecent or obscene—

Distinction between indecency and obscenity—Whether charge may be laid in conjunctive or disjunctive form—Duplicitous—Post Office Act 1953, s 11(1)(b). **R v Stanley** [1965] 1 1035, CCA.

Obscene—Meaning—Items which are shocking or lewd—Sending postal packet enclosing indecent or obscene article—Meaning of obscene—Meaning including items which are shocking or lewd—Unnecessary to prove tendency to deprave or corrupt—Post Office Act 1953, s 11. **R v Anderson** [1971] 3 1152, CA.

Intention of publisher—

Relevance—Results of publications—Whether purpose or intention of publisher material—Whether evidence of results of publication admissible—Obscene Publications Act 1959, s 1(1), s 4(1). **R v Shaw** [1961] 1 330, CCA.

Publication—

Individual—Relevant issues—Likelihood of corrupting individual himself—Possibility of republication—Obscene Publications Act 1959, s 1(1), (3)(a), s 2(6). **R v Barker** [1962] 1 748, CCA.

Representations otherwise published—Photographic negatives—Distribution—No distribution or intent to distribute—Positives distributed—Whether negatives 'otherwise published' when positives taken from them published—Obscene Publications Act 1957, s 1. **Cox v Stinton** [1951] 2 637, KBD.

Showing, playing or projecting article—Photographic negatives—Whether negative an article capable of being published—Obscene Publications Act 1959, s 1(2), (3)(b), s 3(7). **Straker v Director of Public Prosecutions** [1963] 1 697, QBD.

Tendency to deprave or corrupt—

Aversion effect—Filthy or lewd matter—Meaning of obscenity not extending to include items which are namely 'repulsive,' 'filthy,' 'loathsome' or 'lewd'—Aversion defence—Open to defendant to show that article so unpleasant or lewd that likely to cause people to revolt from activities described—Publication having opposite effect to tendency to deprave or corrupt—Obscene Publications Act 1959, s 1(1). **R v Anderson** [1971] 3 1152, CA.

Comparison with other books—Propriety—Whether regard must be had to book alone—Whether other books not subject of charge may be referred to. **R v Reiter** [1954] 1 741, CCA.

Contemporary standards—Proof of tendency to corrupt and deprave according to the standard of the present day. **R v Martin Secker Warburg Ltd** [1954] 2 683, CCC.

Depravity and corruption—Condition of the mind—Publication enabling readers to engage in private fantasies but not leading to overt sexual activity—Unnecessary for prosecution to show that publication would lead to sexual activity on part of reader—Obscene Publications Act 1959, s 1(1). **Director of Public Prosecutions v Whyte** [1972] 3 12, HL.

Justices—Duty to read and look at publication—Not for prosecution to read passages from book or indicate in what respect pictures obscene except in answer to question by justices—Obscene Publications Act 1957, s 1. **Thomson v Chain Libraries Ltd** [1954] 2 616, QBD.

Magazine containing distinct items—Items to be considered separately—Obscenity of single item sufficient to render whole publication obscene—Obscene Publications Act 1959, s 1(1). **R v Anderson** [1971] 3 1152, CA.

Morals of likely readers already in a state of depravity or corruption—Articles obscene if nonetheless tending to maintain likely readers in a state of depravity or corruption—Obscene Publications Act 1959, s 1(1). **Director of Public Prosecutions v Whyte** [1972] 3 12, HL.

Non-sexual matters—Whether obscenity limited to sexual matters—Obscene Publications Act 1959, s 1(1). **John Calder (Publications) Ltd v Powell** [1965] 1 159, QBD.

Persons likely to read, see or hear matter contained in publication—Evidence that persons liable to be depraved or corrupted—Publication by sale—Tendency to deprave or corrupt purchaser—Police officers—Obscene photographs sold to police officers on plain clothes duty—Evidence that officers experienced in dealing with obscene publications and uncorrupted by the photographs—Obscene Publications Act 1959, s 1(1), (3), s 2(6). **R v Clayton, R v Halsey** [1962] 3 500, CCA.

CRIMINAL LAW (cont)

Obscene publications (cont)—

Test of obscenity—

Publication by another person following publication by person charged—Meaning of 'publication'—Cinematograph exhibition excluded—Film—Person charged supplying film to cinema licensee for exhibition to cinema audiences—Whether exhibition of film constituting 'publication' by another person—Obscene Publications Act 1959, ss 1(3), 2(6)—Obscene Publications Act 1964, s 1(3)(b). **Attorney-General's Reference (No 2 of 1975) [1976] 2 753, CA.**

Tendency to deprave or corrupt persons likely to read, see or hear matter contained or embodied in article—Persons reading, seeing or hearing matter as result of publication to them—Film—Cinematograph exhibition not constituting publication—Film likely to deprave or corrupt persons attending cinematograph exhibition—Whether necessary to prove that persons likely to be depraved or corrupted in consequence of 'publication'—Whether likelihood of cinema audiences being depraved or corrupted relevant in determining whether film obscene—Obscene Publications Act 1959, ss 1(1)(3), 2(1)(as amended by the Obscene Publications Act 1964, s 1(1)). **Attorney-General's Reference (No 2 of 1975) [1976] 2 753, CA.**

Unsolicited publications describing sexual techniques. *See* Unsolicited publications—Publications describing or illustrating human sexual techniques, *post*.

Obstructing constable in execution of duty—

Execution of duty—

Direction to motorist to disobey traffic regulations—Circumstances in which constable has power to give direction—Direction reasonably necessary for protection of life or property—Refusal by motorist to obey instruction—Whether motorist guilty of obstructing constable in execution of his duty—Police Act 1964, s 51(3). **Johnson v Phillips [1975] 3 682, QBD.**

Obstruction—

Acts amounting to obstruction—Delay and warning—Police about to enter licensed premises—Police delayed and licensee warned, by accused—Prevention of Crimes Amendment Act 1885, s 2—Licensing Act 1953, s 151(1). **Hinchliffe v Sheldon [1955] 3 406, QBD.**

Positive act constituting obstruction—Act not per se unlawful—Accused suspected by constable of driving with excessive quantity of alcohol in blood—Accused required to take a breath test—Accused drinking from bottle of whisky prior to test—Purpose and effect of drinking whisky to prevent subsequent laboratory test revealing whether he was driving with excessive quantity of alcohol in blood—Whether constituting obstruction—Police Act 1964, s 51(3). **Ingleton v Dibble [1972] 1 275, QBD.**

Wilful obstruction—

Act making it more difficult for police to carry out duty—Refusal to answer questions—Whether wilful obstruction—Police Act 1964, s 51(3). **Rice v Connolly [1966] 2 649, QBD.**

Deliberate acts of defendant causing obstruction—Intention of defendant to assist constable—Intervention by defendant with intention of assisting constable in making arrest—Intervention having effect of obstructing constable—Whether necessary to prove that defendant intended to obstruct constable—Whether defendant guilty of wilfully obstructing constable—Police Act 1964, s 51(3). **Willmott v Atack [1976] 3 794, QBD.**

Obstructing course of justice—

Common law offence—

No element of conspiracy—Whether a count for attempting to defeat the due course of justice charges an offence known to law. **R v Grimes [1968] 3 179, Liverpool Crown Court.**

Conspiracy. *See* Conspiracy—Obstruction of course of justice, *ante*.

Incitement—

Nexus between incitement and contemplated offence—Perversion of course of public justice—Accused offering to give false evidence on behalf of potential defendant in criminal proceedings in return for payment—Whether perversion of justice an offence. **R v Andrews [1973] 1 857, CA.**

No pending proceedings—

Concealment of motor accident—False story told to police—Persuading others to corroborate false statements—No pending proceedings at the time when acts done. **R v Sharpe, R v Stringer [1938] 1 48, CCA.**

Witness—

Intimidation—Intention to persuade witness to alter or withhold evidence—Persuasion by unlawful or improper means—Threat to exercise legal right against witness—Threat made bona fide—Witness intending to give evidence against defendant in divorce proceedings—Defendant writing to witness stating that he would sue witness for slander—Defendant suggesting witness withdraw evidence—Whether defendant's letter capable of constituting attempt to pervert course of justice. **R v Kellett [1975] 3 468, CA.**

Obtaining credit—

Undischarged bankrupt. *See* Bankruptcy (Offences—Undischarged bankrupt obtaining credit).

Obtaining credit by fraud—

Credit—

Advance payments—Contracts to make paintings from photographs or snapshots—Deposits paid—Failure to carry out work—Whether credit obtained—Debtors Act 1869, s 13(1). **Fisher v Raven, Raven v Fisher [1963] 2 389, HL.**

Advance payments—Payments for services to be rendered—Whether obtaining credit—Debtors Act 1869, s 13(1). **R v Ingram [1956] 2 639, CCA.**

Creation of debt—Hire-purchase—Motor cycle under hire-purchase given in part exchange on hire-purchase of another motor cycle—No credit obtained since no debt created—Debtors Act 1869, s 13(1). **R v Mitchell [1955] 3 263, CCA.**

CRIMINAL LAW (cont)

Obtaining credit by fraud (cont)—

Credit (cont)—

Hire-purchase—Arrangement by trader to sell customer's car—Sale of car by trader unknown to customer—Subsequent hire-purchase agreement by trader's company for purchase of the car from customer—Deposit paid by company and balance to be paid by instalments under hire-purchase agreement—Common form agreement—Not an 'obtaining of credit'—Debtors Act 1869, s 13(1). **R v Inman** [1966] 3 414, CCA.

Sale of goods—Goods not delivered—Whether an obtaining of credit—Debtors Act 1869, s 13(1). **R v Dawson, R v Wenlock** [1960] 1 558, CCA.

Debt or liability—

Existing liability—Incurring debt or liability—Whether liability incurred must be something that was not there before—Debtors Act 1869, s 13(1). **R v Thornton** [1963] 1 170, CCA.

Obtaining national insurance benefit by false statement etc. *See* **National insurance** (Benefit—Obtaining benefit by false statement etc).

Obtaining pecuniary advantage by deception—

Deception—

Belief of person to whom representation made—Relevance—False statements not believed by persons to whom made—Relevance—Accused intending to deceive. **Hickmott v Curd** [1971] 2 1399, QBD.

Conduct—Accused ordering meal in restaurant—Accused deciding after meal to leave without paying—Accused remaining at table until waiter out of room before leaving restaurant—Whether pecuniary advantage obtained by deception—Theft Act 1968, ss 15 (4), 16(1). **Director of Public Prosecutions v Ray** [1973] 3 131, HL.

Conduct—Representation—Placing of bet—Representation that stake would be paid in cash—Accused placing bet in betting shop as race was about to begin—Accused counting out money slowly until result known—Dog on which bet placed having failed to win—Accused taking up money and leaving—Whether a false representation—Theft Act 1968, s 16(2)(a). **R v Aston** [1970] 3 1045, CA.

Implied representation—Ability to pay implicit in circumstances—Accused taking taxi after agreeing fare with driver—Accused having no money to pay fare—Theft Act 1968, s 16(1). **R v Waterfall** [1969] 3 1048, CA.

Implied representation—Cheque—Representation by drawer—Cheque card—Card containing undertaking by bank to honour cheque—Payee not having any interest in question whether drawer having authority from bank to draw cheque for amount in question—Defendant drawing cheque for amount in excess of permitted overdraft—Cheque backed by cheque card—Whether implied representation to payee that defendant had authority of bank to draw cheque—Whether defendant having deceived payee—Theft Act 1968, s 16(1). **Metropolitan Police Comr v Charles** [1976] 3 112, HL.

Person deceived—Relevance—Necessity of showing causal connection between deception and obtaining pecuniary advantage—Deception causing loss to third party but not to person deceived—Whether necessary to show that person deceived suffered loss in consequence of deception—Theft Act 1968, s 16(1). **R v Kovacs** [1974] 1 1236, CA.

Deferment of debt—

Antecedent debt—Elements of offence—Purpose of deception—Effect of deception—Purpose to induce creditor to refrain from enforcing payment of debt on due date—Necessity of proving that deception had that effect—Drawing of worthless cheque by debtor—Acceptance of cheque by creditor as payment of debt—Cheque subsequently dishonoured—Whether deception having effect of inducing creditor to refrain from enforcing payment of debt—Theft Act 1968, s 16(2)(a). **R v Locker** [1971] 2 875, CA.

Dishonesty—

Honest belief—Recklessness—Honest belief negating dishonest intent—Representation made recklessly—Absence of reasonable ground for belief insufficient in itself to constitute dishonesty—Evidence of dishonesty—Theft Act 1968, s 16(1). **R v Royle** [1971] 3 1359, CA.

Honest belief—Test of honest belief subjective—Theft Act 1968, s 16(1). **R v Waterfall** [1969] 1 1048, CA.

Evasion of debt—

Antecedent debt—Worthless cheque—Accused having already incurred liability for debt before cheque handed over—Cheque dishonoured—Whether debt 'evaded'—Theft Act 1968, s 16. **Director of Public Prosecutions v Turner** [1973] 3 124, HL.

Evasion of payment—Agreement by creditor to cancel or forgive debt—Worthless cheque—Representation that cheque good and valid order for payment—Acceptance of cheque by creditor as payment—Cheque dishonoured—Whether debt 'evaded' although no agreement on part of creditor that debt should be cancelled or forgiven—Theft Act 1968, s 16(1)(2)(a). **R v Fazackerley** [1973] 2 819, CA.

Evasion of payment—Irrelevant that debt continues in existence—Drawing of worthless cheque by debtor—Acceptance of cheque by creditor as payment of debt—Cheque subsequently dishonoured—Whether debt evaded although continuing in existence—Theft Act 1968, s 16(2)(a). **R v Page** [1971] 2 870, CA.

Incurring of debt—Subsequent evasion—Accused at no time having money to discharge debt—Accused hiring taxi—Accused having no money to pay fare—Accused not released from obligation to pay fare—Whether debt evaded—Theft Act 1968, s 16(1). **R v Waterfall** [1969] 3 1048, CA.

Liability for debt—Personal liability of accused—Necessity of proving that debt was incurred for which accused was personally liable—Theft Act 1968, s 16(2)(a). **R v Royle** [1971] 3 1359, CA.

Prospect that debt might in fact be discharged—Evidence that debts were in due course discharged by third party—Relevance of possibility of discharge—Whether relevant to question whether debt 'deferred' or 'evaded'—Theft Act 1968, s 16(1), (2)(a). **R v Royle** [1971] 3 1359, CA.

CRIMINAL LAW (cont)

Obtaining pecuniary advantage by deception (cont)—
Information—

Statement of offence—Particulars—Particulars of offence not substantiated by evidence—Particulars not essential to description of offence—Statement of offence directing accused to relevant statutory provision—Overwhelming evidence of fraud—Accused ordering drinks in public house—Accused stating that he had money and displaying notes to barmaid—Accused subsequently concealing money and stating to manager and barmaid that it had been mislaid—Manager and barmaid not believing accused's story and so not deceived—Whether conviction should stand—Theft Act 1968, s 16(1). *Hickmott v Curd* [1971] 2 1399, QBD.

Pecuniary advantage—

Cases in which pecuniary advantage to be regarded as obtained—Being allowed to borrow by way of overdraft—Whether pecuniary advantage obtained when overdraft facility granted—Theft Act 1968, s 16(2)(b). *R v Watkins* [1976] 1 578, Crown Ct.

Obtaining property by deception—

Attempt—

Jurisdiction. *See* Jurisdiction—Attempt—Attempt to obtain property by deception, *ante*.

Deception—

Cheque—Representation by defendant that in ordinary course of business there would be sufficient funds to meet cheque on presentation—Cheque in fact met on presentation—Funds to meet cheque only available in consequence of representation made by defendant—Application by defendant for shares—Cheque drawn by defendant for initial payment—Defendant relying on fact that issuing house would not allot full amount of shares applied for and would therefore send a return cheque for difference in price—Defendant knowing that issuing house would not have allotted shares if it had known defendant had insufficient funds to pay for shares applied for—Whether defendant guilty of deception—Theft Act 1968, s 15(1). *R v Greenstein* [1976] 1 1, CA.

Effect of false representation—Need to show representation operated on mind of person to whom it was made. *R v Laverty* [1970] 3 432, CA.

Dishonesty—

Intention to make restitution—Accused overdrawing on his post office giro account—Accused having no right to overdraw—Genuinely intending to repay when having money to place in account—No prospect of money being paid into account before cheques drawn presented for payment—Accused's honest intention insufficient to meet allegation of dishonesty—Theft Act 1968, s 15. *Halstead v Patel* [1972] 2 147, QBD.

Intention of permanently depriving person of property—

Intention to make restitution—Accused overdrawing on his post office giro account—Accused knowing he had no right to overdraw—Accused genuinely intending to repay when having money to place in account—Accused intending permanently to deprive post office of money drawn unless replacing coins or notes received—Theft Act 1968, s 15. *Halstead v Patel* [1972] 2 147, QBD.

Permanent deprivation—Cheque—Loan—Character of cheque as a thing in action—Change of character on presentation and payment—Lender induced to grant loan by dishonest deception—Loan paid by way of cheque—Cheque returned on presentation and payment—Borrower's obligation to repay loan—Whether lender permanently deprived of cheque or of moneys represented by cheque—Theft Act 1968, s 15(1). *R v Duru* [1973] 3 715, CA.

Obtaining—

For another—Enabling another to obtain property—Accused by deception procuring payment of money to third party—Third party ignorant of deception—Whether property obtained by deception—Theft Act 1968, s 15(1),(2). *R v Duru* [1973] 3 715, CA.

Theft. *See* Theft—Obtaining property by deception, *post*.

Offence—

When complete—

Offence against building regulations. *See* Building (Building regulations—Offence against 1965 regulations—When offence complete).

Offensive weapons—

Armed with dangerous or offensive weapon by night. *See* Night offences—Armed with dangerous or offensive weapon, *ante*.

Article intended for use for causing injury—

Abandonment of intention—Accused having weapon with intention to use it to cause injury in future—Accused remaining in possession of article after abandoning intention to use it offensively—Whether article an offensive weapon—Prevention of Crime Act 1953, s 1(1)(4). *R v Allamby* [1974] 3 126, CA.

Formation of intention—Lapse of time between formation of intention and use—Article carried innocently—Article used to cause injury—Whether formation of intention at time of causing injury sufficient to constitute offence—Prevention of Crime Act 1953, s 1(1)(4). *Ohlson v Hylton* [1975] 2 490, QBD.

Injury—Intention to frighten or intimidate—Accused having sheath knife—Accused using knife to break into cinema and to intimidate caretaker—Whether accused had with him an article intended for use for causing injury—Prevention of Crime Act 1953, s 1(1)(4). *Woodward v Koessler* [1958] 3 557, QBD.

Injury—Intention to frighten or to intimidate—Intimidation—Need to show intimidation of a sort capable of producing injury through operation of shock—Prevention of Crimes Act 1953, s 1(4). *R v Edmonds* [1963] 1 828, CCA.

Joint indictment—Common purpose—Purpose of each accused—Necessity for joint possession or common purpose—Prevention of Crime Act 1953, s 1(4). *R v Edmonds* [1963] 1 828, CCA.

Article intended for use causing injury—

Joint indictment—Common purpose—Purpose of each accused—Necessity for joint possession or common purpose—Prevention of Crime Act 1953, s 1(4). *R v Edmonds* [1963] 1 828, CCA.

CRIMINAL LAW (cont)

Offensive weapons (cont)—

Article intended for use for causing injury—

Proof of intention—Accused in fact using article to cause injury—Whether conclusive evidence of intention—Prevention of Crime Act 1953, s 1(1). **R v Dayle** [1973] 3 1151, CA.

Proof of intention—Onus of proof—Onus on prosecution to show defendant carried article with intention of using it to injure—Prevention of Crime Act 1953, s 1(4). **R v Petrie** [1961] 1 466, CCA.

Self-defence—Accused having metal bar—Accused in fear of physical attack—Accused intending to use bar for purpose of self-defence only—Whether bar an 'offensive weapon'—Prevention of Crime Act 1953, s 1(4). **Evans v Hughes** [1972] 3 412, QBD.

Having offensive weapon in public place—

Knowledge—Need to prove accused knowingly had offensive weapon—Onus of proof on prosecution—Direction to be given to jury—Prevention of Crime Act 1953, s 1(1). **R v Cugullere** [1961] 2 343, CCA.

Reasonable excuse—Self-defence—Fear of attack—Necessity of showing imminent particular threat affecting particular circumstances in which weapon carried—Prevention of Crime Act 1953, s 1(1). **Evans v Hughes** [1972] 3 412, QBD.

Reasonable excuse—Use for unlawful purpose—Accused having air rifle in public gallery for purpose of shooting at target—Accused in moment of anger turning and shooting woman—Whether having offensive weapon without reasonable excuse—Prevention of Crime Act 1953, s 1. **R v Jura** [1954] 1 696, CCA.

Offering to sell motor vehicle in unroadworthy condition. *See* **Road traffic** (Motor vehicle—Sale in unroadworthy condition).

Official secrets—

Acts for purpose prejudicial to safety or interests of state—

Purpose—Motive distinguished—Direct purpose and ultimate aim distinguished—Demonstration by nuclear disarmament campaigners at prohibited place—Whether demonstration for purpose prejudicial to interests of state—Official Secrets Act 1911, s 1(1). **Chandler v Director of Public Prosecutions** [1962] 3 142, HL.

Spying—Activities other than spying—Demonstration by nuclear disarmament campaigners at prohibited place—Whether offence extending to activities other than spying—Official Secrets Act 1911, s 1(1). **Chandler v Director of Public Prosecutions** [1962] 3 142, HL.

Acts preparatory to commission of offence under Official Secrets Acts—

Offence—Whether the doing of such an act is an offence in itself—Official Secrets Act 1920, s 7. **R v Oakes** [1959] 2 92, CA.

Offence—Ingredients of offence—Mens rea—What must be proved—Official Secrets Act 1920, s 7. **R v Bingham** [1973] 2 89, CA.

Communication of information—

Person holding office under His Majesty—Police officer—Whether police officer a 'person holding office under His Majesty'—Official Secrets Act 1911, s 2(1)(a)—Official Secrets Act 1920, s 6. **Lewis v Cattle** [1938] 2 368, KBD.

Interference with police officers or members of HM forces—

Vicinity of a prohibited place—In the vicinity of—Meaning—In or in vicinity of—Whether offence can be committed by person in prohibited place—Official Secrets Act 1920, s 3. **Adler v George** [1964] 1 628, QBD.

Penalty—

Importation of prohibited goods. *See* **Customs and excise** (Importation of prohibited goods—Penalty).

Perjury—

Civil action—

Cause of action—Imprisonment of plaintiff in consequence of defendant's perjury in criminal proceedings—Whether a cause of action. **Hargreaves v Bretherton** [1958] 3 122, QBD.

Civil cause of action. *See* **Action** (Immunity from civil action—Witness—Privilege of witness in court of Justice).

Estoppel—

Issue estoppel—Subsequent charge of perjury in respect of evidence given at earlier proceedings. *See* **Estoppel**—Issue estoppel—Application to criminal proceedings—Issue clearly raised and pronounced on by jury in earlier proceedings—Perjury, *ante*.

Judicial proceeding—

Special Commissioners of Income Tax—Two commissioners—Evidence given before two Commissioners on appeal against assessment to surtax—Whether two Special Commissioners constituting a judicial tribunal—Perjury Act 1911, s 1(1)—Income Tax Act 1918, ss 137(4), 230(2)—Finance Act 1936, s 21(1), (5), (9)—Finance Act 1938, s 38(3). **R v Hood-Barrs** [1943] 1 665, CCA.

Lawfully sworn as a witness—

Affirmation—Administration of oath impracticable—Sikh allowed to affirm owing to impracticability of administering oath according to his religion—Whether 'lawfully sworn'—Perjury Act 1911, s 1(1), s 15(2). **R v Pritam Singh** [1958] 1 199, Assizes.

Summary offence—

Summary sentence as for contempt of court—Need to make clear substance of alleged offence, so that witness shall have opportunity to answer the charge—Those parts of the evidence which are alleged to be false should be indicated—Criminal Procedure Code of Ceylon, s 440(1). **Appuhamy v Reginam** [1963] 1 762, PC.

Permitting vehicle to be used on road in breach of regulations. *See* **Road traffic** (Motor vehicle—

Permitting vehicle to be used on road in breach of regulations).

Petrol offence. *See* **Petrol** (Offence).

Picketing. *See* **Trade dispute** (Picketing).

CRIMINAL LAW (cont)

- Plea—
 - Legal aid cases—
 - Plea of guilty—Offer to be made by court where heavy sentence likely. *See* **Legal aid** (Criminal cases)—Offer of legal aid—Guilty plea—Offer to be made by court where heavy sentence likely).
- Poison—
 - Administering poison. *See* Administering poison or other destructive or noxious thing, *ante*.
- Police—
 - Duty of police to enforce laws—
 - Gaming laws. *See* **Mandamus** (Chief officer of police—Enforcement of law—Gaming).
 - Impersonation. *See* **Police** (Impersonation).
- Possession—
 - Firearms with intent to endanger life. *See* **Firearms** (Possession—Possession of firearms with intent to endanger life).
- Practice—
 - Crown Court. *See* **Crown Court**.
 - Trial. *See* **Trial**, *post*.
- Preliminary hearing before justices—
 - Statement made by accused—
 - Speech by accused as advocate—Accused making speech after caution as advocate on his own behalf—Statement by magistrates not containing in full arguments advanced by accused—Certificate of magistrates recording statement final—Accuracy of statement not to be inquired into by trial judge—Criminal Justice Act 1925, s 12. **R v Morry** [1945] 2 632, CCA.
- Prevention of crime—
 - Found on premises about to commit crime—
 - Crime—Felony or certain misdemeanours—Form of indictment—Indictment charging accused with being about to commit 'offence'—Whether offence including crime—Prevention of Crimes Act 1871, ss 7(iii), 20. **R v Goodwin** [1944] 1 506, CCA.
 - Found—Accused not arrested at place where he was found—'Found' meaning discovered or seen—Whether necessary that accused should have been arrested at place he was found—Prevention of Crime Act 1871, s 7. **R v Goodwin** [1944] 1 506, CCA.
- Price control. *See* **Price control**.
- Principal in second degree—
 - Accessory before the fact distinguished. *See* Accessory before the fact—Principal in the second degree, *ante*.
 - Affray. *See* **Affray**—Principal in second degree, *ante*.
 - Encouragement—
 - Minimal requirement—Need to prove defendant encouraged commission of offence before he can be regarded as a principal in the second degree. **R v Allan** [1963] 2 897, CCA.
 - Time of encouragement—Encouragement before offence committed—Affray—Encouragement to others to fight—Sufficient if encouragement connected with fight—Unnecessary to prove encouragement given while fight taking place. **R v Mapstone** [1963] 3 930, Assizes.
- Murder—
 - Duress as a defence. *See* Duress as a defence—Murder—Principal in second degree, *ante*.
- Prison breach—
 - Autrefois convict—
 - Disciplinary proceedings. *See* Autrefois convict—Escape from prison—Disciplinary proceedings before visiting justices—Subsequent trial on indictment for prison breach, *ante*.
- Privilege—
 - Loss of privilege in connection with criminal proceedings. *See* **Privilege** (Legal professional privilege—Loss of privilege in connection with criminal proceedings).
- Procedure—
 - Magistrates' courts. *See* **Magistrates** (Procedure).
 - Trial. *See* **Trial**, *post*.
- Procurator of girl under 21—
 - Sexual intercourse—
 - Element of offence—Whether it is an essential element of the offence that unlawful sexual intercourse should have taken place—Sexual Offences Act 1956, s 23(1). **R v Johnson** [1963] 3 577, CCA.
- Procuring—
 - Abortion—
 - Drugs or instrument. *See* Abortion—Procuring drugs or instrument with intent to effect abortion, *ante*.
 - Commission of offence. *See* Aiding and abetting—Procuring commission of offence, *ante*.
 - Gross indecency. *See* Gross indecency—Procuring gross indecency, *ante*.
 - Mental defective. *See* Sexual intercourse—Mental defective—Procuring defective, *post*.
- Procuring with intent—
 - Intent to commit crime—
 - Common law offence—Forgery—Procuring imitation stamp of Indian magistrate with intent to forge income tax claims—Whether crime known to common law. **R v Gurmit Singh** [1965] 3 384, Assizes.
- Prosecution—
 - Consent to institution of prosecution—
 - Offence under Explosive Substances Act 1883. *See* **Explosives** (Offence—Prosecution for offence—Consent of Attorney-General).
 - Notice of intended prosecution—
 - Motoring offences. *See* **Road traffic** (Notice of intended prosecution).
 - Trial. *See* **Trial**—Prosecution, *post*.

CRIMINAL LAW (cont)

Prosecutor—

Discretion—

Offence to be charged—Application by police officer for issue of summons for careless driving—Justices refusing summons and stating that information for dangerous driving would have to be issued—Order of mandamus against justices. **R v Nuneaton Justices, ex parte Parker** [1954] 3 251, QBD.

Prostitution—

Keeping a brothel. *See* Brothel—Keeping a brothel, *ante*.

Living on earnings of prostitution—

Advertisements—Publication containing advertisements by prostitutes published with object of enabling prostitutes to carry on their trade—Whether living on profits derived therefrom was living on earnings of prostitution—Sexual Offences Act 1956, s 30. **Shaw v Director of Public Prosecutions** [1961] 2 446, HL.

Earnings of prostitution—Money received by accused direct from male clients—House and car knowingly permitted to be used for purposes of prostitution—No money paid to defendant by prostitutes—Money paid to accused by men—Prostitutes receiving their reward in food, drink and clothing—Whether accused living on earnings of prostitution—Vagrancy Act 1898, s 1(1)(a), s 1(3), as amended by Criminal Law Amendment Act 1912, s 7(1). **Calvert v Mayes** [1954] 1 41, QBD.

Earnings of prostitution—Money received by accused direct from male clients—Proof that receipt of money sufficiently closely connected with exercise of control over prostitutes—Accused selling information relating to prostitutes to potential clients—Prostitutes unaware that introduction of client effected by accused—Clients left to pay prostitutes their usual fees—Whether sums received by accused 'earnings of prostitution'—Sexual Offences Act 1956, s 30(1). **R v Ansell** [1974] 3 568, CA.

Earnings of prostitution—Rent—Landlords and agents letting flats to known prostitutes—Whether living on earnings of prostitution—Criminal Law Amendment Act 1885, s 13, as amended by Criminal Law Amendment Act 1912, s 4—Vagrancy Act 1898, s 1, as amended by Criminal Law Amendment Act 1912, s 7(1), (5). **R v Silver** [1956] 1 716, CCC.

Earnings of prostitution—Rent—Inflated rent—Room let nightly to prostitute at inflated rent—Whether landlord guilty of offence—Vagrancy Act 1898, s 1, as amended by Criminal Law Amendment Act 1912, s 7(1), (5). **R v Thomas** [1957] 2 342, CCA.

Presumption—Nature of presumption—Presumption that man is living on earnings of prostitution—Presumption that he is doing so knowingly—Sexual Offences Act 1956, s 30(2). **R v Clarke** [1976] 2 696, CA.

Presumption—Proof that man is living with or is habitually in the company of a prostitute—Whether sufficient to raise presumption—Whether necessary to prove that he is living with or is habitually in her company in a way which shows he is aiding, abetting or compelling her prostitution—Sexual Offences Act 1956, s 30(2). **R v Clarke** [1976] 2 696, CA.

Loitering or soliciting for purposes of prostitution—

In a street—Meaning—Soliciting from window or balcony persons in street—Whether soliciting 'in a street'—Street Offences Act 1959, s 1(1). **Smith v Hughes** [1960] 2 859, QBD.

Soliciting—Passive conduct—No active approach to prospective clients—Prostitute sitting on stool in window illuminated by red light—Prostitute dressed in low-cut top and mini skirt—Prostitute in that position in order to advertise availability to render services of a prostitute—Whether 'soliciting'—Street Offences Act 1959, s 1(1). **Behrendt v Burrill** [1976] 3 285, QBD.

Soliciting—Physical presence—Notice—Soliciting involving physical presence of prostitute—Display of notice advertising prostitute's services outside shop—Whether soliciting—Street Offences Act 1959, s 1(1). **Weisz v Monahan** [1962] 1 664, QBD.

Meaning—

Sexual intercourse—Lewd acts without sexual intercourse—Unnecessary woman should submit to acts of lewdness in a passive way—Sexual Offences Act 1956, s 22(1)(a), (c), s 30(1). **R v Webb** [1963] 3 177, CCA.

Procuring woman to become a common prostitute—

Procure—Element of persuasion—Offer of financial reward—No other pressure exerted on woman—Whether offer of money in absence of other pressure capable of amounting to an attempt to procure—Sexual Offences Act 1956, s 22(1). **R v Broadfoot** [1976] 3 753, CA.

Wandering in public highway—

Prostitute in car—Indecent behaviour in stationary motor car—Whether 'wandering in a public highway'—Vagrancy Act 1824, s 3. **Carnill v Edwards** [1953] 1 282, QBD.

Provocation—

Murder. *See* Murder—Provocation, *ante*.

Provocation as a defence—

Offence other than murder—Defence available only on a charge of murder, not on a charge of any lesser offence. **R v Cunningham** [1958] 3 711, CA.

Public decency—

Act outraging public decency—

Common law offence—Act must be committed in public and more than one person must have been able to see it—Whether necessary for prosecution to prove actual disgust or annoyance on part of any observer. **R v Mayling** [1963] 1 687, CCA.

Public mischief—

Conspiracy to effect a public mischief. *See* Conspiracy—Public mischief, *ante*.

Indictment. *See* Indictment (Joinder of charges—Charges founded on same facts—Sedition and effecting a public mischief).

CRIMINAL LAW (cont)

Public nuisance—

Elements of offence—

Danger or risk to comfort of public—Number of persons affected by accused's act—Need to prove considerable number of persons affected—Potential danger or risk to comfort of public insufficient—Bogus telephone call—Bomb hoax—Accused falsely alleging that bomb planted in steel works—No persons other than telephonist, police and security men at steel works affected—Whether accused guilty of committing a public nuisance. **R v Madden** [1975] 3 155, CA.

Public order—

Generally. *See* Public order.

Incitement to racial hatred—

Distribution of written matter—Matter likely to stir up hatred against section of the public distinguished by colour—Pamphlets left in porch of private house by member of Parliament—Whether a distribution of the written matter—Race Relations Act 1965, s 6(1) (a), (2). **R v Britton** [1967] 1 486, CA.

Riot. *See* Riot, *post*.

Quarter sessions. *See* Quarter sessions.

Railway offences. *See* Railway (Offence).

Rape—

Aiding and abetting—

Acquittal of principal—Effect—Accused assisting principal to have sexual intercourse with woman—Accused knowing that woman not consenting—Principal acquitted of rape because of mistaken belief in consent—Whether accused may be convicted of aiding and abetting rape. **R v Cogan, R v Leak** [1975] 2 1059, CA.

Alternative offence. *See* Verdict—Alternative offence—Rape, *post*.

Consent—

Belief of accused—Mistake—Belief in victim's consent—Honest and reasonable belief—Intention to have intercourse without victim's consent—Accused believing that victim having consented—Belief mistaken—No reasonable grounds for belief—Whether belief must be reasonable. **Director of Public Prosecutions v Morgan** [1975] 2 347, HL.

Girl under 16 years of age—Force and violence—Proof of non-consent necessary—Clear that girl not knowing whether to resist or not—Unnecessary to prove accused used force or violence. **R v Harling** [1938] 1 307, CCA.

Girl under 16 years of age—Resistance—Failure to resist—Proof of absence of consent—Proof that girl's understanding and knowledge such that she was not in a position to decide whether to consent **R or resist**. **R v Howard** [1965] 3 684, CCA.

Corroboration of evidence—

Direction to jury. *See* Criminal evidence (Corroboration—Direction to jury—Necessity for direction—Rape).

Defence to charge of abortion. *See* Abortion—Defence—Danger to life—Young girl—Pregnancy due to rape, *ante*.

Husband and wife—

Divorce—Decree nisi of divorce—Effect—Wife granted decree nisi of divorce—Husband charged with raping wife after decree nisi and before decree absolute—Whether possible for husband to be convicted of rape. **R v O'Brien** [1974] 3 663, Crown Court.

Divorce—Petition by wife—No separation agreement or order in force—Whether possible to convict husband of rape of wife. **R v Miller** [1954] 2 529, Assizes.

Separation order in force—Non-cohabitation clause—Implied consent of wife to intercourse revoked—Husband capable of raping wife. **R v Clarke** [1949] 2 448, Assizes.

Imputation on character of complainant. *See* Criminal evidence (Character of accused—Imputation on character of prosecutor or witness—Particular acts—Rape—Character of complainant).

Rationing offences. *See* Rationing.

Receiving stolen goods—

Accessory after the fact to theft. *See* Accessory after the fact—Theft—Receiving stolen goods, *ante*.

Aiding and abetting. *See* Aiding and abetting—Receiving stolen goods, *ante*.

Evidence of possession. *See* Criminal evidence (Possession of stolen goods—Evidence of possession).

Modern law. *See* Handling stolen goods, *ante*.

Place of trial. *See* Trial—Place of trial—Receiving stolen goods, *post*.

Receiving stolen property—

Alternative charges—

Larceny and receiving—Charges both of larceny and receiving—Direction on larceny only—Jury finding verdict of receiving. **R v Lincoln** [1944] 1 604, CCA.

Conspiracy to steal—Conviction of conspiracy—196520832

Conspiracy to steal—

Conviction of conspiracy—Accused not present when the thefts occurred—Whether open to conviction also of receiving—Larceny Act 1916, ss 33(1), 46(1). **R v Frogett** [1965] 2 832, CCA.

Intent to appropriate property—

Innocent receipt—Later intention to appropriate property—Whether constituting receiving. **R v Matthews** [1950] 1 137, CCA.

Knowledge that goods stolen—

Burden of proof—Satisfaction of jury as to prisoner's guilt. **R v Hepworth, R v Fearnley** [1955] 2 918, CCA.

CRIMINAL LAW (cont)

Receiving stolen property (cont)—

Knowledge that goods stolen goods—

Felony or misdemeanour—Knowledge essential to be proved—Proof of knowledge of category of offence by which property criminally obtained—Inferences of knowledge from recent possession of property obtained by dishonest means—Whether necessary to prove knowledge of specific felony or misdemeanour by which property obtained—*Larceny Act 1916*, s 33(1), s 43(1). *Director of Public Prosecutions v Nieser* [1958] 3 662, CCA.

Knowledge that goods stolen—

Inference of guilty knowledge—Absence of explanation for possession—Explanation proved to be untrue. *R v Aves* [1950] 2 330, CCA.

Inference of guilty knowledge—Explanation by accused—Explanation raising doubt in minds of jury—Whether accused entitled to be acquitted. *R v Garth* [1949] 1 773, CCA.

Time of knowledge—Not sufficient to prove knowledge at some time after goods coming into accused's possession. *R v Tennet* [1939] 1 86, CCA.

Possession—

Assistance in disposal—Goods in exclusive possession—Other person rendering assistance in disposal without actual possession—Whether other person can be convicted of receiving. *R v Shaw, R v Agard* [1942] 2 342, CCA.

Control required to establish possession—Direction to jury—Necessity for careful direction on control required to establish possession—Defence that accused was merely a labouring assistant. *R v Healey, R v Comerford, R v Owens, R v Smith* [1965] 1 365, CCA.

Resumption of possession—Possession regained by owner or police—What amounts to regaining possession—Parcel in possession of police but unopened. *R v King* [1938] 2 662, CCA.

Proof of theft—

Inference from surrounding circumstances—False statement justifying inference that goods were stolen. *R v Young* [1953] 1 21, CCA.

Inference from surrounding circumstances—Proof of recent thefts of goods of same kind—No actual proof of theft or of ownership of goods subject of charge—Whether surrounding circumstances sufficient proof. *R v Fuschillo* [1940] 2 489, CCA.

Stolen property—

Abroad—Goods stolen abroad received in United Kingdom—Whether a person can be convicted of receiving such goods if principal offender not brought to justice or convicted in this country—*Larceny Act 1916*, s 33(1), (3), (4). *R v Smith* [1962] 2 200, CCA.

Child—Goods taken by child aged seven—Child incapable of committing larceny—Goods not stolen—*Larceny Act 1916*, s 1(1), (2)(i)(d), s 33(1)—*Children and Young Persons Act 1933*, s 50. *Walters v Lunt* [1951] 2 645, KBD.

Money—Proceeds of conversion—Money known by receiver to be proceeds of theft and conversion—Theft of savings stamp—Conversion for cash value in Bank of England notes—Accused receiving notes knowing them to be proceeds of theft and conversion—*Larceny Act 1916*, s 46(1). *D'Andrea v Woods* [1953] 2 1028, QBD.

Recklessness—

Assault. *See* Assault—Recklessness, *ante*.

Refusal of leave to appeal. *See* Appeal—Leave to appeal—Refusal, *ante*.

Removal of articles from public building—

Collection intended for permanent exhibition to public—

Article forming part of collection—Permanent exhibition—Meaning—Municipal art gallery—Collection of pictures owned by local authority—Only part of collection on exhibition in gallery at any one time—All pictures exhibited at least once a year—Whether collection intended for permanent exhibition—*Theft Act 1968*, s 11(1), (2). *R v Durkin* [1973] 2 872, CA.

Representation of defendant at trial. *See* Trial—Defendant—Representation, *post*.

Res gestae—

Statement made as part of res gestae—

Circumstances in which evidence admissible—Test to be applied—Statement made in circumstances of spontaneity and involvement in event—No possibility of subsequent fabrication or adaptation by speaker—Proof required to establish involvement of speaker in event—Statement itself as evidence of involvement. *Ratten v R* [1971] 3 801, PC.

Restitution order. *See* Sentence (Restitution order).

Retrial—

Appeal—

No miscarriage of justice. *See* Appeal—No miscarriage of justice—Retrial, *ante*.

Generally. *See* Trial—Retrial, *post*.

Riot—

Elements of riot—

Force and violence such as to alarm—Evidence—Whether direct evidence of terror being caused necessary. *R v Sharp* [1957] 1 577, CCA.

Road traffic offences. *See* Road traffic (Offences).

Robbery—

Alternative offence. *See* Verdict—Alternative offence—Robbery with violence, *post*.

Concerted action—

Robbery with violence—Murder. *See* Murder—Concerted action—Robbery with violence, *ante*.

Defence—

Claim of right—Belief of being entitled to take the thing stolen in the way in which it was taken need not be proved—*Larceny Act 1916*, s 23(1). *R v Skivington* [1967] 1 483, CA.

Threat—

Common law offence—Offence still in existence—Robbery by threat of accusation of sodomitical practices—Necessity of proof of animus furandi at time of threat or accusation. *R v Pollock and Divers* [1966] 2 97, CCA.

CRIMINAL LAW (cont)

Robbery (cont)—

Violence and asportation—

Proximity—Violence and theft part of one transaction—Property taken 'in the presence of' the person to whom violence is used or who is put in fear—Property in the immediate and personal care and protection of the custodian in that he is there to protect it—Material time is when protection of custodian is overborne—His subsequent proximity to, or awareness of, the act of stealing is irrelevant—Whether goods are in custodian's immediate personal care and protection is a question of degree for jury—Nightwatchman and maintenance engineer on duty in bakery overpowered and imprisoned in room some distance away from cash room containing safe—Safe and contents in immediate personal care and protection of victims as being within area of their vigilance. **Smith v Desmond** [1965] 1 976, HL.

Sale of motor vehicle in unroadworthy condition. *See* **Road traffic** (Motor vehicle—Sale in unroadworthy condition).

Sedition—

Indictment. *See* **Indictment** (Joinder of charges—Charges founded on same facts—Sedition).

Self-defence—

Assault. *See* **Assault**—Self-defence, *ante*.

Burden of proof. *See* **Criminal evidence** (Burden of proof—Defence—Self-defence).

Direction to jury. *See* **Jury** (Direction to jury—Self-defence).

Murder. *See* **Murder**—Self-defence, *ante*.

Wounding. *See* **Wounding**—Self-defence, *post*.

Sentence. *See* **Sentence**.

Separate trials—

Common enterprise—

Discretion of judge—Judicial exercise—Matters for consideration—Attack by one accused on another—Prejudice—Test applied on appeal—Whether exercise of discretion resulted in miscarriage of justice. **R v Grondkowski and Malinowski** [1946] 1 559, CCA.

Discretion of judge—

Necessary for administration of justice—Appellants and three others indicted for murder by causing explosion—Statements made by two others inculcating appellants—Whether separate trials should have been ordered. **R v Barnes, R v Richards** [1940] 2 229, CCA.

Prejudice to accused—Publicity—Two murder charges—Prejudice to accused if separate trials—Publicity causing prejudice in second trial—Whether separate trials should be ordered. **R v Kray** [1969] 3 941, CA.

Prejudice to accused—Special feature making joint trial prejudicial or embarrassing to accused—Exercise of discretion. **Ludlow v Metropolitan Police Comr** [1970] 1 567, HL.

Joint charge—

General rule—Accused implicating each other—Accused jointly charged should be tried together in the majority of cases—Factor of cross-examination of one accused by another—Accused implicating each other—Whether separate trials should be ordered. **R v Hoggins** [1967] 3 334, CA.

Separate counts—

Evidence—Admissibility on separate counts—Series of offences of the same or a similar character—Evidence of incest against A inadmissible in counts of similar offences against B or C—Discretion of trial judge to order separate trials—Indictments Act 1915, s 4, Sch 1, r 3. **R v Flack** [1969] 2 784, CA.

Evidence—Prejudicial value of evidence on one count—Two counts alleging indecent assault on male person and exposing person—Offences taking place within interval of fifteen minutes—Prejudicial value of evidence on one count exceeding probative value if admitted as evidence on other count—Whether separate trials should be ordered. **R v Fitzpatrick** [1962] 3 840, CCA.

Several prisoners—Division of trial into parts—Proper course where numerous counts concerning several prisoners to divide trial into parts. **R v Shaw, R v Agard** [1942] 2 342, CCA.

Sexual intercourse—

Abduction of unmarried girl. *See* **Abduction**—Unmarried girl under 18—Intention to have unlawful sexual intercourse, *ante*.

Administration of drug to obtain or facilitate intercourse—

Scope of offence—Intent to enable more than one man to have unlawful sexual intercourse—Essence of the offence the administration of the drug—Indictment containing two counts in respect of one administration—One administration one offence—Conviction on second count quashed—Sexual Offences Act 1956, s 4(1). **R v Shillingford** [1968] 2 200, CA.

Girl under 16—

Married woman—Married according to foreign law—Intercourse with husband—Whether prosecution should be brought—Sexual Offences Act 1956, s 6(1). **Mohamed v Knott** [1968] 2 563, QBD.

Reasonable belief as to age—Defence—Reasonable grounds for belief—Evidence that girl appeared to be over 16—No evidence as to actual belief of accused—Criminal Law Amendment Act 1922, s 2—Criminal Law Amendment Act 1928, s 1. **R v Harrison, R v Wallis, R v Ward, R v Gooding** [1938] 3 134, CCA.

Reasonable belief as to age—Defence—First occasion on which accused is charged—First occasion—Meaning—Separate committals for trial on two separate occasions relating to two different girls—Trial on one indictment—Criminal Law Amendment Act 1922, s 2, proviso. **R v Rider** [1954] 1 5, Assizes.

Mental defective—

Ignorance as defence—Ignorance of victim's severe subnormality—Subjective approach—Proper charge to jury—Sexual Offences Act 1956, s 7, as substituted by Mental Health Act 1959, s 127(1)(a). **R v Hudson** [1965] 1 721, CCA.

CRIMINAL LAW (cont)

Sexual intercourse (cont)—

Mental defective (cont)—

Person detained in institution—Unlawful detention—Whether offence can be committed against person unlawfully detained—Mental Deficiency Act 1913, s 56(1)(a). **Director of Public Prosecutions v Head** [1958] 1 679, HL.

Procuring defective—Procuring—Meaning—Accused asking defective girl to go to her bed—Accused following her and having intercourse then—Whether accused having 'procured' girl to have intercourse with him—Mental Deficiency Act 1913, s 56(1)(a)(b). **R v Cook** [1954] 1 60, Assizes.

Procuration of girl. *See* Procuration of girl under 21—Sexual intercourse, *ante*.

Prostitution. *See* Prostitution, *ante*.

Rape. *See* Rape, *ante*.

Sexual offences—

Complaint. *See* **Criminal evidence** (Complaints in sexual cases).

Corroboration of evidence. *See* **Criminal evidence** (Corroboration—Sexual offence).

Gross indecency. *See* Gross indecency, *ante*.

Statement by victim. *See* **Criminal evidence** (Sexual offence—Statement by victim).

Single judge—

Refusal of leave to appeal. *See* Appeal—Leave to appeal—Refusal—Single judge, *ante*.

Smuggling—

Money—

Prohibition of export of money. *See* **Currency control** (Exchange control—Prohibition of export of money—Smuggling money, Bank of England notes, out of country).

Soliciting for immoral purposes—

Immoral purposes—

Sexual conduct—Prostitute—Whether offence for a man to solicit a common prostitute—Sexual Offences Act 1956, s 32. **Crook v Edmondson** [1966] 1 833, QBD.

Importuning—

Words used—Word of pleasantry—Evidence of more than one invitation—Use of word of pleasantry interpreted as invitation—Such interpretation permissible as word had been used on previous day coupled with undoubted act of importuning—Sexual Offences Act 1956, s 32. **Dale v Smith** [1967] 2 1133, QBD.

Prostitution. *See* Prostitution—Loitering or soliciting for purposes of prostitution, *ante*.

Solicitation—

Physical presence—Notice—Necessity for physical presence of man to constitute soliciting—Notice advertising male prostitute's services displayed outside shop—Whether soliciting—Sexual Offences Act 1956, s 32. **Burge v Director of Public Prosecutions** [1962] 1 666, QBD.

Stamp duty offences. *See* Stamp duty (Offence).

Statutory offence—

Conspiracy to commit statutory offence. *See* Conspiracy—Statutory offence, *ante*.

Stolen property—

Seizure by police. *See* **Police** (Search warrant—Seizure of goods believed on reasonable grounds to be stolen goods).

Vehicle—

Travelling in vehicle. *See* **Road traffic** (Taking vehicle without authority—Travelling in vehicle known to have been stolen).

Street trading offence. *See* Street trading (Offence).Strict liability. *See* Absolute liability, *ante*.

Suicide—

Accessory before the fact. *See* Murder—Accessory before fact—Suicide pact, *ante*.

Summary trial—

Committal proceedings distinguished. *See* Committal—Preliminary hearing before justices—Summary trial distinguished, *ante*.

Suspected person—

Vagrancy offence. *See* Vagrancy—Suspected persons, *post*.

Taking vehicle without authority. *See* **Road traffic** (Taking vehicle without authority).

Temporary statutory offence—

Expiry of statute—

Effect—Offence committed during currency of statute—Prosecution and conviction after expiry—Effect of expiry on operation 'as respects things previously done'—Emergency Powers (Defence) Act 1939, s 11(3). **Wicks v Director of Public Prosecutions** [1947] 1 205, HL.

Theft—

Accessory after the fact. *See* Accessory after the fact—Theft, *ante*.

Dishonesty—

Claim of right—Belief in claim of right—No basis in law for belief—Whether material—Theft Act 1968, s 2(1). **R v Turner (No 2)** [1971] 2 441, CA.

Consent of owner—Absence of consent by owner to appropriation not an ingredient of theft—Absence of consent relevant to issue of dishonesty—Consent given by owner without full knowledge of circumstances not sufficient to show that there was no dishonesty—Belief that owner had full knowledge sufficient to negative dishonesty—Theft Act 1968, s 1(1). **Lawrence v Commissioner of Police for the Metropolis** [1971] 2 1253, HL.

Intention to make restitution—Appropriation of money—Intention to repay—Ability to repay—Accused appropriating money from employer's safe—Accused acting contrary to express instructions of employer—Defence in law for accused to say that he intended to repay and believed on reasonable grounds that he would repay—'Dishonestly' an ordinary word of English language—Jury requiring no direction on meaning—Whether accused acting dishonestly a question of fact for the jury—Theft Act 1968, s 1(1). **R v Feely** [1973] 1 341, CA.

Going equipped for stealing. *See* Going equipped for stealing, *ante*.

CRIMINAL LAW (cont)**Theft (cont)—****Handling stolen goods—**

Facts consistent with either offence—Informations charging defendant with theft and handling stolen goods—Informations relating to the same goods—Goods stolen—Defendant found in possession of goods—Defendant having come by goods dishonestly and intending to keep them—No evidence as to how goods came into defendant's possession—Whether defendant should be convicted of theft or handling—Theft Act 1968, ss 1(1), 3(1), 22(1). *Stapylton v O'Callaghan* [1973] 2 782, QBD.

Generally. *See* Handling stolen goods, *ante*.

Information—

Specified articles. *See* Magistrates (Information charging accused with stealing specified articles).

Inn—

Guest's property—Liability of innkeeper. *See* Inn (Loss of guest's property—Liability of innkeeper).

Intention permanently to deprive owner of property—

Conditional intention—Appropriation of property with intent to deprive owner of such items as prove worth keeping—Taking of handbag—Contents on examination proving valueless to taker—Handbag and contents left ready to hand to be repossessed by owner—Whether taking of handbag amounting to theft of contents—Theft Act 1968, s 1(1). *R v Easom* [1971] 2 945, CA.

Murder in course of theft. *See* Murder—Capital murder—Murder in course or furtherance of theft, *ante*.

Obtaining property by deception—

Facts justifying conviction for theft and for obtaining property by deception—Offences not mutually exhaustive—Conviction for theft not liable to be set aside because facts justified conviction for obtaining—Theft Act 1968, ss 1(1), 15(1). *Lawrence v Commissioner of Police for the Metropolis* [1971] 2 1253, HL.

Old law. *See* Larceny, *ante*.**Property belonging to another—**

Mistake—Payment of money by mistake—Payee knowing of payer's mistake but accepting and keeping money—Payment made by bookmaker to accused in mistaken belief that accused had backed winning horse—Transfer of ownership—Whether money paid to accused 'belonging to another'—Theft Act 1968, s 1(1). *R v Gilks* [1972] 3 280, CA.

Mistake—Property obtained by mistake—Obligation to make restoration of property—Obligation—Whether including social or moral obligation—Theft Act 1968, s 5(4). *R v Gilks* [1972] 3 280, CA.

Partnership property—Taking by one partner—Whether appropriation of property belonging to another—Theft Act 1968, ss 1(1), 3(1), 5(1). *R v Bonner* [1970] 2 97, CA.

Possession or control of other—Control—Articles on premises under the control of other person—Other person ignorant that articles on premises—Whether articles in 'control' of other person—Theft Act 1968, s 5(1). *R v Woodman* [1974] 2 955, CA.

Possession or control of other—Owner leaving car at garage for repairs—Owner removing car without paying bill—Whether garage proprietor had possession or control a question of fact—Theft Act 1968, s 5(1). *R v Turner (No 2)* [1971] 2 441, CA.

Received from or on account of another—Obligation to retain and deal with property in particular way—Travel agent receiving money from clients to arrange flights to America—Money paid into general account of travel agent's firm—Flights not materialising—No money refunded—Whether travel agent under an obligation to clients to deal with money in particular way—Theft Act 1968, s 5(3). *R v Hall* [1972] 2 1009, CA.

Received from or on account of another—Obligation to retain and deal with property in a particular way—Obligation—Obligation unenforceable by civil action—Cheque obtained by other party by fraud—Accused agreeing to cash cheque for other party—Accused unaware of fraud—Accused subsequently learning of fraud—Accused appropriating proceeds of cheque—Whether cheque and proceeds to be treated as 'property belonging to' other party—Theft Act 1968, s 5(3). *R v Meech* [1973] 3 939, CA.

Sale of goods—Passing of property—Appropriation of unascertained goods—Reservation of right of disposal until payment—Sale of petrol—Garage attendant filling tank of accused's car with petrol—Accused driving away without paying for petrol—Whether garage having reserved right to dispose of petrol until payment—Whether property in petrol passing to accused when mixed with other petrol in his car—Sale of Goods Act 1893, ss 18, r 5, 19(1)—Theft Act 1968, s 1(1). *Edwards v Ddin* [1976] 3 705, QBD.

Taking vehicle without authority. *See* Road traffic (Taking vehicle without authority).

Threatening letters—**Sending letter threatening to kill—**

Maliciously—Meaning—Wilfully or intentionally and without reasonable excuse—Offences against the Person Act 1861, s 16. *R v Solanke* [1969] 3 1383, CA.

Time—**Time limit for bringing prosecution—**

Indecent offences between males—Court-martial. *See* Court-martial (Civil offence—Time limit—Sexual offences between males).

Touting—

Street. *See* Highway (Street-Touting).

Trade description. *See* Trade description**Trap—****Setting engine calculated to inflict grievous bodily harm—**

Engine—Meaning—Electrical device composed of two live electric wires intended as trap—Whether an 'engine'—Offences against the Person Act 1861, s 31. *R v Munks* [1963] 3 757, CCA.

CRIMINAL LAW (cont)

- Travelling in vehicle known to have been stolen. *See* **Road traffic** (Taking vehicle without authority—Travelling in vehicle known to have been stolen).
- Treason—
 - Allegiance to Crown—
 - Alien—Holder of British passport—Passport issued on alien's declaration of being British subject by birth—Alien broadcasting propaganda for the King's enemies—Adhering to the King's enemies—Adherence without the King's realm—Whether alien owes allegiance to the Crown—Rights and obligations of the holder of a British passport—Jurisdiction of English court to try alien for treason committed abroad—Treason Act 1351. **Director of Public Prosecutions v Joyce** [1946] 1 186, HL.
- Trial—
 - Allocutus—
 - Felony—Failure to put allocutus—Reason for putting allocutus to convicted prisoner in felony—Opportunity to move in arrest of judgment—Failure to put allocutus not vitiating trial where prisoner has no intention of moving in arrest of judgment. **R v Gombos (otherwise Gyugyei)** [1965] 1 229, CCA.
 - Quarter sessions—Summary trial—Committal to quarter sessions for sentence—Plea of guilty in magistrates' court—Whether necessary to put allocutus at quarter sessions before passing sentence concerning administration of allocutus inapplicable. **R v Rear** [1965] 2 268, CCA.
 - Arraignment—
 - Amendment of indictment after arraignment. *See* **Indictment** (Amendment—Amendment after arraignment).
 - Several counts in indictment—Counts to be put separately to defendant—Separate pleas to be taken on each count. **R v Boyle** [1954] 2 721, CCA.
 - Arson. *See* **Damage to property—Arson—Trial, ante.**
 - Bail during trial. *See* **Bail—Bail during trial, ante.**
 - Commencement of trial—
 - Time limit—Trial to begin within prescribed period beginning with date of committal—Extension of time—Whether provision as to time limit mandatory or directory—Whether court having power to extend period where application made after expiration of period—Courts Act 1971, s 7(4). **R v Urbanowski** [1976] 1 679, CA.
 - Committal for trial. *See* **Committal, ante.**
 - Conviction—
 - Alternative counts—Duty of court to look at realities of position and convict on count showing plainest evidence of guilt. **R v Dawson, R v Wenlock** [1960] 1 558, CCA.
 - Previous convictions. *See* **Trial—Previous convictions, post.**
 - Counts not proceeded with—
 - Subsequent trial—Election not to proceed on certain counts—Application subsequently for leave to proceed with counts not tried—Discretion of court not to allow trial on these counts to proceed—Indictment containing twenty-nine counts of which two charged conspiracy and the others related to overt acts—Election to proceed on overt acts would involve complete retrial—Oppressive—Leave to proceed refused. **R v Riebold** [1965] 1 653, Assizes.
 - Crown court—
 - Distribution of business. *See* **Crown Court** (Distribution of court business—Classification of offences—Offences triable by High Court judge, circuit judge, recorder).
 - Defendant—
 - Representation—Right to conduct own defence—Counsel assigned to prisoner—Brief returned—Second counsel assigned to prisoner shortly before trial—Request by prisoner to conduct his own case. **R v Woodward** [1944] 1 159, CCA.
 - Demanding money with menaces. *See* **Demanding money with menaces—Trial, ante.**
 - Depositions as evidence—
 - Witnesses not heard—Plea of guilty before justices—Witnesses bound over conditionally—Plea of not guilty at trial—Depositions read as only evidence for prosecution—Evidence offered on depositions alone undesirable—Whether ground for quashing conviction—Criminal Justice Act 1925, s 13. **R v Collins** [1938] 3 130, CCA.
 - Direction to jury—
 - Admissibility of admissions and confessions. *See* **Criminal evidence** (Admissions and confessions—Direction to jury).
 - Direction to decide issue adversely to accused—Circumstances in which direction may be given—Issue of possession in receiving charge not appropriate—Withdrawal of direction once given. **R v Healey, R v Comerford, R v Owens, R v Smith** [1965] 1 365, CCA.
 - Duty of counsel—Erroneous direction in law—Whether duty of counsel to draw the attention of trial judge to error. **R v Southgate** [1963] 2 833, CCA.
 - Fact and law—Issues distinguished—Public mischief—Speech—Direction to convict prisoner if he uttered the words complained of—Propriety—Misdirection. **Joshua v Reginam** [1955] 1 22, PC.
 - Further direction—Circumstances in which further direction should be given—Question asked by jury after they had retired indicating that they were inferring facts for which there was no supporting evidence—Necessity for further direction by trial judge. **R v Adair** [1958] 2 629, CCA.
 - Reasonable doubt—Reference to 'reasonable doubt' undesirable—Expression confusing—Proper direction—Satisfied offence committed by accused so that, when verdict given, they are sure it is right one. **R v Summers** [1952] 1 1059, CCA.

CRIMINAL LAW (cont)

Trial (cont)—

Direction to jury (cont)—

Separate counts—Sexual offences—Need to direct jury to consider each count separately. **R v Fisher** [1965] 1 677, CCA.

Verdict—Direction that verdict of not guilty is not open to jury—Unambiguous evidence of prisoner's guilt—Whether direction a proper one. **R v Larkin** [1943] 1 217, CCA.

Written notes—Accuracy—Notes for guidance of jury in considering their verdict—Care to ensure accuracy of notes. **R v Healey**, **R v Comerford**, **R v Owens**, **R v Smith** [1965] 1 365, CCA.

Discharge of defendant—

Verdict of jury not completed—Whether discharge a nullity. **R v Carter** [1964] 1 187, CCA.

Evidence. *See* Criminal evidence.

Fitness to plead—

Burden of proof—Allegation by defence or Crown—Burden accordingly—Proof on balance of probabilities or beyond reasonable doubt. **R v Podola** [1959] 3 418, CCA.

Burden of proof—Issue raised by Crown—Persecution mania—Proof beyond reasonable doubt. **R v Robertson** [1968] 3 557, CA.

Direction to jury—Appeal. *See* Appeal—Fitness to plead—Direction to jury, *ante*.

Issue for jury—Duty to raise issue for jury to determine—Deaf mute remanded by judge for medical report—Report that fit to plead—Doctor questioned by judge before jury sworn—Issue of fitness to plead not then raised expressly by prosecution, defence or judge—Whether question of fitness to plead should have been determined by a jury—Criminal Procedure (Insanity) Act 1964, s 4(1). **R v MacCarthy** [1966] 1 447, CCA.

Mute by visitation of God—Onus on prosecution to prove malice—Accused unable to communicate with legal advisers. **R v Sharp** [1958] 1 62, Assizes.

Nature of accused's disability—Chances of success of challenge to prosecution case by defence—Trial judge ruling that question of fitness to plead be tried before arraignment—Whether discretion properly exercised—Criminal Procedure (Insanity) Act 1964, s 4(2), (3). **R v Webb** [1969] 2 626, CA.

Nature of accused's disability—Disability apart from Act, constituting bar to trial—Criminal Procedure (Insanity) Act 1964, s 4(1). **R v Burles** [1970] 1 642, CA.

Trial of issue—Disagreement by jury—New jury to be sworn to determine issue. **R v Darkhu** [1956] 3 428, Assizes.

Trial of issue—Right of defence to require general issue to be tried before issue of fitness to plead—Issue of fitness to plead raised by the prosecution—Criminal Lunatics Act 1800, s 2. **R v Beynon** [1957] 2 513, Assizes.

Trial of issue—Right of defence to require general issue to be tried before issue of fitness to plead—Deaf mute. **R v Roberts** [1953] 2 340, Assizes.

Guilty—

Plea—Absence of accused. *See* Magistrates (Plea of guilty—Absence of accused).

Informer—

Disclosure of existence. *See* Criminal evidence (Prosecution evidence—Informer).

Insufficient evidence—

Duty of judge—Invitation to jury—Stopping the case—Whether judge should invite jury to stop the case if jury feel that prosecution case not proved. **R v Young** [1964] 2 480, CCA.

Irregularity—

Acquittal—Certiorari to quash acquittal. *See* Certiorari (Acquittal—Quashing—Irregularity at trial).

Appeal. *See* Appeal—Irregularity at trial, *ante*.

Right to appeal. *See* Appeal—Right to appeal—Irregularity at trial, *ante*.

Judge—

Admission of discretion evidence of previous convictions. *See* Criminal evidence (Character of accused—Previous conviction—Discretion of judge).

Ambiguous verdict—Questions by judge. *See* Verdict—Ambiguity—Questions by judge, *post*.

Certificate for appeal. *See* Appeal—Certificate of trial judge, *ante*.

Communications by jury after retirement. *See* Trial—Retirement of jury—Communication with judge, *post*.

Conduct of judge—Appeal. *See* Appeal—Conduct of trial judge, *ante*.

Discretion—Admission of evidence of previous convictions. *See* Criminal evidence (Character of accused—Previous conviction—Discretion of judge).

Discretion—Bail. *See* Bail—Bail during trial—Discretion of judge, *ante*.

Discretion—Separate trials. *See* Separate trials—Discretion of judge, *ante*.

Duty of judge—Corroboration of accomplice's evidence. *See* Criminal evidence (Corroboration—Accomplice—Duty of judge).

Duty of judge—Inadmissible questions—Duty of judge to disallow inadmissible question without objection by counsel. **Stirland v Director of Public Prosecutions** [1944] 2 13, HL.

Duty of judge—Unrepresented defendant—Inadvertent reference to previous conviction—Duty to inform defendant of right to new trial. **R v Featherstone** [1942] 2 672, CCA.

Duty of judge—Unsworn evidence of child. *See* Criminal evidence (Child—Unsworn evidence of child—Duty of judge).

Examination of accused. *See* Criminal evidence (Examination of accused—Questions by judge).

CRIMINAL LAW (cont)

Trial (cont)—

Judge (cont)—

Exclusion of evidence of similar offences. *See* **Criminal evidence** (Improper conduct of accused on other occasions—Similar offences—Exclusion of evidence as irrelevant—Discretion of judge to exclude).

Issues to be determined by judge. *See* **Criminal evidence** (Judge—Issues to be determined by judge).

Notes of trial—Copy of notes—Whether party entitled to a copy of judge's notes for the purposes of a retrial. **Ramlochan v Reginam** [1956] 2 577, PC.

Qualification—Appeal. *See* **Appeal**—Irregularity at trial—Constitution of court—Court of trial not properly constituted—Trial a nullity—New trial ordered—Deputy recorder not qualified for appointment, *ante*.

Summing-up. *See* **Trial**—Summing-up, *post*.

Written notes—Copy for purpose of retrial. *See* **Trial**—Retrial—Judge's notes of first trial, *post*.

Jury—

Direction to jury. *See* **Trial**—Direction to jury, *ante*.

Generally. *See* **Jury** (Trial by jury).

Questions to jury after verdict. *See* **Jury** (Questions to jury after verdict).

Language—

Ceylon. *See* **Ceylon** (Criminal law—Trial—Language).

Majority verdict. *See* **Jury** (Majority verdict).

Newspaper report—

Prejudice—Contempt of court—Newspaper publishing matter likely to prejudice fair trial—Accused at the time had been charged before quarter sessions with using words with intent to stir up racial hatred and was awaiting a fresh trial—At fresh trial accused admitted using words of the character described—No issue as to credibility of accused as witness to be balanced against credibility of prosecution witnesses—Accused convicted—Jury could not have come to any other conclusion—No possible prejudice affecting result of trial. **R v Malik** [1968] 1 582, CA.

No case to answer—

Submission by one of joint accused—Wrongful rejection of submission—Other accused giving evidence against first accused—Both convicted—Whether conviction of first accused should be quashed despite evidence of other accused. **R v Abbott** [1955] 2 899, CCA.

Objection to admissibility of evidence—

Time when objection should be taken—General rule—Objection when evidence tendered rather than at opening of prosecution case. **R v Hammond** [1941] 3 318, CCA.

Open court—

Proceedings to be held in open court—Evidence—Exhibits—Examination by court—Cinematographic films—Imported films alleged to be indecent—Showing of films to jury—Public excluded while films shown—Whether showing of films constituting part of trial proceedings—Whether judge having jurisdiction to exclude public. **R v Waterfield** [1975] 2 40, CA.

Other offences taken into consideration—

Application—Admission of other offences—Accused must himself admit offences and apply for them to be taken into consideration. **R v Davis** [1943] 1 305, CCA.

Application—Admission of other offences—Pressure on accused—Court should satisfy itself by explicit inquiry that accused admits those offences before they can be taken into consideration—Pressure on accused in regard to admission of other offences. **R v Nelson** [1967] 1 358, CA.

Breach of probation order—Sentence for original offence—Breach of probation order to be considered separately—Separate sentence—Criminal Justice Act 1948, s 12(1). **R v Webb** [1953] 1 1156, CCA.

Class of offences—Road traffic offences—Conviction of receiving stolen property—Traffic offences involving disqualification or indorsement—Whether traffic offences proper to be taken into consideration. **R v Collins** [1947] 1 147, CCA.

Disqualification for holding licence—Calculation of period of disqualification—Similar offence taken into consideration—Propriety. **R v Jones** [1970] 3 815, CA.

Jurisdiction of court—Offence not within jurisdiction—Election by defendant—Taking into consideration offence not within jurisdiction of court passing sentence—Offence only triable on indictment by election of defendant—No election by defendant. **R v Simons** [1953] 2 599, CCA.

Jurisdiction of court—Taking into account other charges—Charges beyond the jurisdiction of the court passing sentence—Whether court should take those charges into consideration. **R v Warn** [1937] 4 327, CCA.

Place of trial—

Assizes—Case sent for trial at next assizes but one—Whether any jurisdiction to make the order—Criminal Justice Act 1925, s 14(2). **R v Oliver** [1957] 3 669, CCA.

Place in which accused in custody—In custody—Meaning—Whether meaning 'in lawful custody'—Criminal Justice Act 1925, s 11(1). **R v Kulynycz** [1970] 3 881, CA.

Receiving stolen goods—Goods stolen in country where trial took place but received in a different country—Jurisdiction of magistrates to issue summons outside their country—Criminal Justice Act 1925, s 11(1)—Magistrates' Courts Act 1952, s 1(2)(b). **R v Blandford**, **R v Freestone** [1955] 1 681, CCA.

Removal to Central Criminal Court. *See* **Trial**—Removal of trial to Central Criminal Court, *post*.

CRIMINAL LAW (cont)**Trial (cont)—****Place of trial (cont)—**

Transfer to convenient court—Amendment of indictment—Power of new court of trial to amend indictment—Case sent for retrial to quarter sessions—No indorsement on indictment that case ordered to be tried by that court—Whether necessary that indictment—Case sent for trial to other court—Amendment of indictment—Power to new court of trial—Assizes and Quarter Sessions (Convenient Court) Order 1926 (SR & O 1926 No 774), art 1(d)—Criminal Justice Act 1925, s 14(2), s 14(3). *R v Moore* [1953] 1 641, CCA.

Transfer to convenient court—Indictment—Additional count—Direction by quarter sessions for trial at assizes—No bill of indictment preferred at quarter sessions—Indictment preferred at assizes containing additional count—Validity. *R v Wilson* [1967] 2 1088, CA.

Plea—

Diminished responsibility. *See* Murder—Diminished responsibility—Plea, *ante*.

Double plea—Autrefois acquit after plea of not guilty. *Flatman v Light* [1946] 2 368, KBD.

Fitness to plead. *See* Trial—Fitness to plead, *ante*.

Guilty—Conviction by justices. *See* Magistrates (Plea of guilty—Conviction).

Guilty—Lesser charge—Plea of guilty of lesser charge—Acceptance—Duty of prosecutor. *R v Soanes* [1948] 1 289, CCA.

Guilty—Lesser charge—Conviction—Discretion of trial judge to refuse to accept plea of guilty—Plea of guilty to lesser charge but of not guilty to serious charge. *R v Cole* [1965] 2 29, CCA.

Guilty—Lesser offence—Charge of wounding with intent—Plea of guilty to unlawful wounding not accepted by prosecution—Accused tried on charge of wounding with intent—Jury returned verdict of not guilty—Accused sentenced for unlawful wounding—Only one plea to any one count—Plea was, therefore, not guilty—Conviction quashed—Offences against the Person Act 1861, s 18, s 20. *R v Hazeltine* [1967] 2 671, CA.

Guilty—Part only of offence charged—Plea of guilty to maliciously damaging one of several articles specified in one count—Plea entered on court record—Refusal by prosecution to accept that plea—Accused put in charge of jury on whole count—Acquitted on that and other counts—Bound over in respect of count to part of which he pleaded guilty—Whether court had power to sever the count—Whether record should have been corrected to plea of not guilty to whole count. *R v Kelly* [1965] 3 162, CCA.

Guilty—Prosecution evidence insufficient to prove case—Whether expedient and in interests of accused to postpone trial of issue—Criminal Procedure (Insanity) Act 1964, s 4(2). *R v Burles* [1970] 1 642, CA.

Guilty—Statement of facts in open court—Statement of facts by prosecution where no committal proceedings or committal proceedings which could not be fully reported—Criminal Justice Act 1967, s 1. *Practice Direction* [1968] 2 144, CA.

Guilty—When plea should be finally accepted. *See* Magistrates (Plea of guilty—Conviction—When plea should be finally accepted).

Not guilty—Relevance to sentence—Conduct of defence—Whether factors towards increasing sentence. *R v Harper* [1967] 3 679n, CA.

Not guilty—Withdrawal—Admission of guilt—Need to take verdict of jury. *R v Heyes* [1950] 2 587, CCA.

Plea-bargaining—Change of plea to guilty during prosecution case—Duty of counsel when advising change of plea—Whether accused's freedom of choice vitiated by belief that change of plea recommended by judge to counsel. *R v Turner* [1970] 2 281, CA.

Withdrawal of plea of guilty—Application—Application before sentence passed—Conviction by magistrates' court and committal to quarter sessions for sentence—Whether application can be heard after committal. *R v Mutford and Lothingland Justices, ex parte Harber* [1971] 1 81, QBD.

Withdrawal of plea of guilty—Application—Application before sentence passed—Summary proceedings—Discretion of court. *S (an infant) v Manchester City Recorder* [1969] 3 1230, HL.

Withdrawal of plea of guilty—Application—Discretion of court—Application before sentence pronounced. *R v McNally* [1954] 2 372, CCA.

Withdrawal of plea of guilty—Committal for sentence—Withdrawal after committal—Accused convicted by magistrates' court and committed to quarter sessions for sentence—Whether quarter sessions can remit case to enable magistrates' court to consider whether to allow defendant to withdraw plea—Magistrates' Courts Act 1952, s 29. *R v Riley* [1963] 3 949, Liverpool Crown Court.

Withdrawal of plea of guilty—Plea in unequivocal terms—Conviction directed to be entered in register of magistrates' court—Remand in custody and adjournment for notice under Commonwealth Immigrants Act 1962, s 8—Subsequent application to change plea to one of not guilty—Refusal by magistrate—Whether magistrates' court was functus officio—Magistrates' Courts Act 1952, s 13(3). *R v Guest, ex parte Anthony* [1964] 3 857, QBD.

Postponement—

Discharge of accused—Right of discharge after prolonged postponement—Accused committed to Crown Court at Liverpool on charge of felony—Prosecution witness out of country—Case twice previously respite to next session on application of Crown—Third application by Crown—Whether accused entitled to be discharged—Habeas Corpus Act 1679, s 6. *R v Campbell* [1959] 2 557, Liverpool Crown Court.

Presence of accused—

Accused absconding during course of trial—Accused thereby depriving himself of opportunity of giving evidence—Discretion of judge to continue trial. *R v Jones (R E W)* (No 2) [1972] 2 731, CA.

CRIMINAL LAW (cont)

Trial (cont)—

Previous convictions—

Handling stolen goods. *See* Handling stolen goods—Evidence—Previous conviction for same offence, *ante*.

Information inadvertently made available to jury—Abstract of indictment handed to jury—List of previous convictions on fourth page of abstract—Judge asking jury to return copies of abstract before fourth page looked at—Observations which might give jury grounds for suspecting previous convictions—Material irregularity—Whether substantial miscarriage of justice—Criminal Appeal Act 1907, s 4(1). **R v Thomas** [1957] 3 350, CCA.

Newspaper report of committal proceedings—Disclosure of previous convictions. *See* Committal—Newspaper report—Previous convictions, *ante*.

Police—Duty to provide particulars—Particulars of convictions and history of accused to be supplied by police. **Practice Direction** [1955] 1 386, CCA.

Police—Duty to provide particulars—Particulars of previous convictions must be supplied by police to defending solicitor or counsel on request—Proof of police evidence as to history of accused, including summary of previous convictions, to be given to counsel for prosecution either with brief or at outset of case—Copy of proof of this evidence to be supplied to counsel for prisoner, or the prisoner, in case of plea of guilty or when jury retire—Copy to be given to shorthand writer when officer called to prove contents. **Practice Direction** [1966] 2 929, CCA.

Police—Statement after verdict—Statement by police—Limitations to be observed—Character and antecedents—Matters relevant to determination of sentence—Matters capable of proof and not disputed by prisoner. **R v van Pelz** [1943] 1 36, CCA.

Rehabilitation of offenders—Spent convictions—Rehabilitated person to be treated as person who has not committed offence where conviction spent—Reference to previous conviction in criminal proceedings—Reference to spent conviction to be avoided wherever possible—Reference to be made only on authority of judge. **Practice Note** [1975] 2 1072, QBD.

Suspected person. *See* Vagrancy—Suspected persons—Previous convictions, *post*.

Prosecution—

Calling of evidence—Duty to call evidence before close of case—Evidence becoming subsequently available—All probative evidence to be relied on by prosecution should be adduced as a general rule before prosecution's case closed—Whether evidence available to prosecution for first time after close of prosecution's case can be introduced at a later stage. **R v Rice** [1963] 1 832, CCA.

Closing speeches—Irregularity—Accused not represented and refusing to give evidence or call witnesses—Address to jury by prosecution for second time. **R v Pink** [1970] 3 897, CA.

Costs—Police prosecutor. *See* Police (Prosecutor—Costs).

Disclosure of evidence—Disclosure by prosecution to defence—Prosecution's duty to make available to the defence statements of witnesses tending to show accused's innocence. **Dallison v Caffery** [1964] 2 610, CA.

Evidence. Generally. *See* Criminal evidence (Prosecution evidence).

Informer—Disclosure to court of existence of informer—Duty of prosecution. **R v Birtles** [1969] 2 1131, CA.

Withdrawal—Application for leave to withdraw prosecution—No evidence to go to jury—Counsel's duty to apply for leave to withdraw prosecution. **Abbott v Refuge Assurance Co Ltd** [1961] 3 1074, CA.

Witnesses—Palestine. *See* Palestine (Criminal law—Prosecution witnesses).

Witnesses—Witnesses listed on back of indictment—Duty of prosecution to tender all witnesses on back of indictment. **R v Oliva** [1965] 3 116, CCA.

Witnesses—Witnesses listed on back of indictment—Duty of prosecution to tender witnesses—Reasonable steps to procure attendance—Absence of witness owing to events outside prosecution's control—Discretion of trial judge to proceed with trial. **R v Cavanagh** [1972] 2 704, CA.

Public hearing—

Constitutional right to public hearing—Jamaica. *See* Jamaica (Constitutional law—Fundamental rights and freedoms—Criminal proceedings to be in public).

Quashing indictment—

Motion to quash. *See* Indictment (Motion to quash).

Recommendation to mercy—

Direction to jury—Improper to suggest to jury within province to recommend mercy in event of guilty verdict. **R v Larkin** [1943] 1 217, CCA.

Invitation to jury—Undesirability of judge or counsel inviting jury to add recommendation to mercy. **R v Black** [1963] 3 682, CCA.

Removal of trial to Central Criminal Court—

Grounds—Local feeling—Central Criminal Court Act 1856, s 3. **R v Lewis, ex parte Director of Public Prosecutions, R v Williams, ex parte Same, R v Valentine, ex parte Same** [1936] 3 1008, KBD.

Retirement of jury—

Communication with judge—Absence of defendant—Written note sent to judge asking for direction—Direction given by judge in writing without coming into court—Whether conviction should be quashed. **R v Green** [1950] 1 38, CCA.

Communication with judge—Jury's question while considering verdict—Answer by judge—Question and answer not announced in court until after verdict and discharge of jury—Irregularity not going to root of case. **R v Furlong** [1950] 1 636, CCA.

CRIMINAL LAW (cont)

Trial (cont)—

Retirement of jury (cont)—

Further evidence—Inspection—Inspection of car referred to in evidence after retirement—Conviction quashed—No further evidence to be adduced after retirement of jury. **R v Lawrence** [1968] 1 579, CA.

Further evidence—Inspection—Charge of driving whilst disqualified—Jury, after retirement, inspecting car with consent and at wish of defence—Technical breach of rules—No miscarriage of justice. **R v Nixon** [1968] 2 33, CA.

Separation of jurors after retirement—Separation after being given in charge of bailiff—Permission by recorder to leave court and take luncheon together—Power to order new trial—Duty of counsel to bring irregularity to notice of court. **R v Neal** [1949] 2 438, CCA.

Retrial—

Judge's notes of first trial—Whether party entitled to copy of judge's notes for purpose of second trial. **Ramlochan v Reginam** [1956] 2 577, PC.

No miscarriage of justice. *See* Appeal—No miscarriage of justice—Retrial, *ante*.

Order for retrial—Power of appeal court—Appeal allowed and conviction quashed—Right of appeal a substantive right—Whether power to order retrial a matter of practice or procedure rather than substantive right. **Ross v Reginam** [1957] 1 451, PC.

Right of accused to claim trial by jury for summary offence. *See* Magistrates (Right of accused to claim trial by jury for summary offence).

Separate trials—

Conspiracy. *See* Conspiracy—Separate trials, *ante*.

Generally. *See* Separate trials, *ante*.

Shortening of trial—

Severance of counts—Conspiracy to defraud Revenue—Complicated purchase tax evasions—Steps to be taken for shortening trials. **R v Simmonds** [1967] 2 399, CA.

Shorthand note—

Evidence and summing-up—Absence of official shorthand writer or apparatus for mechanical recording—Duty of judge, counsel and officers of the court—Duty to ensure that unchallengeable note taken—Duty of judge to see that his directions to jury adequately recorded—Criminal Appeal Rules 1968 (SI 1968 No 1262), r 18(3). **R v Payne, R v Spillane** [1971] 3 1146, CA.

Summing-up—Transcript—Revision of transcript by judge—Revision not permissible. **R v Kluczynski** [1973] 3 401, CA.

Stay of proceedings—

Application by accused for indictment to be proceeded with—Applicant charged on one indictment with murder and on second indictment with armed robbery—Both indictments based on same facts—Applicant convicted of murder—Second indictment ordered to remain on file marked not to be proceeded with without leave—Two years later applicant applied to Central Criminal Court for order that the second indictment be tried—Two years after that application was refused applicant made similar application to Court of Appeal—Order refused. **R v Thatcher** [1967] 3 410, CA.

Power of court—Discretion not to proceed with trial of indictment—Whether apart from principles of *autrefois acquit* and kindred pleas court has discretion. **Connelly v Director of Public Prosecutions** [1964] 2 401, HL.

Summary trial—

Committal proceedings distinguished. *See* Committal—Preliminary hearing before justices—Summary trial distinguished, *ante*.

Summing-up—

Burden of proof. *See* Jury (Direction to jury—Burden of proof).

Character of accused—Good character—No dispute of good character—Whether necessary to refer to good character. **R v Aberg** [1948] 1 601, CCA.

Comment of failure of defence to call certain witnesses. *See* Jury (Direction to jury—Comment by judge on failure of defence to call certain witnesses).

Conduct of accused—Adverse comment—Statement by accused after caution, but before being charged—‘What I have to say I will say to the court’—Comment of judge that if accused innocent it was curious statement to make before being charged—Propriety of comment. **R v Gerard** [1948] 1 205, CCA.

Depositions—Reference to depositions—Evidence on depositions not to be referred to in summing-up unless evidence on those lines called at trial. **R v Thompson** [1966] 1 505, CCA.

Direction to jury. Generally. *See* Jury (Direction to jury).

Failure to call witnesses—Adverse comment—Failure of defence or prosecution to call witness in whose defence accused alleged that he had acted—Undesirability of comment. **R v Wheeler** [1967] 3 829, CA.

Medical evidence—Transcript—Analysis—Inadequate practice to hand transcript to jury without analysis. **R v Terry** [1961] 2 569, CCA.

Review of evidence—Whether fatal defect if evidence not reviewed by judge in summing-up. **R v Attfield** [1961] 3 243, CCA.

Self-defence. *See* Jury (Direction to jury—Self-defence).

Several defendants—Summing-up case of each defendant separately—Verdict on each defendant taken after individual summing-up and before summing-up of case against next defendant—Circumstances in which that course should be followed. **R v Newland** [1953] 2 1067, CCA.

Shorthand note. *See* Trial—Shorthand note—Summing-up, *ante*.

Silence of accused—Adverse comment—Indication that accused's failure to declare innocence a consideration tending to prove guilt—Misdirection justifying quashing of conviction—Criminal Appeal Act 1907, s 4(1). **R v Leckey** [1943] 2 665, CCA.

CRIMINAL LAW (cont)

Trial (cont)—

Verdict—

Majority verdict. *See* **Jury** (Majority verdict).Verdict. *See* Verdict, *post*.

Withdrawal of charge—

Effect—Several counts—Count withdrawn from jury on submission of no case—Count alleging larceny withdrawn—Count alleging receiving left to jury—Whether count withdrawn may be revived subsequently. **R v Plain** [1967] 1 614, CA.

Witnesses—

Calling of witnesses—Accused—Accused, if called, should give evidence before any other witness for the defence—Witnesses as to fact should remain outside the court until required to give evidence. **R v Smith (Joan)** [1968] 2 115, CA.Calling of witnesses—Generally. *See* **Criminal evidence** (Trial—Witness).Competence. *See* **Criminal evidence** (Competence as witness).Eye witnesses to be called by prosecution—Murder—Whether incumbent on prosecution in murder case to call every available eye-witness. **Seneviratne v R** [1936] 3 36, PC.Failure to call. *See* Trial—Summing-up—Failure to call witnesses, *ante*.Identity—Disclosure—Blackmail proceedings—Jurisdiction—Order by judge that identity of witness should not be disclosed—Whether judge having jurisdiction to make order. **R v Socialist Worker Printers and Publishers Ltd, ex parte Attorney-General** [1975] 1 142, QBDImputation on character of prosecution witness. *See* **Criminal evidence** (Character of accused—Imputation on character of prosecutor or witness).Interference with witness—Embracery. *See* embracery, *ante*.Obscenity charge. *See* Obscene publications—Defence of public good—Witnesses, *ante*.Prosecution witnesses. *See* Trial—Prosecution—Witnesses, *ante*.Refreshing memory. *See* **Criminal evidence** (Witness—Refreshing memory).Warning to defendant in person—Defendant conducting own defence attacking character of prosecution witness—Warning of consequent admissibility of questions as to defendant's character—How given. **R v Weston-super-Mare Justices, ex parte Townsend** [1968] 3 225, QBDUnauthorised collection for charitable purpose. *See* **Charity** (House to house collection).

Uncontrollable impulse—

Murder. *See* Murder—Uncontrollable impulse, *ante*.Undischarged bankrupt obtaining credit. *See* **Bankruptcy** (Offences—Undischarged bankrupt obtaining credit).

Uniforms—

Wearing in connection with political objects. *See* **Public order** (Uniforms in connection with political objects).Unlawful arrest. *See* **Arrest** (Unlawful arrest).

Unlawful assembly—

Public place—

Danger to peace and tranquillity of neighbourhood—Assembly inside building—Persons inside building put in fear—Whether necessary that assembly should be held in public place—Whether necessary to show that fear engendered outside building. **Kamara v Director of Public Prosecutions** [1973] 2 1242, HL.Unlawful fighting. *See* Affray—Unlawful fighting, *ante*.

Unsolicited publications—

Publications describing or illustrating human sexual techniques—

Advertising material for such publications—Accused sending advertising material—Advertising material not describing or illustrating human sexual techniques—Whether an offence—Unsolicited Goods and Services Act 1971, s 4(1). **Director of Public Prosecutions v Beate Uhse (UK) Ltd** [1974] 1 753, QBD.Using vehicle on road in breach of regulations. *See* **Road traffic** (Motor vehicle—Using vehicle on road in breach of regulations).

Uttering counterfeit coins—

Possession with intent to utter. *See* Coinage offence—Possessing counterfeit coins with intent to utter or put them off, *ante*.Uttering forged document. *See* Forgery—Uttering forged document, *ante*.

Vagrancy—

Fortune-telling—

Fortune of individual—Newspaper article—Addressed to public generally—No reference to any particular person—Vagrancy Act 1824, s 4. **Barbanell v Naylor** [1936] 3 66, KBD.

Found in enclosed premises for an unlawful purpose—

Enclosed area—Area—Railway siding—Fenced on every side except across railway track—Whether an 'inclosed area'—Vagrancy Act 1824, s 4. **Knott v Blackburn** [1944] 1 116, KBD.Enclosed yard—Enclosed—Gaps in walls—Yard surrounded by buildings, walls and fences, with two gaps for access—Whether an 'enclosed yard'—Vagrancy Act 1824, s 4. **Goodhew v Morton** [1962] 2 771, QBD.Enclosed yard—Yard—Size—Small area contiguous to building—Railway siding—Siding covering area one mile long by quarter of a mile wide—Siding surrounded by fences and buildings, with one 100 yard gap—Whether siding an 'enclosed yard'—Vagrancy Act 1824, s 4. **Quatromini v Peck** [1972] 3 521, QBD.

Found in enclosed premises for unlawful purpose—

Occupier of premises—Block of flats—Accused found in entrance hall—Charge of being on premises in occupation of one of the tenants—Surplusage—Vagrancy Act 1824, s 4. **Hollyhomes v Hind** [1944] 2 8, KBD.

CRIMINAL LAW (cont)

Vagrancy (cont)—

Frequenting public place with intent—

Frequenting—Element of continuity or repetition—Merely being in place with necessary intent insufficient—Circumstances to be considered in determining whether a person has frequented a public place—Police Offences Act (New Zealand) 1927, s 52(1)(j). **Nakhla v The Queen** [1975] 2 138, PC.

Place of public resort—Place where public invited but proprietors having right to refuse admission—Charge for admission—Tattersall's enclosure on racecourse—Whether a place of public resort to refuse admission—Vagrancy Act 1824, s 4. **Glynn v Simmonds** [1952] 2 47, QBD.

Suspected persons—

Conduct giving rise to suspicion—Antecedent to act for which arrest made—Evidence of a number of police officers—Pooling evidence—Vagrancy Act 1824, s 4. **Cohen v Black** [1942] 2 299, KBD.

Conduct giving rise to suspicion—Antecedent to act for which arrest made—Whether act giving rise to suspicion sufficiently antecedent to act for which arrest made—Vagrancy Act 1824, s 4 (as amended by Penal Servitude Act 1891, s 7). **Pyburn v Hudson** [1950] 1 1006, KBD.

Loitering antecedent to act the subject of the charge—Separation of prior similar acts rendering person a suspected person—Vagrancy Act 1824, s 4. **Cosh v Isherwood** [1968] 1 383, QBD.

Previous convictions—Character not known to police before arrest—Whether previous convictions admissible as evidence to establish accused was a suspected person—Vagrancy Act 1824, s 4. **R v Clarke** [1950] 1 546, CCA.

Previous convictions—Evidence of previous conviction—Conviction followed by conditional discharge not a conviction—Certificate of conviction not proof where discharge—Evidence by person that he was in court on previous occasion when accused confessed or was found guilty of offence—Vagrancy Act 1824, s 4—Prevention of Crimes Act 1871, s 15—Criminal Justice Act 1948, s 12(1). **R v Harris** [1950] 2 816, CCA.

Several acts on same date—Accused looking at and trying doorhandles of several different cars—Arrest on last such occasion—Whether sufficient distinction between act for which arrest made and preceding acts giving rise to suspicion—Vagrancy Act 1824, s 4. **Rawlings v Smith** [1938] 1 11, KBD.

Verdict—

Alternative offence—

Appeal—Substitution of verdict. *See* Appeal—Substitution of verdict—Alternative offence, *ante*.

Burglary—Theft—Allegations in indictment amounting to or including allegation of another offence—Allegation of other offence expressly included—Alternative offence not an ingredient of offence charged—Allegation that accused having entered building as a trespasser stole therein—Evidence that accused took goods from building with permission—Evidence that accused subsequently stole the goods—Theft outside building not an ingredient of burglary—Whether necessary that alternative offence should be an ingredient of offence charged—Criminal Law Act 1967, s 6(3). **R v Lillis** [1972] 2 1209, CA.

Embezzlement. *See* Embezzlement—Indictment—Alternative verdict, *ante*.

Larceny—Warehousebreaking—Indictment for warehousebreaking and larceny—No evidence of asportation other than to facilitate entry—Whether alternative verdict of warehousebreaking with intent permissible—Larceny Act 1916, s 26(1), s 27(2). **R v Kelly** [1963] 3 558, CCA.

Rape—Indecent assault—Allegations in indictment amounting to or including allegation of another offence—Count alleging rape—Victim aged 14—Age irrelevant to charge of rape—Defence of consent—Consent no defence to indecent assault where victim under age of 16—Acquittal of rape—Whether allegation of rape including allegation of indecent assault—Whether open to jury to convict of indecent assault—Sexual Offences Act 1956, s 14(1), (2)—Criminal Law Act 1967, s 6(3). **R v Hodgson** [1973] 2 552, CA.

Rape—Unlawful sexual intercourse—Whether alternative verdict of unlawful sexual intercourse permissible—Criminal Law Act 1967, s 6(3). **R v Fisher, Marshall and Mitchell** [1969] 1 265, Newcastle Assizes.

Robbery with violence—Simple larceny—Indictment for robbery with violence—Whether alternative verdict of simple larceny permissible. **Smith v Desmond** [1965] 1 976, HL.

Substitution of alternative verdict on appeal. *See* Appeal—No miscarriage of justice—Alternative verdict, *ante*.

Ambiguity—

Questions by judge—Questions to ascertain meaning of verdict proper—Improper to question jury on grounds of verdict if verdict plain and unambiguous in its terms. **R v Larkin** [1943] 1 217, CCA.

Completeness—

All possible verdicts dealt with—Verdict not complete until jury have dealt with all possible verdicts on indictment. **R v Carter** [1964] 1 187, CCA.

Direction to jury. *See* Trial—Direction to jury—Verdict, *ante*.Generally. *See* Jury (Verdict).

Impossible verdict—

Attempt to blackmail. *See* Demanding money with menaces—Attempt—Verdict impossible, *ante*.

Jury—

Generally. *See* Jury (Verdict).

Special verdict—

Insanity—Appeal. *See* Appeal—Insanity—Special verdict, *ante*.

CRIMINAL LAW (cont)

Verdict (cont)—

Substitution—

Manslaughter. *See* Manslaughter—Alternative charge—Substituted verdict, *ante*.

Unreasonable verdict—

Setting aside on appeal. *See* Appeal—Unreasonable verdict, *ante*.

What constitutes verdict—

Autrefois acquit. *See* Autrefois acquit—Verdict of jury—What constitutes verdict, *ante*.

Weapons—

Offensive weapons. *See* Offensive weapons, *ante*.

Weights and measures. *See* **Weights and measures**.

Wife—

Accessory after the fact. *See* Accessory after the fact—Wife, *ante*.

Wilfully killing deer during close season. *See* **Game** (Deer—Offence—Wilfully killing deer during close season).

Witchcraft—

Conjuration of spirits—

Pretence to exercise conjuration of spirits—Spirits of deceased persons—Whether offence limited to calling up of evil spirits—Witchcraft Act 1735, s 4. **R v Duncan** [1944] 2 220, CCA.

Witness—

Trial. *See* Trial—Witnesses, *ante*.

Wounding—

Autrefois convict—

Murder—Conviction of wounding with intent. *See* Autrefois convict—Murder—Wounding with intent, *ante*.

Intent to cause grievous bodily harm. *See* Grievous bodily harm—Wounding with intent to cause grievous bodily harm, *ante*.

Self-defence—

Defence of another—Relationship between accused and other—Circumstances justifying intervention on behalf of another—Whether defence applicable to act of one sister to assist another. **R v Duffy** [1966] 1 62, CCA.

Unlawful and malicious wounding—

Maliciously—Meaning—Direction to jury—Prevention of Offences Act 1851, s 5—Offences against the Person Act 1861, s 20. **R v Mowatt** [1967] 3 47, CA.

CROPS

Damage to crops—

Loss of deficiency payment—

Damages. *See* **Damages** (Remoteness of damage—Damage to crops—Loss of deficiency payment).

CROSS-CLAIM

Set-off. *See* **Set-off** (Cross-claim).

CROSS-EXAMINATION

Affidavit—

Chancery Division. *See* **Practice** (Chancery Division—Affidavit—Cross-examination of deponent).

Winding-up proceedings. *See* **Company** (Compulsory winding-up—Petition by Board of Trade—Evidence—Cross-examination—Affidavit of official of Board of Trade).

Character of accused—

Criminal proceedings. *See* **Criminal evidence** (Character of accused).

Co-accused. *See* **Criminal evidence** (Co-accused—Cross-examination).

Generally. *See* **Practice** (Cross-examination).

Statement by accused. *See* **Criminal evidence** (Statement by accused—Cross-examination on statement).

CROSSING

Road—

Pedestrian crossing. *See* **Road traffic** (Pedestrian crossing).

School crossing. *See* **Road traffic** (School crossing).

CROWD

Danger from rush of people—

Premises open to public—

Duty to institute crowd control. *See* **Negligence** (Duty to take care—Premises open to public—Danger from rush of people—Duty to institute crowd control).

CROWN

Action against Minister of Crown—

Competency—

Minister of Supply—Privileges and immunities inherent in Crown—Action by conservancy authority against Minister as cargo owner to recover expenditure incurred in removing wrecked ship—War Department Stores Act 1867, s 20—Ministry of Supply Act 1939, s 2(3)—Ministry of Supply (Transfer of Powers)(No 1) Order 1939 (SR & O 1939 No 877). **Tyne Improvement Comrs v Armement Anversoils Société Anonyme, The Brabo** [1949] 1 294, HL.

Action by Minister for breach of contract—

Counterclaim—

Right of counterclaim—War Department Stores Act 1867, s 20—Ministry of Supply Act 1939—Ministry of Supply (Transfer of Powers)(No 1) Order 1939 (SR & O 1939 No 877). **Minister of Supply v British Thomson-Houston Co Ltd** [1943] 1 615, CA.

CROWN (cont)

Adverse possession—

Requisites for establishing title against Crown—

Foreshore. *See* **Limitation of action** (Land—Adverse possession—Foreshore—Requisites for establishing title against the Crown).

Corruption—

Person serving under the Crown. *See* **Criminal law** (Corruption—Transactions with agents—Agent—Person serving under the Crown).

Crown lands—

Canada. *See* **Canada** (Crown lands).

Crown servant—

Action for tort against servant of Crown—

Nominated defendant—Jurisdiction of court—Accident to employee in government factory—Action for damages for negligence or breach of statutory duty—Superintendent of factory nominated by government as defendant—Jurisdiction of court to hear case against nominal defendant. **Royster v Cavey** [1946] 2 642, CA.

Dismissal at pleasure by Crown—

Effect of national agreement on right to dismiss at pleasure—Whether matters agreed by National (Whitley) Council incorporated as term of service. **Rodwell v Thomas** [1944] 1 700, KBD.

Exclusion of Crown's right to dismiss at pleasure—Whether regulations made by Army Council under letters patent excluded Crown's right to dismiss employee at pleasure—Whether employee determined own employment under regulations—War Department (Outstations) Civilian Staff Regulations 1950, reg 437, reg 438. **Riordan v The War Office** [1960] 3 774, CA.

Termination or variation of contract of service—Guyana. *See* **Guyana** (Crown servant—Contract of service—Termination or variation of contract).

Loss of services—

Established 'civil servant'—Civil servant injured in road accident for which he was partly to blame—Absent from work for several months—Whether action per quod servitium amisit lay. **Inland Revenue Comrs v Hambrook** [1956] 3 338, CA.

Member of police force—Police constable injured by negligence of third person—Whether action per quod servitium amisit lay. **Attorney-General for New South Wales v Perpetual Trustee Co (Ltd)** [1955] 1 846, PC.

Receipt of bribes by servant—

Right of Crown to bribes. **Reading v Attorney-General** [1951] 1 617, HL.

Crown ship—

Collision—

Limitation of liability of Crown—Collision between submarine and merchant ship—Failure of submarine to comply with rules concerning lights in the King's Regulations and Admiralty Instructions, ch XVI, para 660—'Actual fault or privity' of Board of Admiralty—Merchant Shipping Act 1894, s 503(1)—Crown Proceedings Act 1947, s 5(1). **HMS Truculent** [1951] 2 968, Adm.

Limitation of liability of Crown—HMC ship—Whether Crown entitled to limitation of liability under Canadian statute—Canada Shipping Act 1934, s 649(1), s 712. **Nisbet Shipping Co Ltd v Reginam** [1955] 3 161, PC.

Entitlement to estate or interest in hereditament. *See* **Administration of estates** (Interest of Crown).

Exemption from liability in tort—

Act of member of armed forces on duty causing death of another such member—

Certificate of Minister of Pensions that injury attributable to service for purpose of entitlement to award—Certificate granted—Award refused—Whether Crown exempt from liability—Crown Proceedings Act 1947, s 10(1). **Adams v The War Office** [1955] 3 245, QBD.

Forfeiture of lease—

Mortmain—

Crown not accepting or entering on land—Liability of Crown under lessee's covenants—Mortmain and Charitable Uses Act 1888, s 1(1)—Mortmain and Charitable Uses Act 1891, s 3. **Attorney-General v Parsons** [1956] 1 65, HL.

Fraud on the Crown and public. *See* **Criminal law** (Fraud—Fraud on the Crown and public).

Grant—

Implied Crown grant—

Land drainage. *See* **Land drainage** (Sea wall—Right to drain from seaward to landward side of wall—Implied Crown grant).

Income tax—

Exemption. *See* **Income tax** (Exemption—Crown).

Interlocutory injunction—

Undertaking as to damages. *See* **Injunction** (Interlocutory—Undertaking as to damages—Undertaking by Crown).

Joinder of Crown as party—

Originating summons. *See* **Originating summons** (Parties—Joinder of Crown as party).

Minerals—

Crown rights to minerals etc—

Isle of Man. *See* **Isle of Man** (Mines and minerals—Crown rights to minerals, flaege, slate and stone).

Office or employment under the Crown—

Income tax. *See* **Income tax** (Office or employment under the Crown).

Patent—

Crown use. *See* **Patent** (Crown use).

Peerage—

Legitimacy—

Declaration—Binding effect on Crown. *See* **Legitimation** (Declaration of legitimacy—Binding effect—Crown—Peerage claim).

CROWN (cont)

Prerogative—

Colony and Protectorate—

Constitution making power—Renunciation—Retroactive exercise. **Sabally v Attorney-General** [1964] 3 377, CA.

Disposition and armament of armed forces—

Whether courts can inquire into manner of the exercise of such prerogative. **Chandler v Director of Public Prosecutions** [1962] 3 142, HL.

Emergency prerogative—

Compensation for loss or damage by exercise of prerogative—Legal right to compensation—Exception for battle damage—Oil installations of appellants destroyed to deny use to advancing enemy—Long term strategy not bottle damage—Whether actions barred owing to being outside statutory limitation period—Public Authorities Protection Act 1893, s 1. **Burmah Oil Company (Burma Trading) Ltd v Lord Advocate** **Burmah Oil Company (Burma Concessions) Ltd v Lord Advocate** **Burmah Oil Company (Overseas) Ltd v Lord Advocate** **Burmah Oil Company (Pipe Lines) Ltd v Lord Advocate** [1964] 2 348, HL.

Compensation for loss or damage by exercise of prerogative—Treaty with independent sovereign state—Truce force under British command established to assist sovereign power in preservation of internal peace—Occupation by British troops of hotel on territory of that power—Whether occupation a prerogative act of Crown—Whether an act of state of the Crown—Occupation by British troops later continued as part of the United Nations Force—Whether tenant of hotel, a British subject, entitled to compensation from the Crown—Jurisdiction of the court. **Nissan v Attorney-General** [1967] 2 1238, CA.

Ouster by statute—

Prerogative in relation to infants. **Re M (an infant)** [1961] 1 788, CA.

Treaty-making power—

Power resting in Crown advised by its Ministers—Courts having no power to interfere with sovereign's treaty-making power—Treaty of Rome—Treaty irrevocable once signed—Treaty limiting sovereignty of United Kingdom—Action seeking declaration that signature of treaty unlawful disclosing no cause of action. **Blackburn v Attorney-General** [1971] 2 1380, CA.

Privilege—

Discovery. *See* **Discovery** (Privilege—Production contrary to public interest).

Proceedings against—

Period of limitation—

Cause of action statute-barred before commencement of Crown Proceedings Act 1947—Whether cause of action revived by virtue of Crown Proceedings Act 1947, s 1—Limitation Act 1939, s 30(1)—Crown Proceedings Act 1947, s 1. **Benson v Home Office** [1949] 1 48, KBD.

Recovery of possession of land—

Power of Minister to recover possession—

Evacuees from abroad allowed to occupy premises—Revocation of licence—Action by Minister to recover possession—Power to enforce rights of Crown—Ministry of Health Act 1919, s 7. **Minister of Health v Bellotti**, **Same v Holliday** [1944] 1 238, CA.

Relief against the Crown—

Injunction against Minister—

Jurisdiction—Capacity of Minister in performing certain functions prescribed by statute—Whether acting as representative of Crown—Crown Proceedings Act 1947, s 21. **Merricks v Heathcoat-Amory** [1955] 2 453, ChD.

Injunction against Secretary of State—

Jurisdiction—Crown Proceedings Act 1947, s 21. **Harper v Secretary of State for the Home Department** [1955] 1 331, CA.

Interlocutory relief—

Jurisdiction—Interim declaration in lieu of interim injunction—Whether court has jurisdiction to make such a declaration—Whether court would grant other appropriate relief—Crown Proceedings Act 1947, s 21(1)(a). **International General Electric Co of New York Ltd v Comrs of Customs and Excise** [1962] 2 398, CA.

Jurisdiction—Interim declaration in lieu of interim injunction—Whether court has jurisdiction to make such a declaration—Crown Proceedings Act 1947, s 21(1)(a). **Underhill v Ministry of Food** [1950] 1 591, ChD.

Right to legislate in colonies—

Settlements—

Ceded territories—Cession by general consent of inhabitants—Royal prerogative—British Settlements Act 1887, s 6—Foreign Jurisdiction Act 1890, s 1. **Sammut v Strickland** [1938] 3 693, PC.

Rights on intestacy—

Gift by will 'for such...persons who...would have been entitled...under Part IV of the Administration of Estates Act 1925—

Right of Crown to succeed as a 'person' or by prerogative right. **Re Mitchell (decd)** [1954] 2 246, ChD.

Salvage—

Crown acting as salvor. *See* **Petition of right** (Salvage).

Statute—

Whether bound by statute. *See* **Statute** (Crown—Whether bound by statute).

Treason. *See* **Criminal law** (Treason).

CROWN COURT

Appeal—

Appeal from Crown Court. *See* **Appeal from Crown Court, post**.

Appeal to Crown Court—

Disqualification for holding driving licence—Previous convictions—Evidence of previous convictions. *See* **Road traffic** (Disqualification for holding licence—Evidence of previous convictions—Appeal to Crown Court).

CROWN COURT (cont)**Appeal (cont)—****Appeal to Crown Court (cont)—**

Power of court on appeal. *See* Appeal to Crown Court—Power of court on appeal, *post*.

Refusal of firearms certificate—Evidence. *See* Firearms (Certificate—Refusal—Appeal—Evidence—Appeal to Crown Court).

Case stated. *See* Case stated (Appeal from Crown Court).

Power of court on appeal—

Sentence imposed by magistrates' court—Imprisonment—Sentence invalid because defendant not legally represented before justices. *See* Sentence (Imprisonment—Magistrates' court—Person not legally represented—Appeal).

Appeal from Crown Court—**Costs—**

Court of Appeal, Criminal Division—Jurisdiction—Costs of successful private prosecution—Crown Court order that costs of prosecution be paid out of central funds—Taxation order for lesser amount than sought—Prosecutor appealing against taxation order—Whether Court of Appeal, Criminal Division, having jurisdiction to hear appeal—Costs in Criminal Cases Act 1973, s 3. *Re Central Funds Costs Order* [1975] 3 238, CA.

Interlocutory order—

Court of Appeal—Jurisdiction—Trial on indictment—Solicitor—Order against solicitor—Right of appeal—Order that solicitor personally pay costs occasioned by adjournment of trial—Right of appeal against order—Whether Court of Appeal having jurisdiction to entertain appeal. *R v Smith (Martin)* [1974] 1 651, CA.

Appeal to Crown Court—**Power of court on appeal—**

Appeal against conviction by magistrates—Jurisdiction to allow amendment—Amended information alleging different particulars of offence—Appellant convicted on information alleging threatening behaviour with intent to provoke breach of peace—Amended information alleging insulting behaviour whereby breach of peace likely to be occasioned—Whether Crown Court having jurisdiction to allow amendment—Public Order Act 1936, s 5, as substituted by the Race Relations Act 1965, s 7. *Garfield v Maddocks* [1973] 2 203, QBD.

Case stated. *See* Case stated (Appeal from Crown Court).

Circuit judge. *See* Judge (Circuit judge).

Committal for trial at Crown Court—**Procedure—**

Committal for trial on consideration of evidence. *Practice Direction* [1971] 3 829, CA.

Committal for trial without consideration of evidence. *Practice Direction* [1971] 3 1312

Committal of offender to Crown Court for sentence—**Borstal training—**

Road traffic offence—Disqualification—Defendant committed to Crown Court with view to borstal training—Power of court to order disqualification for holding driving licence in addition to imposing period of borstal training—Magistrates' Courts Act 1952, s 28(1)(as amended by the Criminal Justice Act 1961, s 41, Schs 4, 5, the Criminal Justice Act 1967, s 103(1), Sch 6 and the Courts Act 1971, s 56(1), Sch 8)—Criminal Justice Act 1967, s 56(as amended by the Courts Act 1971, s 56(1), Sch 8 and the Road Traffic Act 1972, s 203(1), Sch 7). *R v O'Connor* [1976] 2 327, CA.

Jurisdiction—

Incorrigible rogue. *See* Criminal law (Incorrigible rogue—Sentence—Probation—Committal to Crown Court).

Powers of justices—

Order by justices following conviction—Compensation order—Propriety—Justices having no power to make any order following conviction where offender is to be committed for sentence—All questions associated with sentence to be left to Crown Court—Magistrates' Courts Act 1952, s 29. *R v Brogan* [1975] 1 879, CA.

Summary trial for indictable offence—Accused charged with offences of theft—Accused of previous good character—Justices having no other information about accused's antecedents and character—Justices agreeing to summary trial—Accused pleading guilty—Justices subsequently discovering accused police officer—Offences committed whilst accused on duty—Justices committing accused for sentence—Power of justices to commit for sentence—Magistrates' Courts Act 1952, ss 19, 29. *R v Lymm Justices, ex parte Brown* [1973] 1 716, QBD.

Committal of offender to Crown Court for sentence or to be dealt with—**Procedure—**

Committal to most convenient location of Crown Court. *Practice Notes* [1971] 3 829, [1973] 1 182.

Costs—**Taxation—**

Legal aid. *See* Legal aid (Taxation of costs—Criminal proceedings—Crown Court).

Value added tax. *See* Costs (Taxation—Value added tax—Crown Court).

Distribution of court business—**Classification of offences—**

Offences triable by High Court judge, circuit judge, recorder—Cases suitable for allocation to court comprising justices of Peace—Appeals and proceedings under court's original civil jurisdiction—Application for bail and for removal of driving disqualifications—Transitional arrangements—Courts Act 1971, ss 4(5), 5(4), Sch 10. *Practice Notes* [1971] 3 829, CA, [1972] 2 1057.

Judge—

Immunity from suit. *See* Judge (Immunity from suit—Circuit judge).

CROWN COURT (cont)

Jurisdiction—

Appeal against conviction by magistrates—

Jurisdiction to allow amendment of information. *See* Appeal to Crown Court—Power of court on appeal—Appeal against conviction by magistrates—Jurisdiction to allow amendment, *ante*.

Contempt of court—

Criminal contempt—*See* **Contempt of court** (Criminal contempt—Jurisdiction—Summary committal).

False customs declaration—

Declaration made knowingly or recklessly. *See* **Customs and excise** (False declaration—Declaration untrue in a material particular—Untrue declaration made knowingly or recklessly—Jurisdiction of Crown Court to try offence).

Single indivisible court—

Jurisdiction of sections of Crown Court—Jurisdiction to examine decision of other section of court—Probation order—Breach—Jurisdiction of court by which order made to deal with breach—Defendant placed on probation by one section of Crown Court—Defendant sentenced for subsequent offences by second section of court—Second section considering breaches of probation order but making no order—Whether first section having jurisdiction to deal with defendant for breaches of order—Courts Act 1971, s 4(1)—Powers of Criminal Courts Act 1973, s 8(7). **R v Slatter** [1975] 3 215, Crown Court.

Justices as judges—

Judge or recorder sitting with justices—

Decisions of court—Justices to play full part in decisions of court—Majority decisions—Questions of law—Ruling of judge on law to be followed—Decision on admissibility of evidence—Proper for judge to retire with justices to consider decision—Courts Act 1971, ss 4(2), 5(8). **R v Orpin** [1974] 2 1121, CA.

Legal aid—

Committal for trial—

Application to Crown Court for legal aid. *See* **Legal Aid** (Criminal cases—Trial—Time when application must be made—Committal for trial to Crown Court).

Majority verdict. *See* **Jury** (Majority verdict).

Order—

Amendment—

Jurisdiction—Order not giving effect to court's intention—Costs—Defendant acquitted—Order that defence costs be paid out of central funds—Intention that order should include costs of committal proceedings—Order entered on record containing no reference to costs of committal proceedings—Whether court having jurisdiction to order that record be amended—Courts Act 1971, s 11(2). **R v Michael** [1976] 1 629, Crown Ct.

Practice—

Solicitor—

Right of audience. **Practice Direction** [1972] 1 144, 608.

Sentence—

Commencement—

Sentence to take effect from day on which pronounced unless court otherwise directs—Ante-dated sentence—Whether court having power to direct sentence to take effect from day before day on which it is pronounced—Courts Act 1971, s 11(1). **R v Gilbert** [1975] 1 742, CA.

Generally. *See* **Sentence**

Solicitor—

Advocate—

Right of audience. *See* **Solicitor** (Practice—Advocate—Right of audience—Crown Court).

Jurisdiction over solicitor—

Payment of costs. *See* **Solicitor** (Payment of costs by solicitor personally—Crown Court).

Supervisory jurisdiction of High Court—

Appeal by case stated. *See* **Case stated** (Appeal from Crown Court).

Orders of mandamus, prohibition and certiorari—

Orders in relation to jurisdiction of Crown Court—Meaning of 'jurisdiction'—Whether power to make an order of certiorari when error of law shown on the face of the record—Courts Act 1971, s 10(5). **R v Crown Court of Leeds, ex parte City of Bradford Chief Constable** [1975] 1 133, QBD.

Orders of mandamus, prohibition or certiorari—

Orders in relation to jurisdiction of Crown Court—Meaning of 'jurisdiction'—Whether power to make an order of certiorari where error of law shown on the face of the record—Courts Act 1971, s 10(5). **R v Crown Court at Exeter, ex parte Beattie** [1974] 1 1183, QBD.

Trial on indictment—

High Court having no supervisory jurisdiction in matters relating to trial on indictment—Interlocutory order—Order against accused's solicitor—Order personally to pay costs occasioned by adjournment of trial—Whether order a matter relating to trial on indictment—Whether solicitor having right to apply for order of certiorari—Courts Act 1971, s 10(5). **R v Smith (Martin)** [1974] 1 651, CA.

High Court having no supervisory jurisdiction in matter relating to trial on indictment—Legal aid—Contribution order—Crown Court ordering accused to make contribution to defence costs incurred in trial—Whether order a matter relating to trial on indictment—Criminal Justice Act 1967, s 76(1)—Courts Act 1971, s 10(5). **R v Crown Court at Cardiff, ex parte Jones** [1973] 3 1027, QBD.

High Court having no supervisory jurisdiction in matters relating to trial on indictment—Order of Crown Court relating to costs following trial on indictment—Certiorari—Whether High Court having jurisdiction to quash order—Courts Act 1971, s 10(5). **Ex parte Meredith** [1973] 2 234, QBD.

CROWN COURT (cont)

Transfer of proceedings between locations—

Sentence—

Deferred sentence passed on offender—Conviction of further offence before different location of court during period of deferment—Sentence for original offence—Criminal Justice Act 1972, s 22(1), (4). **Practice Direction** [1974] 2 121.

Trial. *See* **Criminal law** (Trial).

CROWN PRIVILEGE

Cabinet proceedings—

Confidential information. *See* **Constitutional law** (Cabinet—Proceedings—Disclosure of documents or information—Confidential information—Public interest in non-disclosure).

Discovery. *See* **Discovery** (Privilege—Production contrary to public interest).

Production of documents—

Rules of court—

Power of Rules Committee. *See* **Statutory instrument** (Rules of court—Power of Rules Committee—Power to make rule relating to production of documents and Crown privilege).

CROWN PROCEEDINGS

Petition of right. *See* **Petition of right**.

Vicarious liability for negligence—

Salvage—

Crown acting as salvor. *See* **Statute** (Crown—Crown entitled by statute to claim for salvage services—Vicarious liability for negligence).

CROWN SERVANT

See **Crown** (Crown servant).

CRUELTY

Animal. *See* **Animal** (Protection).

Child. *See* **Criminal law** (Child—Cruelty).

Divorce—

Ground for divorce. *See* **Divorce** (Cruelty).

Persistent cruelty. *See* **Husband and wife** (Summary proceedings—Persistent cruelty).

Persons under 16. *See* **Children and young persons** (Cruelty to persons under 16).

CULTIVATION CONTROL

Directions—

Ministerial power to give directions—

Delegation of power—Delegation of Minister's power to county agricultural committee—Exercise of delegated power by county executive officer—Delegatus non potest delegare—Defence (General) Regulations 1939, regs 62(1), 66. **Allingham v Minister of Agriculture and Fisheries** [1948] 1 780, KBD

Non-compliance with directions—

Magistrates' power to consider merits of directions—Defence (General) Regulations 1939, regs 62, 66, 92. **Minister of Agriculture and Fisheries v Price** [1941] 2 660, KBD.

Failure to cultivate land according to rules of good husbandry—

Supervision order—

Termination of owner's occupation of land—'Land'—Inclusion of dwelling-house buildings—Agriculture Act 1947, s 17(1)(b). **Hasell v McAulay** [1952] 2 825, QBD.

Termination of tenancy—

Consent of Minister—Delegation of power of consent—Method of delegation—Defence (General) Regulations 1939, reg 62(2), (3)—Cultivation of Lands Order 1939 (SR & O 1939 No 1078), art 1. **West Riding County Council v Wilson** [1941] 2 827, KBD.

Consent of Minister—Necessity for inquiry prior to consent—Power of committee to take possession—Defence (General) Regulations 1939, regs 51, 62—Cultivation of Lands Order 1939 (SR & O 1939 No 1078). **Howell v Addison** [1943] 1 29, CA.

CURRENCY

Decimalisation. *See* **Decimalisation**.

Foreign currency—

Damages—

Rate of interest. *See* **Interest** (Damages—Award in foreign currency—Rate of interest).

Interest payable in foreign currency—

Deduction of tax. *See* **Income tax** (Interest—Deduction of tax by payer—Foreign currency).

Judgment. *See* **Judgment** (Payment of sum of money—Foreign currency).

Generally. *See* **Money** (Currency).

Income tax—

Return. *See* **Income tax** (Return—Currency).

Rate of exchange—

Double taxation relief. *See* **Income tax** (Double taxation relief—Rate of exchange).

Shipping—

Limitation of liability—Conversion rate. *See* **Shipping** (Limitation of liability—Conversion rate).

Ship—

Sale by Admiralty marshal—

Sale for sum expressed in foreign currency.

CURRENCY CONTROL

Bill of exchange—

Holder in due course—

Resident outside scheduled territory—No Treasury permission obtained—Claim for recovery of amount due—Whether recovery defeated owing to failure to obtain Treasury permission—Exchange Control Act 1947, s 33(1), Sch 4, para 4. **Contract & Trading Co (Southern) Ltd v Barbey** [1959] 3 846, HL.

Debt in foreign money—

Rate of exchange—

Date of conversion—Conversion at rate ruling on date debt payable or date on which exchange control permission given whichever later—Administration proceedings—Administration of deceased debtor's estate—Creditor resident abroad—Treasury permission at no time obtained or dispensed with—Order for administration of debtor's estate—Creditor's claim admitted to proof—Admission to proof 'as if [permission] had been given'—Date of conversion date on which administration order made—Exchange Control Act 1947, s 33(1), Sch 4, para 5(1). **Re Hawkins (decd)** [1972] 3 386, ChD.

Date of conversion—Creditor resident abroad outside scheduled territories—Date when debt became payable—Date when Treasury permission obtained—Exchange Control Act 1947, s 33(1). **Cummings v London Bullion Co Ltd** [1952] 1 383, CA.

Debts clearing office—

Beneficial title to money—

Price of goods imported in 1939 into United Kingdom—Money paid to Anglo-Roumanian Clearing Office—Clearing scheme brought to an end—Outbreak of war—Money transferred to Custodian of Enemy Property—Peace treaty—Transfer to Administrator of Roumanian Property—Debts Clearing Offices and Import Restrictions Act 1934, s 1—Clearing Office (Roumania) Order 1936 (S R & O 1936 No 427), as amended by Clearing Office (Roumania) Amendment Order 1939 (S R & O 1939 No 750)—Treaty of Peace (Roumania) Order 1948 (S I 1948 No 118), art 1(5)(g). **Fischler v Administrator of Roumanian Property** [1960] 3 433, HL.

Exchange control—

Borrowing or lending foreign currency—

Direction to Swiss finance company to pay foreign currency to third parties entitled to retain it—Distinction between money paid at the request of another and money lent—Penal enactment to be construed so as not to extend beyond what the language fairly comprises—Exchange Control Act 1947, s 1(1). **Re HPC Productions Ltd** [1962] 1 37, ChD.

Evasion of restrictions or requirements imposed by Act—

Power of Treasury to require information to be furnished for detecting evasion of Act—Extent of power—Exchange Control Act 1947, Sch 5, Part I, para 1(1), Part II, para 1(1). **Director of Public Prosecutions v Ellis** [1973] 2 540, QBD.

Foreign exchange control—

Bretton Woods Agreements—Exchange contracts—Enforceability—Exchange contracts involving currency of member of International Monetary Fund and contrary to exchange control regulations of that member—Meaning of 'exchange contracts'—Contract for sale of goods—Plaintiffs English brokers dealing in metals—Defendant resident in Italy—Defendant buying and selling metals through agency of plaintiffs—Contracts involving currency of Italy and contrary to Italian exchange control regulations—Whether 'exchange contracts' and therefore unenforceable in England—Bretton Woods Agreements Order in Council 1946 (SR & O 1946 No 36), Sch, Part 1, art VIII, s 2(b). **Wilson, Smithett & Cope Ltd v Terruzzi** [1976] 1 817, CA.

Bretton Woods Agreements—Inland cheque—Cheque for £300 given in England in consideration of a rupee cheque on Pakistani bank—Transaction between persons resident in England—Rupee cheque drawn in England—Whether inland cheque was in contravention of Pakistani exchange control—Whether inland cheque unenforceable in England—Bretton Woods Agreements Order in Council 1946 (S R & O 1946 No 36), art 3, Schedule, Pt 1, art 8, s 2(b)—Pakistan Foreign Exchange Regulations Act 1947 (No 7 of 1947) s 5(1)(a), (e), (f)—Bills of Exchange Act 1882, s 30(2). **Sharif v Azad** [1966] 3 785, CA.

Payment for exports—

Export of goods to destination outside scheduled territories—Prerequisite as to prior payment not fulfilled—Ultimate destination of goods Southern Rhodesia—Goods consigned by company to South Africa for reconsignment to Southern Rhodesia—Penalty under customs legislation for export in contravention of exchange control—Exchange Control Act 1947, s 23(1), (4)—Customs and Excise Act 1952, s 56(1). **Superheater Co Ltd v Commissioners of Customs and Excise** [1969] 2 469, QBD.

Prohibition of export of money—

Smuggling money, Bank of England notes, out of the country—Contravention of the prohibition imposed by s 22 of the Exchange Control Act 1947—Whether in law an offence under Customs and Excise Act 1952, s 56(2)—Interpretation Act 1889, s 38(1)—Exchange Control Act 1947, s 22, Sch 5, Pt 3, para 1(1)—Customs and Excise Act 1952, s 56(2). **R v Goswami** [1968] 2 24, CA.

Smuggling money, Bank of England notes, out of the country—Contravention of the prohibition imposed by s 22 of the Exchange Control Act 1947—Deliberate offence—Dismissal of charge under Probation of Offenders Act 1907, s 1(1)—Duty of justices to impose penalty—Exchange Control Act 1947, s 22(1). **Pickett v Fesq** [1949] 2 705, KBD.

Gold—

Gold coin or gold bullion—

Gold replicas of minted coins—Whether replicas gold coin or gold bullion—Exchange Control Act 1947, s 42(1). **Freed v Director of Public Prosecutions** [1969] 1 428, QBD.

CURRENT COIN

Wages—

Payment in current coin—

Artificer. *See* **Master and servant** (Remuneration—Artificer—Payment of otherwise than in current coin of realm).

CURTILAGE

Unconsecrated curtilage of church—

Secular use—

Faculty. *See* **Ecclesiastical law** (Faculty—Unconsecrated curtilage of church).

CUSTODIAN OF ENEMY PROPERTY

Custody of enemy property—

Vesting of property. *See* **Trading with the enemy** (Custody of enemy property—Vesting of property in Custodian of Enemy Property).

Income tax—

Exemption. *See* **Income tax** (Exemption—Crown—Custodian of Enemy Property).

Rights vested in—

Custodian not a party—

Statement of claim. *See* **Statement of claim** (Striking out—No reasonable cause of action—Rights vested in Custodian of Enemy Property).

CUSTODY

Adoption proceedings—

Illegitimate child—

Conflicting applications. *See* **Adoption** (Custody—Illegitimate child).

Appeal—

Divorce proceedings. *See* **Divorce** (Custody—Appeal).

Applicant for adoption—

Award of custody for probationary period. *See* **Adoption** (Interim order—Award of custody to applicant for probationary period).

Child—

Divorce proceedings. *See* **Divorce** (Custody).

Generally. *See* **Minor** (Custody).

Illegitimate child—

Child in care. *See* **Child** (Care—Local authority—Assumption by authority of parental rights—Illegitimate child—Custody).

Wardship jurisdiction. *See* **Ward of court** (Custody).

Conflict of laws. *See* **Ward of court** (Jurisdiction).

Costs—

Appeal—

Legal aid—Unassisted person's costs out of legal aid fund. *See* **Legal aid** (Unassisted person's costs out of legal aid fund—Just and equitable—Infant's custody).

Custodial sentence—

Deferred sentence. *See* **Sentence** (Deferment of sentence—Custodial sentence following deferment).

Divorce proceedings. *See* **Divorce** (Custody).

Forum conveniens—

Wardship proceedings. *See* **Ward of court** (Jurisdiction—Forum conveniens—Custody).

Interim order—

Propriety—

Outcome of divorce suit unknown. *See* **Divorce** (Custody—Interim order—Propriety).

Jurisdiction—

Ward of court. *See* **Ward of court** (Jurisdiction).

Limitation of action—

Whether infant in custody of a parent. *See* **Limitation of action** (Persons under disability—Custody of parent).

Order—

Failure to comply with order—

Contempt of court—Committal proceedings—Propriety. *See* **Contempt of court** (Committal—Proceedings for committal—Propriety—Order for custody of child—Failure to hand over child).

Ward of court. *See* **Ward of court** (Custody).**CUSTOM**

Coal—

Taking coal from foreshore. *See* **Foreshore** (Rights over foreshore—Acquiring sea-borne coal).

Duty to fence arising by custom. *See* **Animal** (Trespass—Cattle—Defence—Duty to fence—Duty arising from custom).

Principal and agent—

Duty of agent to principal. *See* **Agent** (Duty to principal—Effect of custom).

Town or village green—

Customary right of inhabitants to indulge in lawful sports or pastimes. *See* **Commons** (Registration—Town or village green—Land on which inhabitants of any locality have customary right).

CUSTOMS

Forfeiture—

Ship—

'Ship having had on board prohibited spirits'—Ship used in importation of prohibited goods—Forfeiture of vessel owned by foreign citizen—Vessel proceeding outside permitted limit of navigation—Vessel 'having had on board' prohibited spirits—'Use in importation of prohibited goods'—Transshipment of prohibited goods outside territorial waters—Vessel found in British port—Whether ship liable to forfeiture—Customs Consolidation Act 1876, ss 169, 170, 179, 202—General Regulations of Board of Customs, dated Aug 31, 1895, reg 3. **Attorney-General v Hunter** [1949] 1 1006, KBD.

Vehicle used for carriage of thing liable to forfeiture—

Used for carriage—Heavy oil being used as fuel for vehicle in contravention of Customs and Excise Act 1952—Oil liable to forfeiture—Whether commissioners also entitled to seize vehicles—Customs and Excise Act 1952, s 277(1). **Comrs of Customs and Excise v Jack Bradley (Accrington) Ltd** [1958] 3 487, QBD.

CUSTOMS AND EXCISE

Carrying uncustomed goods with intent to defraud—

Ingredients of offence—

Accused found in possession of uncustomed goods away from port of entry—Accused charged with evasion of purchase tax on imported goods and evasion of customs duty—Whether two offences—Customs Consolidation Act 1876, s 186—Finance Act 1944, s 11(1). **Beck v Binks** [1948] 2 1058, KBD.

Commissioners of Customs and Excise—

Exercise of powers—

Exercise by person authorised by commissioners—Demand authorised by proper officer but made by officer not authorised—Whether valid demand—Customs and Excise Act 1952, s 4(1). **Comrs of Customs and Excise v Cure & Deeley Ltd** [1961] 3 641, QBD.

Commonwealth preference. *See* Duties—Commonwealth preference, *post*.

Customs offence—

Condemnation of goods by magistrates. *See* Quarter sessions (Appeal to—Condemnation of goods by magistrates).

Dealing with goods chargeable to duty which has not been paid—

Dealing with intent to defraud—

Concession to import goods duty free for use by American forces—American servicemen giving away spirits, wine and cigarettes—Whether goods remained chargeable to duty—No need to show limits of concession when misuse was known to be outside concession terms—'Dealing'—Customs and Excise Act 1952, s 290(2)(b), s 304. **R v Berry** [1969] 1 689, CA.

Concession to import goods duty free for use by American forces—American serviceman selling spirits to accused—Misuse of goods imported duty free for American troops—Forfeiture—Time at which duty becomes payable—Customs and Excise Act 1952, ss 257, 304. **Schneider v Dawson** [1959] 3 583, QBD.

Duty paid by importer after assessment by customs officer—

Assessment substantially below market value—Importer knowing of but not inducing undervaluation—Whether importer liable to pay additional duty on goods—Whether importer 'dealing with any goods which are chargeable with a duty which has not been paid'—Customs and Excise Act 1952, s 304(a). **R v Tan** [1976] 2 908, CA.

Dealing with uncustomed goods—

Dealing with intent to defraud—

Proof—Keeping uncustomed goods—Intent to defraud—Use of goods—Customs Consolidation Act 1876, s 186. **Sayce v Coupe** [1952] 2 715, QBD.

Declaration—

False declaration—

Declaration untrue in a material particular—Untrue declaration made knowingly or recklessly—Jurisdiction of Crown Court to try offence—Whether knowledge or recklessness should be alleged—Customs and Excise Act 1952, ss 283(2), 301. **Attorney-General's Reference (No 3 of 1975)** [1976] 2 798, CA.

Person resident outside the United Kingdom—Exemption from duty on imported goods—Declaration that person 'resident outside the United Kingdom'—Residence outside United Kingdom for period or periods amounting to not less than 12 months during previous two years—'Resident'—Whether meaning time spent outside United Kingdom—Customs and Excise Act 1952, s 301—Customs Duty (Personal Reliefs) Order 1970 (S I 1970 No 558), arts 2(2), 5. **Brokelmann v Barr** [1971] 3 29, QBD.

Person entering United Kingdom—

Anything contained in his baggage or carried with him—Motor car purchased abroad—Whether 'anything ... carried with him'—Finance Act 1968, s 6(1). **Brokelmann v Barr** [1971] 3 29, QBD.

Duties—

Commonwealth preference—

Goods consigned to United Kingdom from place in Commonwealth preference area—Consignment of goods to the United Kingdom—No through bill of lading—Mustard seed grown in Canada and shipped to United Kingdom via Holland—Whether consigned from Commonwealth preference area to United Kingdom—Import Duties Act 1958, s 2(2). **J & J Colman Ltd v Comrs of Customs and Excise** [1968] 2 832, CA.

Goods consigned to United Kingdom from place in Commonwealth preference area—Southern Rhodesia—Tobacco—Southern Rhodesia ceasing to be in Commonwealth preference area from midnight 18th/19th November 1965—Tobacco grown in Southern Rhodesia and consigned to United Kingdom before 19th November 1965—'Consigned'—Whether full duty payable—Import Duties Act 1958, s 2(2), (3)(c), s 12(1)—Southern Rhodesia (Withdrawal of Commonwealth Preference Order 1965 (S I 1965 No 1954), art 1—Southern Rhodesia (Withdrawal of Commonwealth Preference)(No 2) Order 1965 (S I 1965 No 1987). **Comrs of Customs and Excise v Gallaher Ltd** [1969] 2 328, HL.

CUSTOMS AND EXCISE (cont)

Duties (cont)—

Imported goods—

Commonwealth preference area, from. *See* Duties—Commonwealth preference, *ante*.

Time when duty becomes due—Imported goods stored in bonded warehouse—Goods stolen from bonded warehouse—Liability of importer—Customs Consolidation Act 1876, ss 13, 85. **Brooks Wharf and Bull Wharf Ltd v Goodman Bros** [1936] 3 696, CA.

Valuation of goods for purposes of duty. *See* Duties—Valuation of goods for purposes of duty, *post*.

Valuation of goods for purposes of duty—

Open market price—Importation by sole concessionaires on English market—Goods sold under well-known trade mark—Cost of advertising in England paid by concessionaires—Addition (uplift) to invoice price for advertising—Whether there should be an allowance for contractual continuity of supplies and monopoly—Customs and Excise Act 1952, Sch VI, paras 1(1), 2. **Rolex Watch Co Ltd v Comrs of Customs and Excise** [1956] 2 589, CA.

Open market price—Importation of new camera by private traveller—Whether duty should be based on import price or on open market retail price prevailing in the United Kingdom—Whether commissioners have discretion to distinguish between traders and non-traders—Customs and Excise Act 1952, ss 258(1) proviso, 258(2), Sch 6, paras 1, 2. **Salmon v Comrs of Customs and Excise** [1966] 3 871, CA.

Exportation of prohibited goods—

Bringing goods to quay or other place for purpose of being exported—

Other place—Residence of defendant—Import, Export and Customs Powers (Defence) Act 1939, s 3(1)(b). **Roe v Hemmings** [1951] 1 389, KBD.

Knowingly concerned in exportation of goods with intent to evade prohibition—

Whether offence involves a single question—Customs and Excise Act 1952, s 56(2). **Garrett v Arthur Churchill (Glass) Ltd** [1969] 2 1141, QBD.

False declaration. *See* Declaration—False declaration *ante*.

Forfeiture—

Condemnation—

Appeal—Jurisdiction—Illegal export—Condemnation of goods by magistrate—Claimants ordered to pay five guineas costs—Appeal by claimants to quarter sessions against order of condemnation—Competency—Metropolitan Police Courts Act 1839, s 50—Customs Consolidation Act 1876, s 226. **R v London (County) Quarter Sessions, ex parte Bowes** [1950] 2 1043, KBD.

Ship. *See* Admiralty (Jurisdiction—Action in rem—Claim for forfeiture or condemnation of ship—Customs duty).

Imported goods—

Goods on which duty chargeable and unpaid—Onus of proof—Proceedings by customs and excise officer—Burden on other party where question whether goods of 'description' alleged in information—Secondhand goods bought by accused seized—Complaint preferred by customs and excise officer—Complaint alleging goods of foreign manufacture and duty unpaid—Accused unable to produce evidence goods manufactured in England—Whether reference to foreign manufacture matter concerning 'description' of goods alleged in complaint—Customs and Excise Act 1952, ss 44, 275, 290(2)(b), Sch 7. **Mizel v Warren** [1973] 2 1149, QBD.

Notice of claim that thing seized not liable to forfeiture—

Notice of claim given by solicitors acting for company with registered office abroad—Service of writ claiming condemnation of seized goods—Service of writ on solicitors more than a year later—Whether writ properly served on company—Customs and Excise Act 1952, Sch 7, para 4. **Comrs of Customs and Excise v I F S Irish Fully Fashioned Stockings Ltd** [1957] 1 108, QBD.

Ship—

Ship having had on board prohibited spirit—Ship used in importation of prohibited goods—Forfeiture of vessel owned by foreign citizen—Vessel proceeding outside permitted limit of navigation—Vessel 'having had on board prohibited spirits'—Use in importation of prohibited goods—Transshipment of prohibited goods outside territorial waters—Vessel found in British port—Whether ship liable to forfeiture—Customs Consolidation Act 1876, ss 169, 170, 179, 202—General Regulations of Board of Customs dated Aug 31, 1895, reg 3. **Attorney-General v Hunter** [1949] 1 1006, KBD.

Vehicle used for carriage of thing liable to forfeiture—

Used for carriage—Heavy oil being used as fuel for vehicle in contravention of Customs and Excise Act 1952—Oil liable to forfeiture—Whether commissioners also entitled to seize vehicles—Customs and Excise Act 1952, s 277(1). **Comrs of Customs and Excise v Jack Bradley (Accrington) Ltd** [1958] 3 487, QBD.

Gaming licence—

Offence in relation to. *See* Gaming (Gaming licence—Offence by body corporate committed with consent etc of director etc).

Harbouring uncustomed goods—

Ingredients of offence—

Knowledge that goods uncustomed—Intent to defraud—Prima facie case—Goods found on premises of accused—Onus on accused to prove that goods customed or that he did not know duty had not been paid—Customs Consolidation Act 1876, ss 186, 259—Criminal Evidence Act 1898, s 1(f). **R v Cohen** [1951] 1 203, CCA.

Hydrocarbon oils—

Rebate—

Conspiracy to contravene prohibition on using rebated oils as fuel in road vehicles with repayment of rebate—Customs and Excise Act 1952, s 200(2). **Churchill v Walton** [1967] 1 497, HL.

Import licence. *See* Licence (Import licence).

CUSTOMS AND EXCISE (cont)

Importation of prohibited goods—

Acquiring possession knowingly and with intent to evade prohibition—

Time and place of acquisition—Relevance—Acquisition after importation—Acquisition remote in time and place from moment of importation—Whether a defence to a charge of acquiring prohibited goods—Customs and Excise Act 1952, s 304. **R v Ardalan** [1972] 2 257, CA.

Evasion of prohibition—

Acquiring possession of goods knowingly and with intent to evade prohibition. *See* Importation of prohibited goods—Acquiring possession of goods knowingly and with intent to evade prohibition, *ante*.

Being concerned in evasion—Continuing offence—Object of evasion having become impossible to achieve—Prohibited goods having been seized by customs authorities—Defendant ignorant of seizure—Defendant subsequently taking steps to assist in scheme for importing goods—Importation of cannabis—Whether defendant liable to be convicted of being knowingly concerned in fraudulent evasion of prohibition on importation—Customs and Excise Act 1952, s 304 (as amended by the Misuse of Drugs Act 1971, s 26(2)). **R v Green (Harry Rodney)** [1975] 3 1011, CA.

Indictment—Form of indictment—Need to allege intent to evade prohibition—Customs Consolidation Act 1876, s 186. **R v Franks** [1950] 2 1172, CCA.

Knowingly concerned in fraudulent evasion of prohibition or restriction. *See* Importation of prohibited goods—Knowingly concerned in fraudulent evasion of prohibition or restriction, *post*.

Indecent or obscene prints etc—

Photographs—Cinematograph film—Whether cinematograph film 'photographs'—Customs Consolidation Act 1876, s 42. **Derrick v Comrs of Customs and Excise** [1972] 1 993, QBD.

Prints, paintings, photographs, books, cards, lithographic or other engravings, or any other indecent or obscene articles—Cinematograph film—Indecency of film not apparent on visual inspection—Ejusdem generis rule not applicable—No common genus in articles prohibited—Prohibition applying to any indecent or obscene articles, including cinematograph film—Customs Consolidation Act 1876, s 42. **Derrick v Comrs of Customs and Excise** [1972] 1 993, QBD.

Knowingly concerned in fraudulent evasion of prohibition or restriction—

Importation of drugs—Cannabis—Accused charged under Customs and Excise Act 1952, s 304—Restriction imposed on importation of drugs by Dangerous Drugs Act 1965, s 2—Whether leave of Attorney-General or Director of Public Prosecutions required under s 20 of 1965 Act before proceedings instituted under s 304 of 1952 Act. **R v Williams** [1971] 2 444, CA.

Importation of drugs—Importation—Meaning—Cannabis—Cannabis sent by air from Nairobi to Bermuda via London—Cannabis unloaded at London airport, transferred to another aircraft and flown to Bermuda—Cannabis not taken outside customs area at London airport—Accused knowing cannabis being sent from Nairobi to Bermuda—Intention merely to use London as pipeline between Nairobi and Bermuda—Whether cannabis 'imported' into, and 'exported' from, United Kingdom—Customs and Excise Act 1952, ss 44, 45, 56, 79, 304. **R v Smith (Donald)** [1973] 2 1161, CA.

Jurisdiction—Acts performed abroad—Accused and others charged with being concerned in fraudulent evasion on specified date—Accused having taken steps abroad on earlier date for purpose of fraudulent evasion—Whether accused 'knowingly concerned' in fraudulent evasion on date specified—Whether jurisdiction to try accused—Customs and Excise Act 1952, s 304. **R v Wall** [1974] 2 245, CA.

Knowingly—Smuggle—Customs and Excise Act 1952, s 304(b). **R v Hussain** [1969] 2 1117, CA.

Penalty—

Penalty related to the value of the goods—Value to be taken as price which goods might reasonably be expected to have fetched on the 'open market'—Importation of goods prohibited and therefore no open market—Distinction between open and black markets irrelevant—Value to be determined by what would be paid by willing buyer to willing seller at port of landing—Invoice price of overseas seller as a guide to value—Customs and excise Act 1952, ss 304, 305(2). **Byrne v Low** [1972] 3 526, QBD.

Ship used for—

Forfeiture of. *See* Forfeiture—Ship—Ship having had on board prohibited spirits—Ship used in importation of prohibited goods, *ante*.

Imported goods—

Commonwealth preference. *See* Duties—Commonwealth preference—Goods consigned to United Kingdom from place in Commonwealth preference area, *ante*.

Delivery on giving security for duty—

Interest on security—Date from which interest payable—Deposit by way of security for unpaid duty made by importers in 1964—Notice specifying correct amount of duty payable given by commissioners in 1966—Repayment of security to importers ordered by court—Whether interest on security runs from date of deposit or date of notice—Customs and excise Act 1952, ss 255(3), 260(2). **J & J Colman Ltd v Comrs of Customs and Excise** [1968] 2 832, CA.

Duty unpaid—

Forfeiture of goods. *See* Forfeiture—Imported goods—Goods on which duty chargeable and unpaid, *ante*.

Valuation for purposes of duty. *See* Duties—Valuation of goods for purposes of duty, *ante*.

Institution of proceedings for offences—

Time limit—

Suits for any offence against the Customs Acts—Seizure of goods outside limitation period—Claim for forfeiture and condemnation—Whether 'Suits for any offence against the Customs Acts'—Whether time barred—Customs Consolidation Act 1876, s 257. **Comrs of Customs and Excise v Sokolow's Trustee** [1954] 2 5, QBD.

CUSTOMS AND EXCISE (cont)

Offence—

Burden of proof. *See* **Criminal evidence** (Burden of proof—Customs offence).

Pool betting duty. *See* **Gaming** (Pool betting).

Proceedings for recovery of penalties under the Customs Acts—

Burden of proof—

Dealing with uncustomed goods with intent to defraud—Evasion of purchase tax—Recovery of penalties—Payment of duties and legality of importation—Onus of proof—Goods not seized—Customs Consolidation Act 1876, ss 186, 259. **R v Fitzpatrick** [1948] 1 769, CCA.

Purchase tax. *See* **Purchase tax**.

Smuggling—

Conspiracy—

Sentence—Jurisdiction—Jurisdiction to award sentence of more than two years' imprisonment. **R v Morris** [1950] 2 965, CCA.

Valuation of imported goods. *See* **Duties**—Valuation of goods for purposes of duty, *ante*.

Vehicle licence. *See* **Road traffic** (Excise licence).

CY-PRÈS DOCTRINE

See **Charity** (Cy-près doctrine).

CYPRUS

Emergency legislation—

Collective fine—

Duty on commissioner to hold inquiry and satisfy himself that the inhabitants of the area are given adequate opportunity of understanding subject-matter of inquiry and making representations thereon—Satisfy himself—Subjective or objective test—Validity of regulations imposing collective fine—Emergency Powers Order in Council 1939, s 6(1)—Cyprus Emergency Powers (Collective Punishment) Regulations 1955, regs 3(g)(i), 5(1), (2). **Ross-Clunis v Papadopoulos** [1958] 2 23, PC.

Money—

Currency—

Contract with Turkish corporation—Pension based on salary—Whether payable on a gold basis. **Ottoman Bank of Nicosia v Chakarian** [1937] 4 570, PC.

DAIRY

Milk roundsman—

Agreement in restraint of trade. *See* **Restraint of trade by agreement** (Master and servant—Dairyman and milk roundsman).

DAMAGE

Aircraft. *See* **Air traffic** (Damage caused by aircraft).

Compensation order—

Criminal proceedings. *See* **Sentence** (Compensation—Loss or damage resulting from offence).

Criminal. *See* **Criminal law** (Damage to property).

Nuisance. *See* **Nuisance** (Damage).

Remoteness of damage—

Negligence. *See* **Negligence** (Remoteness of damage).

War—

Redevelopment. *See* **Town and country planning** (War damage).

DAMAGES

Action—

Personal injury claim—

Limitation of time. *See* **Limitation of action** (Period of limitation—Personal injury claim).

Additional damages—

Copyright—

Infringement. *See* **Copyright** (Infringement—Damages—Additional damages).

Adjustment—

Overlapping of damages. *See* **Overlapping of damages**—Adjustment, *post*.

Agent—

Loss of commission. *See* **Agent** (Commission—Loss of commission—Damages).

Appeal—

Appeal against amount of damages for personal injury. *See* **Personal injury**—Amount of damages—Appeal against amount, *post*.

Dismissal—

Reinstatement—Court of Appeal. *See* **Court of Appeal** (Appeal—Dismissal—Reinstatement—Appeal as to quantum of damages).

Divorce—

Appeal by co-respondent. *See* **Divorce** (Appeal—Damages—Appeal by co-respondent).

Apportionment—

Enquiry as to damages—

Apportionment of damages by court prior to enquiry. **Pride of Derby and Derbyshire Angling Assn Ltd v British Celanese Ltd** [1952] 1 1326, ChD.

Fatal accident claim. *See* **Fatal accident** (Damages—Apportionment).

Assault. *See* **Trespass to the person** (Damages).

DAMAGES (cont)

Assessment—

Date at which damages assessed—

Breach of contract for sale of goods *c f*. *See Contract* (Damages for breach—Date at which damages assessed—Sale of goods *c f*).

Enquiry as to damages—

Property valuation—Negligence—Exercise of power of sale by mortgagee—Mortgagee negligent in failing to realise market value of property—Assessment of true value by trial judge—Evidence of true market value at trial inadequate—Request by both parties to judge to assess damages on basis of evidence of market value given at trial—Duty of judge to direct enquiry as to damages. *Cuckmere Brick Co Ltd v Mutual Finance Ltd* [1971] 2 633, CA.Fatal Accidents Acts. *See Fatal accident* (Damages).

Further evidence—

Significant factor arising after assessment—*See Court of Appeal* (Evidence—Further evidence—Damages for personal injuries—Basis of assessment falsified by events occurring after trial).Significant factor arising after assessment—Factor not previously taken into account—Dismissal of plaintiff by defendant after judgment—Power to admit further evidence. *Murphy v Stone Wallwork (Charlton) Ltd* [1969] 2 949, HL.Wrong basis of reckoning loss of future earnings at trial—Assessment reviewed in light of further evidence. *Jenkins v Richard Thomas & Baldwins Ltd* [1966] 2 15, CA.

Principle on which appellate court will intervene—

Assessment at trial by jury. *Bocock v Enfield Rolling Mills Ltd* [1954] 3 94, CA; *Morey v Woodfield* [1963] 3 533, CA.Assessment at trial by judge alone—Comparable awards in other cases—Discernible pattern of awards. *Singh (an infant) v Toong Fong Omnibus Co Ltd* [1964] 3 925, PC.Assessment at trial by jury—Personal injury cases—Intervention by Court of Appeal—Court will have less hesitation in future in setting aside erroneous award—New trial may be directed before judge alone—RSC Ord 58, r 9(3), (6), r 10(4). *Ward v James* [1965] 1 563, CA.Assessment at trial by jury—Whether comparable awards in trials by judges alone may establish a level against which to test jury's award. *Scott v Musial* [1959] 3 193, CA.General damages assessed too low, special damages too high, but global award fair and proper—Whether appeals as to quantum should be directed to one item only in total award. *Povey v W E & E Jackson (a firm)* [1970] 2 495, CA.No intervention unless assessment based on error in principle or assessment so clearly erroneous that it should be altered. *Brown v Thompson* [1968] 2 708, CA.

Separation of issues—

Liability and quantification. *Stevens v William Nash Ltd* [1966] 3 156, CA.Tort committed abroad. *See Conflict of laws* (Tort—Damages—Assessment).Wrongful dismissal. *See Contract* (Damages for breach—Wrongful dismissal).

Available for distribution in bankruptcy—

Claim by bankrupt for damage to reputation and property—

Settlement of action—Apportionment of agreed damages. *Re Kavanagh* [1950] 1 39, CA.

Bankruptcy—

Defendant's petition. *See Bankruptcy* (Adjudication—Debtor's petition—Annulment of adjudication—Damages of £2,400 awarded against infant appellant).Benefits excluded in assessing damages Under Fatal Accidents Act. *See Fatal accident* (Damages—

Benefits excluded in assessing damages).

Breach of agreement for lease—

Measure of damages. *See Landlord and tenant* (Agreement for lease—Breach—Damages).Breach of confidence. *See Equity* (Breach of confidence—Damages).

Breach of contract—

Building contract. *See Building contract* (Damages).Carriage by sea. *See Shipping* (Carriage by sea—Damages for breach of contract).Master and servant. *See Master and servant* (Contract of service—Breach of contract—Damages).Palestine. *See Palestine* (Damages—Breach of contract).Breach of contract. *See Contract* (Damages for breach).

Breach of covenant—

Agricultural holding. *See Agricultural holding* (Breach of covenant—Damages).Repair. *See Landlord and tenant* (Damages for failure to repair).Building contract. *See Building contract* (Damages).Charge for costs on damages recovered. *See Legal aid* (Charge on property recovered for deficiency of costs—Enforcement of charge—Charge for costs on damages recovered).Collision at sea. *See Shipping* (Damages in collision cases).

Compensatory damages—

Distinction between compensatory damages and exemplary damages. *See Exemplary damages—Compensatory damages distinguished, post*.Conflict of laws. *See Conflict of laws* (Tort—Damages).

Contract—

Breach. *See Contract* (Damages for breach).

County court—

Transfer of action to High Court. *See County court* (Transfer of action—Transfer to High Court—Action founded on contract or tort).Contributory negligence. *See Negligence* (Contributory negligence—Damages).

Conversion—

Generally. *See Conversion* (Damages).

Measure of damages—

Hire-purchase—Sale of goods by hirer. *See Hire-purchase* (Damages—Sale of goods by hirer—Measure of damages in conversion).

DAMAGES (cont)

- Copyright—
 - Infringement. *See* **Copyright** (Infringement—Damages).
- Co-respondent—
 - Divorce. *See* **Divorce** (Damages—Co-respondent).
- County court—
 - Transfer of action to High Court. *See* **County court** (Transfer of action—Transfer to High Court—Action founded on contract or tort).
- Death—
 - Claim under Fatal Accidents Acts. *See* **Fatal accident** (Damages).
- Deduction from damages—
 - Damages under Fatal Accidents Acts. *See* **Fatal accident** (Damages—Deductions from damages).
- Defective work—
 - Building contract. *See* **Building contract** (Damages—Measure of damages—Defective work).
- Detinue. *See* **Detinue** (Damages).
- Devaluation of currency—
 - Personal injury—
 - Devaluation of pound following accident—Damages crystallising at date of accident—Whether devaluation to be taken into account. *Bishop v Cunard White Star Ltd, Appleby v Same, The Queen Mary* [1950] 2 22, Adm.
- Discretion of judge to consider similar cases. *See* **Precedent** (Damages).
- Distress—
 - Illegal distress. *See* **Distress** (Distress for rent—Illegal distress—Damages).
- Divorce. *See* **Divorce** (Damages).
- Economic loss—
 - Loss not consequent on physical damage. *See* **Remoteness of damage**—Economic loss not consequent on physical damage, *post*.
- Enquiry as to damages—
 - Duty of judge to order. *See* **Assessment**—Enquiry as to damages, *ante*.
- Estate agent—
 - Agent prevented from earning commission. *See* **Estate agent** (Commission—Agent prevented from earning commission).
- Exclusion of right of action for damages—
 - War injury. *See* **War injury** (Exclusion of right of action for damages).
- Exemplary damages—
 - Compensatory damages distinguished—
 - Need for clear distinction—Wrong to add sum by way of punishment after assessment of compensatory award. *McCarey v Associated Newspapers Ltd* [1964] 3 947, CA.
- Copyright—
 - Infringement—Generally. *See* **Copyright** (Infringement—Damages—Additional damages).
 - Infringement—Photographer supplying customer's wedding group photographs to Press—Publication in connexion with murder of customer's father-in-law—Copyright Act 1956, s 17(3). *Williams v Settle* [1960] 2 806, CA.
- Deceit—
 - Whether exemplary damages can be awarded. *Mafo v Adams* [1969] 3 1404, CA, *Cassell & Co Ltd v Broome* [1972] 1 801, HL.
- Libel—
 - Generally. *See* **Libel and slander** (Exemplary or punitive damages).
 - New South Wales. *See* **New South Wales** (Libel—Exemplary or punitive damages).
- Oppressive, arbitrary or unconstitutional conduct by servants of the government—
 - Servants of the government—Class extending to local government officials, police and others exercising governmental functions. *Cassell & Co Ltd v Broome* [1972] 1 801, HL.
- Pleading. *See* **Pleading** (Damage—Exemplary damages).
- Principle—
 - Categories in which award of exemplary damages given—Aggravated damages distinguished. *Rookes v Barnard* [1964] 1 367, HL.
- Trespass to the person—
 - Way forced into flat—Shock, but no injuries, inflicted—Award of separate sum for assault as exemplary damages—Judge's direction comparing damages with magistrates' fine. *Loudon v Ryder* [1953] 1 741, CA.
- Expenses of third party—
 - Personal injuries case. *See* **Personal injury**—Expenses of third party, *post*.
- False attribution of authorship. *See* **Copyright** (False attribution of authorship—Damages).
- Fatal accident. *See* **Fatal accident** (Damages).
- Fatal Accidents Acts. *See* **Fatal accident** (Damages).
- Financial loss—
 - Occupier's liability. *See* **Occupier's liability** (Damages—Financial loss).
- Harmful publicity—
 - Failure to deliver goods—
 - Breach of contract. *See* **Contract** (Damages for breach—Harmful publicity—Failure to deliver goods).
- Hire—
 - Measure of damages for breach of contract of hiring. *See* **Hire** (Damages for breach of contract of hiring).
- Hire-purchase—
 - Breach of agreement. *See* **Hire-purchase** (Damages).
- Husband—
 - Impairment of wife's consortium. *See* **Husband and wife** (Consortium—Damages—Impairment of wife's consortium).
 - Loss of wife's consortium. *See* **Husband and wife** (Consortium—Damages—Loss of wife's consortium).
- Illegal distress. *See* **Distress** (Distress for rent—Illegal distress—Damages).

DAMAGES (cont)

- Impairment of wife's consortium. *See* **Husband and wife** (Consortium—Damages—Impairment of wife's consortium).
- Income tax—
 - Capital or income. *See* **Income tax** (Capital or income receipts—Damages).
 - Generally. *See* **Income tax** (Damages).
- Inconvenience, mental distress, etc.—
 - Breach of contract. *See* **Contract** (Damages for breach—Inconvenience, mental distress etc).
- Indivisible—
 - Tort—
 - Any tortfeasor liable for whole damage proximately caused. **Associated Newspapers Ltd v Dingle** [1962] 2 737, HL.
- Infant—
 - Claim by infant plaintiff—
 - Entitlement of infant on majority to money recovered—Compromise of action—Approval of court—Money paid into court—Terms of settlement providing for payment of money 'in such manner as the judge may direct to or for the benefit of' infant—Application for approval of draft deed providing for postponement of date of infant's entitlement until date after attainment of majority—Whether court having inherent jurisdiction to approve terms postponing infant's entitlement—Whether court having jurisdiction under terms of compromise. **Allen v Distillers Co (Biochemicals) Ltd** [1974] 2 365, QBD.
 - Damages recovered by infant—
 - Jurisdiction of court to postpone entitlement until after attainment of majority. *See* **Variation of trusts** (Jurisdiction—Damages recovered by infant).
- Inflation—
 - Effect on award—
 - Personal injury. *See* **Personal injury**—Amount of damages—Post-trial financial loss—Inflation, *post*.
- Injunction—
 - Damages in lieu of injunction—
 - Breach of confidence. *See* **Equity** (Breach of confidence—Damages).
 - Generally. *See* **Injunction** (Damages in lieu of injunction).
- Inn—
 - Refusal to supply refreshment and lodging. *See* **Inn** (Duty to supply refreshment and lodging to traveller—Refusal—Action by traveller—No special damage—Right to general damages).
- Insurance—
 - Motor insurance—
 - Settlement of claim without consulting insured. *See* **Motor insurance** (Conditions—Absolute conduct and control of proceedings—Claim for damages—Settlement without consulting insured).
- Interest—
 - Arbitration award. *See* **Arbitration** (Award—Interest).
 - Generally. *See* **Interest** (Damages).
 - Income tax. *See* **Income tax** (Interest—Damages).
- Interest. *See* **Interest** (Damages).
- Interference with right to light. *See* **Easement** (Light—Interference with light—Damages).
- Interlocutory injunction—
 - Undertaking as to damages. *See* **Injunction** (Interlocutory—Undertaking as to damages).
- Investment of funds in court. *See* **Public trustee** (Investment of funds in court).
- Landlord and tenant—
 - Breach of covenant against alterations. *See* **Landlord and tenant** (Covenant—Alterations—Breach of covenant against alterations—Measure of damages).
 - Damages for failure to repair. *See* **Landlord and tenant** (Repair—Damages for failure to repair).
- Libel and slander—
 - Generally. *See* **Libel and slander** (Damages).
 - New South Wales. *See* **New South Wales** (Libel—Exemplary or punitive damages).
- Limitation period—
 - Action not brought within limitation period—
 - Negligence of solicitor. *See* **Solicitor** (Negligence—Damages—Action not brought with limitation period).
- Liquidated damages or penalty—
 - Pre-estimate of damage—
 - Price-maintenance agreement—Disparity between parties—Disparity between damages and price of article. **Imperial Tobacco Co (of Great Britain & Ireland) Ltd v Parslay** [1936] 2 515, CA.
- Loss made good by third party—
 - Board and lodging—
 - Domestic servant receiving board and lodging as part of wages—Claim for loss of board and lodging—Board and lodging received from parent without payment. **Liffen v Watson** [1940] 2 213, ChD.
- Loss of amenities—
 - Amenities of life. *See* **Personal injury**—Loss of amenities of life, *post*.
 - Nuisance by smell. *See* **Nuisance** (Smell—Damages—Loss of amenity).
- Loss of consortium—
 - Husband's loss. *See* **Husband and wife** (Consortium—Damages—Wife's loss of consortium).
 - Wife's loss. *See* **Husband and wife** (Consortium—Damages—Wife's loss of consortium).
- Loss of dividends. *See* **Remoteness of damage**—Loss of dividends, *post*.
- Loss of earnings. *See* **Personal injury**—Loss of earnings, *post*.
- Loss of expectation of life. *See* **Personal injury**—Loss of expectation of life, *post*.
- Loss of future earnings. *See* **Personal injury**—Loss of future earnings, *post*.
- Loss of profits—
 - Mitigation of loss. *See* **Mitigation of loss**, *post*.

DAMAGES (cont)

Loss of profits (cont)—

Remoteness of damage. *See* Remoteness of damage—Loss of profit, *post*.

Loss of publicity—

Author of screen play—

Breach of contract. *See* **Contract** (Damages for breach—Loss of publicity—Screen credit).

Loss of sense of taste and smell—

Disability resulting from brain injury. *See* **Personal injury**—Brain damage—Disabilities resulting from brain injury—Loss of sense of taste and smell, *post*.

Malicious falsehood. *See* **Malicious falsehood** (Damages).

Matrimonial proceedings—

Solicitor—

Disregard of client's instructions to contest damages—Personal liability of solicitor for costs.

See **Solicitor** (Payment of costs by solicitor personally—Matrimonial proceedings—

Disregard of client's instructions to contest damages).

Measure of damages—

Building contract. *See* **Building contract** (Damages—Measure of damages).

Contract—

Generally. *See* **Contract** (Damages for breach).

Conversion—

Generally. *See* **Conversion** (Damages—Measure of damages).

Hire-purchase—Sale of goods by hirer. *See* **Hire-purchase** (Damages—Sale of goods by hirer—Measure of damages in conversion).

Copyright—

Infringement. *See* **Copyright** (Infringement—Damages).

Detinue. *See* **Detinue** (Damages—Measure of damages).

Easement—

Light—Interference with. *See* **Easement** (Light—Interference with light—Damages—Measure of damages).

Fatal accident. *See* **Fatal accident** (Damages).

Fraud—

Actual damage flowing from fraud—Object of damages to compensate plaintiff for all loss suffered. *Doyle v Olby (Ironmongers) Ltd* [1969] 2 119, CA.

Income tax—

Liability to pay excessive rent under lease as a result of solicitor's negligence—No sum for which compensation awarded which was itself subject to tax—Whether allowance for income tax in measure of damages. *Sykes v Midland Bank Executor & Trustee Co Ltd* [1970] 2 471, CA.

Negligence—

Personal injury. *See* **Personal injury**—Amount of damages, *post*.

Solicitor—Failure to advise on clause in lease—Amount of rent under lease greater than current market rent—Burden on plaintiffs to prove that negligent advice was one of the causes of their entering into leases at rents reserved. *Sykes v Midland Bank Executor & Trustee Co Ltd* [1970] 2 471, CA.

Personal injury. *See* **Personal injury**, *post*.

Separate tortfeasors—

Successive torts—Each tort, if occurring alone, would render necessary the same work of repair—Judgment for damages, including cost of repair, recorded against first tortfeasor but unsatisfied—Whether second tortfeasor's liability in damages included the cost of that work. *Performance Cars Ltd v Abraham* [1961] 3 413, CA.

Wrongful dismissal—

Generally. *See* **Contract** (Damages for breach—Wrongful dismissal).

Managing director. *See* **Company** (Director—Managing director—Wrongful dismissal—Measure of damages).

Mental shock. *See* Remoteness of damage—Mental shock, *post*.

Minor. *See* **Infant**, *ante*.

Misrepresentation—

Sale of land. *See* **Sale of land** (Misrepresentation—Damages).

Mitigation—

Libel. *See* **Libel and slander** (Damages—Mitigation).

Physical injuries—

Whether conduct of plaintiff a ground of mitigation. *See* **Trespass to the person** (Damages—Mitigation—Conduct of person assaulted provoking assault).

Mitigation of loss—

Breach of warranty—

Beverage misdescribed as 'cordial'—Whether purchaser required to replace label or add sufficient sugar to sell as cordial. *Sopers of Harrow Ltd v Johnston & Son (London) Ltd, and Henderson & Liddell Ltd, and Collins Arden Products Ltd* [1944] 2 42, KBD.

Contract—

Generally. *See* **Contract** (Damages for breach—Mitigation of loss).

Damage to plaintiff's motor car—

Car lent by defendant to plaintiff in mitigation of damage—Car destroyed by plaintiff—Plaintiff obliged to hire another car—Recovery from defendant of cost of hire. *Macrae v Swindells (Trading as West View Garage Co)* [1954] 2 260, Assizes.

Impecuniosity—

Failure to mitigate through impecuniosity—Motor accident—Damage to plaintiff's car—Delay in effecting repairs to car—Plaintiff unable to afford cost of repairs—Claim against defendant's insurers—Plaintiff awaiting agreement of insurers to estimated cost before putting repairs in hand—Cost of hiring another car during period of delay—Whether plaintiff entitled to recover cost. *Martindale v Duncan* [1973] 2 355, CA.

DAMAGES (cont)

Mitigation of loss (cont)—

Motor car damaged in collision—

Costs of repair exceeding its market value—Whether owner entitled to recover damages based on cost of having had motor car repaired. *Darbishire v Warran* [1963] 3 310, CA.

Plaintiff not required to expend money—

Plaintiff induced by fraudulent misrepresentation to advance money on debenture—Plaintiff bought assets of company on winding-up and sold at profit—Profit not to be taken into account in calculating damage for misrepresentation. *Jewelowski v Propp* [1944] 1 483, KBD.

Reasonable steps to mitigate damages—

Standard of reasonableness—Motor car damaged in collision—Total loss—Car 18 months old—Need of owner to have reliable car because of professional duties—Owner's practice to buy new car every two years—Hire of car pending delivery of new car—Delivery of new car delayed for 18 weeks due to labour disputes at car factory—Evidence that 18 month old car could have been obtained in two weeks—Whether owner reasonable in ordering new car—Whether owner entitled to recover cost of hire for full period of 18 weeks. *Moore v DER Ltd* [1971] 3 517, CA.

Sale of land—

Term requiring sale to be with vacant possession—Breach of term—Offer by seller to buy back property—Offer rejected—Whether buyer bound to accept offer in order to mitigate loss—Whether refusal of offer precluding buyer from claiming substantial damages—Whether buyer confined to nominal damages. *Strutt v Whitnell* [1975] 2 510, CA.

Same principle applicable in contract and tort—

Plaintiff owner and manager of a business—Plaintiff injured as result of defendants' negligence—Plaintiff unable to complete negotiations for purchase of important piece of equipment for business—Plaintiff able to buy equipment at much reduced price 3n years later—Plaintiff claiming loss of profits which would have accrued during 3n years if he had had equipment—Whether account to be taken of fact that breakdown of negotiations enabled plaintiff to acquire equipment at great saving of expense 3n years later. *Bellingham v Dhillon* [1973] 1 20, QBD.

Motor insurance—

Settlement of claim without consulting insured. *See* **Motor insurance** (Conditions—Absolute conduct and control of proceedings—Claim for damages—Settlement without consulting insured).

Negligence—

Jurisdiction of county court. *See* **County court** (Jurisdiction—Negligence—Damages).

Personal injuries. *See* **Personal injury, post.**

Remoteness of damage. *See* **Negligence** (Remoteness of damage).

Nervous shock. *See* **Personal injury—Nervous shock, post.**

Nuisance. *See* **Nuisance** (Damages).

Overlapping of damages—

Adjustment—

Death duties and administration expenses. *Feay v Barnwell* [1938] 1 31, Assizes.

Passing off. *See* **Passing off** (Damages).

Patent—

Infringement. *See* **Patent** (Infringement—Damages).

Payment by instalments—

Jurisdiction to order—

Divorce. *See* **Divorce** (Damages—Co-respondent—Instalments—Whether court has jurisdiction to order payment by instalments).

Payment into court—

Practice. *See* **Practice** (Payment into court).

Pecuniary loss—

Malicious falsehood. *See* **Malicious falsehood** (Damages—Pecuniary loss).

Pension rights—

Loss. *See* **Pension** (Loss of pension rights—Damages for loss of pension rights).

Personal injury—

Action for benefit of deceased's estate—

Measure of damages—Deceased never having regained consciousness after accident—Death nearly a year later. *Andrews v Freeborough* [1966] 2 721, CA.

Amount of damages—

Actuarial calculation. *See* 3 calculation. 196931412 *S v Distillers Co (Biochemicals) Ltd* [1969] 3 1412, QBD.

Actuarial calculation—General damage. *See* **Personal injury—Amount of damages—General damage—Whether actuarial calculation should be adopted instead of multiplier and multiplicand, post.**

Ankle and leg. *See* **Personal injury—Ankle and leg, post.**

Appeal—Non-disclosure of payment into court. *See* **Court of Appeal** (Practice—Payment into court—Non-disclosure—Appeal as to quantum of damages).

Appeal against amount—Defendant seeking to uphold award on ground that total sum awarded reasonable, notwithstanding one element might be too low—Plaintiff suffering severe brain damage as result of accident—Defendant admitting liability for accident—Trial judge awarding plaintiff £48,682 and specifying how total made up—Plaintiff appealing against amount—Right of parties to challenge any error in assessment. *George v Pinnock* [1973] 1 926, CA.

Basic sum—Deductions from basic sum—Pain and suffering—Effect of devaluation of pound—Pension—Fatal Accidents Acts 1846 to 1908—Law Reform (Miscellaneous Provisions) Act 1934, s 1(1). *Bishop v Cunard White Star Ltd, Appleby v Same, The Queen Mary* [1950] 2 22, Adm.

Basically conventional figure. *Ward v James* [1965] 1 563, CA.

DAMAGES (cont)

Personal injury (cont)—

Amount of damages (cont)—

Calculation of amount—Agreed figures—Statement to court of basis of calculation. **Bennett v Chemical Construction (GB) Ltd** [1971] 3 822, CA.

Expenses of third party. *See* Personal injury—Expenses of third party, *ante*.

Future risk. *See* Personal injury—Future risk, *post*.

General damage—Objective and subjective elements—Assessment by comprehensive sum—Unconsciousness of injured person—Woman permanently bedridden—Slight sign of consciousness—Never likely to be able to use award. **H West & Son Ltd v Sheppard** [1963] 2 625, HL.

General damage—Whether actuarial calculation should be adopted instead of multiplier and multiplicand. **Mitchell v Mulholland (No 2)** [1971] 2 1205, CA.

Guidelines from other cases—Consideration of similar cases by judge of first instance—Judge's discretion. **Waldon v The War Office** [1956] 1 108, CA.

Guidelines from other cases—Regard to be had to awards in comparable cases. **Rushton v National Coal Board** [1953] 1 314, CA.

Heads of damage—Avoidance of overlapping—Pain and suffering—Reduction of figure for pain and suffering where high figure awarded for loss of earnings. **Smith v Central Asbestos Co Ltd** [1971] 3 204, CA.

Loss of amenities of life. *See* Personal injury—Loss of amenities of life, *post*.

Loss of earnings. *See* Personal injury—Loss of earnings, *post*.

Loss of expectation of life. *See* Personal injury—Loss of expectation of life, *post*.

Loss of future earnings. *See* Measure of damages—Loss of future earnings, *ante*.

Loss of sense of taste and smell. *See* Personal injury—Brain damage—Disabilities resulting from brain injury—Loss of sense of taste and smell).

Nursing. *See* Personal injury—Nursing, *post*.

Pain and suffering. *See* Personal injury—Pain and suffering, *post*.

Post-trial financial loss—Inflation—Evidence of inflation—Admissibility—Relevance—Prospective fall in value of money—Prospective increase in real earnings. **Mitchell v Mulholland (No 2)** [1971] 2 1205, CA.

Serious disfigurement. *See* Personal injury—Serious disfigurement, *post*.

Sexual impotence. *See* Personal injury—Brain damage—Disabilities resulting from brain injury—Loss of sense of taste and smell—Sexual impotence, *post*.

Single comprehensive sum. **Watson v Powles** [1967] 3 721, CA.

Single comprehensive sum on basis of fair compensation—Elements of fair compensation where injured person deprived of enjoyment for the rest of his life—Duplication of damages for loss of future earnings and loss of amenities to be avoided. **Fletcher v Autocar & Transporters Ltd** [1968] 1 726, CA.

Small award—Award of £75—Whether standard figure for slight injuries. **Parry v English Electric Co Ltd** [1971] 2 1094, CA.

Small award—Plaintiff a mechanical fitter adjusting a machine in a factory, received electric shock from accidentally touching uncovered live junction box with screwdriver—Thrown by shock and shoulder injured—General damages assessed at £40—Increased on appeal to £100—Finding of contributory negligence reversed—Junction box not readily visible and plaintiff not an electrician. **Kansara v Osram (GEC) Ltd** [1967] 3 230, CA.

Spastic. *See* Personal injury—Spastic, *post*.

Special damages—Relevance of future contingency in assessment of special damages—Loss of wages as result of injury culminating in operation—Operation inevitable in any event at future date. **Cutler v Vauxhall Motors Ltd** [1970] 2 56, CA.

Subsequent further injury to plaintiff—Fall down stairs as a consequence of original injury—Attempt to avoid serious injury by jumping—Unwise act in emergency—Ankle fractured—Whether unreasonable act (jumping) would break chain of causation. **McKew v Holland & Hannen & Cubitts (Scotland) Ltd** [1969] 3 1621, HL.

Subsequent further injury to plaintiff—Injury received as victim in a robbery, necessitating amputation of limb previously injured—Whether damages for injury originally caused by tortfeasor should be reduced by reason of subsequent greater injury supervening. **Baker v Willoughby** [1969] 3 1528, HL.

Thalidomide children. *See* Personal injury—Thalidomide children, *post*.

Totality of award—Desirability of looking at total figure in the round after splitting up award into items—£63,500 awarded to child aged nine at date of trial for severe brain damage. **Taylor v Bristol Omnibus Co Ltd** [1975] 2 1107, CA.

Ankle and leg—

Broken lower left leg and ankle—Risk of degenerative changes in ankle joint. **Baker v Willoughby** [1969] 2 549, CA.

Grazed ankle requiring daily dressings for about 14 days. **Cutler v Vauxhall Motors Ltd** [1970] 2 56, CA.

Appeal—

Further evidence. *See* Court of Appeal (Evidence—Further evidence—Damages for personal injuries—Basis of assessment falsified by events occurring after trial).

Arm—

Serious permanent impairment of right arm and hand of right-handed manual worker. **Stevens v William Nash Ltd** [1966] 3 156, CA.

Assault. *See* Trespass to the person (Damages).

Asthma—

Plaintiff capable of working though unfit for heavy work ever again. **Adair v General Motors Ltd** [1968] 1 481, QBD.

Bilateral amputee—

Loss of amenities including diminished marriage prospects and disfigurement—Diminution of earning capacity—Nursing and attendance—Two year old girl—Both legs cut off by train—Compensation for mother's services—Pain and suffering. **Thomas v British Railways Board** [1976] 3 15, CA.

DAMAGES (cont)

Personal injury (cont)—

Brain damage—

Disabilities resulting from brain injury—Loss of sense of taste and smell—Sexual impotence—Ten per cent risk of epilepsy—Some loss of control of limbs—Depression. **Cook v J L Kier & Co Ltd** [1970] 2 513, CA.

Grave mental deficiency and personality change—Plaintiff aged twenty-eight, wife and mother of three children, happily married, and a talented commercial artist—Care in private institution necessary throughout rest of her life, probably about twenty-five years—Limited awareness in plaintiff of her deprivation—Element of bodily pain absent. **Cutts v Chumley** [1967] 2 89, QBD.

Total mental and physical incapacity—Plaintiff aged 21 at time of accident—Needing help night and day in all activities—Inability to work or marry—Mother aged 48 giving up employment to devote herself to care of plaintiff—Need for nursing help—Possibility of plaintiff having to go into hospital—Plaintiff and mother moving to accommodation more suited to plaintiff's needs—Method of assessing nursing expenses—Cost of accommodation. **George v Pinnock** [1973] 1 926, CA.

Cause of injury—

Accident and natural degeneration—Plaintiff suffering from progressive disease—Determination of extent to which accident cause of injury. **Powley v Bristol Siddeley Engines Ltd** [1965] 3 612, QBD.

Conduct of action—

Delay—Accident March 1962—Warning by doctor to plaintiff's solicitors in June 1963 that plaintiff's pain and disability (including inability to work) unlikely to clear up until action over, but should clear up then—Writ issued June 1964—Action tried June 1968—Action which would have been tried in early 1965 had writ been issued promptly and action prosecuted diligently after doctor's warning—Persistence of plaintiff's pain and disability and inability to work until after trial—Date to which damages for loss of earnings to be assessed. **James v Woodall Duckham Construction Co Ltd** [1969] 2 794, CA.

Consortium—

Impairment of consortium—Wife injured in accident for which defendant liable—Partial incapacity of wife for household duties, etc. **Lawrence v Biddle** [1966] 1 575, QBD.

Dermatitis—

Industrial dermatitis—Plaintiff unable to take work involving handling chrome or nickel. **Downman v Wolverhampton Die Casting Co Ltd** [1968] 3 692, Assizes.

Devaluation of pound sterling following accident—

Whether devaluation to be taken into account. *See* Devaluation of currency—Personal injury—Devaluation of pound following accident, *ante*.

Dismissal from work in consequence of injury—

Dismissal following award at trial—Ground for increasing damages on appeal. **Murphy v Stone Wallwork (Charlton) Ltd** [1969] 2 949, HL.

Divorce—

Damages as family asset for purpose of financial provision order. *See* Divorce (Family provision—Matters to be considered by court when making order—Family assets—Damages for personal injuries).

Ear—

Partial deafness in one ear—Pain in ears, headaches, and irritability. **Jones v Griffith** [1969] 2 1015, CA.

Evidence—

Medical evidence. *See* Evidence (Medical evidence—Agreed reports—Damages—Personal injuries claim).

Expenses of third party—

Circumstances in which recoverable by plaintiff—Liability of plaintiff to reimburse third parties—Reasonableness of expenses—Nursing expenses—Plaintiff returning to live with mother—Mother's lodgers giving nursing assistance in return for free board—Plaintiff's brother taking less remunerative work in order to help—Plaintiff entering into agreements to pay mother and brother for nursing services—Whether mother's and brother's loss of income recoverable—Whether payments to mother and brother under agreements recoverable. **Haggar v de Placido** [1972] 2 1029, Crown Ct.

Services freely given by third party—When recoverable as special damage. **Schneider v Eisovitch** [1960] 1 169, QBD.

Services provided to plaintiff by third party—Services provided in consequence of injury—Cost of services—Plaintiff under no duty to reimburse third party for services—Infant plaintiff—Injuries requiring constant care by mother—Mother giving up employment to care for plaintiff—Whether mother's loss of wages recoverable in action by plaintiff. **Donnelly v Joyce** [1973] 3 475, CA.

Services provided to plaintiff by third party—Services provided in consequence of injury—Cost of services—Plaintiff under no duty to reimburse third party for services—Nursing services rendered to plaintiff by wife—Whether plaintiff entitled to recover cost of services. **Cunningham v Harrison** [1973] 3 463, CA.

Eyes—

Injury rendering eye precarious—Plaintiff having full vision at time of judgment. **Littler v G L Moore (Contractors) Ltd** [1967] 3 801, Assizes.

Loss of one eye and some injury to other eye. **Gardner v Dyson** [1967] 3 762, CA.

Finger on right hand—

Retraining for employment which would probably be at a lower wage—Steel erector, aged 36, lost little finger and damaged ring finger at work—Earning £25 net weekly—No longer fit to do ordinary work of steel erector—Entered retraining as welder—Wage of welder in general engineering £15 upwards—Possibility of plum jobs—General damages £5,000 for loss of future earnings. **Rowden v Clarke Chapman & Co Ltd** [1967] 3 608, QBD.

Future risk—

Risk of future attacks of epilepsy—Grand mal. **Jones v Griffith** [1969] 2 1015, CA.

DAMAGES (cont)**Personal injury (cont)—****Future risk (cont)—**

Risk of major disease supervening at some future time—Workman, aged 27, injured at work—Temporal lobe epilepsy—Risk of major epilepsy—Assessment of damages once and for all—Quantum. **Hawkins v New Mendip Engineering Ltd** [1966] 3 228, CA.

Hands—

Loss of both hands—£10,000 awarded—Appeal on quantum of damages. **Heaps v Perrite Ltd** [1937] 2 60, CA.

Loss of use of right hand—Plaintiff twenty years old—Award of general damages of £6,500 not excessive. **Senior (an infant) v Barker and Allen Ltd** [1965] 1 818, CA.

Inspection of injuries—

Court of Appeal. *See* **Court of Appeal** (Damages—Personal injuries—Inspection of injuries by Court of Appeal).

Instantaneous death—

Cause of action preceding death—Collision to be taken to have preceded death—Right of administrator to claim damages for loss of expectation of life—Law Reform (Miscellaneous Provisions) Act 1934, s 1. **Morgan v Scoulding** [1938] 1 28, KBD.

Interest on damages. *See* **Interest (Damages—Personal injury).****Loss of amenities of life—**

Loss of expectation of life—Loss of probable future earnings—Girl aged twenty engaged to be married rendered permanently unconscious as result of injury—Award unlikely to be used by her or on her behalf. **Wise v Kaye** [1962] 1 257, CA.

Loss of future earning capacity—Child aged twenty months—Mental defective as result of injury—Expense of home help and of child's entering private institution in the first instance—Probability that child would spend most of his life in state institution—Total award unlikely to be used by or on behalf of child. **Oliver v Ashman** [1961] 3 323, CA.

Loss of earnings—

Deduction of industrial disablement benefit—Disablement assessed within five years of accident at less than twenty per cent—Assessment made in respect of period covering whole of plaintiff's life—Benefit payable in form of lump sum—What amount to be deducted from loss of earnings—Law Reform (Personal Injuries) Act 1948, s 2(1). **Roberts v Naylor Bros Ltd** [1959] 2 409, QBD.

Deduction of industrial disablement benefit—Disablement assessed within five years of accident at less than twenty per cent—Assessment made in respect of period of plaintiff's life—What amount of industrial disablement gratuity to be deducted from loss of earnings—Law Reform (Personal Injuries) Act 1948, s 2(1)(6)(c). **Hultquist v Universal Pattern & Precision Engineering Co Ltd** [1960] 2 266, CA.

Deduction of industrial disablement benefit—Disablement assessed within five years of accident at less than twenty per cent—Assessment made in respect of period covering whole of plaintiff's life—What amount to be deducted from loss of earnings—Law Reform (Personal Injuries) Act 1948, s 2(1). **Perez v C A V Ltd** [1959] 2 414, QBD.

Deduction of industrial injury benefit—Benefits accruing after end of period of incapacity—Law Reform (Personal Injuries) Act 1948, s 2(1). **Stott v Sir William Arrol & Co Ltd** [1953] 2 416, QBD.

Deduction of industrial injury benefit—Plaintiff away from work for one year—Benefits received on basis that incapacity throughout the whole period attributable to industrial injury—Finding by court that period of incapacity attributable to injury less than that for which benefits paid—Amount to be taken 'into account'—Law Reform (Personal Injuries) Act 1948, s 2(1). **Flowers v George Wimpey & Co Ltd** [1955] 3 165, QBD.

Future earnings. *See* **Personal injury**—Loss of future earnings, *post*.

Husband and wife in motor accident—Wife severely injured—Husband in United States Air Force and wife sent to air force hospital where medical treatment was free—Hospital distant from husband's station—Husband given a month's leave without pay primarily to enable him to visit wife in hospital—Whether husband entitled to recover loss of earnings for the month. **McNeill v Johnstone** [1958] 3 16, QBD.

Husband and wife in motor accident—Wife severely injured—Husband not returning to job abroad because of wife's injuries and care of children—Less lucrative job taken by husband—Whether husband can recover damages for loss of earnings. **Kirkham v Boughey** [1957] 3 153, QBD.

Income tax—Deduction of amount representing income tax—Relevance of plaintiff's intentions as to disposition of his private income. **Beach v Reed Corrugated Cases Ltd** [1956] 2 652, QBD.

Income tax—Deduction of income tax rebate—Plaintiff having paid income tax on earnings before accident on PAYE basis—Plaintiff away from work after accident—Plaintiff receiving tax rebate—Whether amount of rebate to be deducted in calculating special damages for loss of earnings. **Hartley v Sandholme Iron Co Ltd** [1974] 3 475, QBD.

Joint earnings—Husband and wife. *See* **Personal injury**—Loss of joint earnings—Husband and wife, *post*.

Loss of expectation of life—

Change in value of money, etc—Law Reform (Miscellaneous Provisions) Act 1934, s 1. **Moore v Babcock & Wilcox Ltd** [1966] 3 882, Assizes.

Child aged three—Proper basis of compensation—Law Reform (Miscellaneous Provisions) Act 1934, s 1. **Bailey v Howard** [1938] 4 827, CA. **Shepherd v Hunter** [1938] 2 587, CA.

Child aged two years six months—Amount of assessment. **Benham v Gambling** [1941] 1 7, HL.

Child aged two years six months—£522 not excessive. **Cain v Wilcock** [1968] 3 817, CA.

Factors—Discounting capital sum. **Morey v Woodfield** [1963] 3 533n, CA.

Girl aged eight—Girl rendered immediately unconscious as result of injury—Died nearly a year later without regaining consciousness—Action brought by her father as administrator—Law Reform (Miscellaneous Provisions) Act 1934, s 1. **Andrews v Freeborough** [1966] 2 721, CA.

DAMAGES (cont)

Personal injury (cont)—

Loss of expectation of life (cont)—

Girl aged eight. **Trubyfield v Great Western Ry Co** [1937] 4 614, KBD.

Life of criminal unhappy—Damages reduced—Law Reform (Miscellaneous Provisions) Act 1934, s 1. **Burns v Edman** [1970] 1 886, QBD.

Loss of future wages through death supervening—Work 'above' fragile roof—Provision of scaffolds—Building (Safety, Health and Welfare) Regulations 1948 (SI 1948 No 1145), reg 5, reg 31(3)(a)(b). **Harris v Bright's Asphalt Contractors Ltd, Allard & Saunders Ltd (third parties)** [1953] 1 395, QBD.

Matters relevant to assessment—Man aged twenty with real prospects of successful and happy life killed instantaneously—Change in value of money since earlier decisions—Liability of employers for breach of statutory duty—Law Reform (Miscellaneous Provisions) Act 1934, s 1. **Yorkshire Electricity Board v Naylor** [1967] 2 1, HL.

Moderation in award—Estimate of cost of meeting injured person's needs—Discounting capital sum—Girl aged nearly seventeen permanently paralysed in both legs and both arms—Guidance to jury on quantum. **Warren v King** [1963] 3 521, CA.

Loss of future earnings—

Actuarial assessment—Assessment on actuarial basis not conclusive. **Fletcher v Autocar & Transporters Ltd** [1968] 1 726, CA.

Actuarial assessment—Whether general practice should be to have an actuarial assessment. **Watson v Powles** [1967] 3 721, CA.

Child—Serious disablement—Injuries rendering child incapable of earning a living in adult life—Correct basis of assessment—Estimate of lost earnings necessarily speculative—Compensation likely to enure for benefit of child's estate—Estimate of child's likely earnings based on father's position in life and earnings—Whether conventional sum for child's lost earnings should be awarded—Whether estimate based on father's earnings proper. **Taylor v Bristol Omnibus Co Ltd** [1975] 2 1107, CA.

Consequential loss—Part-time secretarial wages paid by husband to wife—Husband and wife both having cause of action for negligence against defendant—Husband's injuries incapacitating him from self-employed work—Consequential loss of part-time secretarial wages to wife. **Malcolm v Broadhurst** [1970] 3 508, QBD.

Future living expenses—Plaintiff aged five years at time of accident—Severe brain injury—Evidence that plaintiff would be supported in state institutions free of cost for remainder of life—Plaintiff thereby saving on expenditure on future housing and maintenance which would have had to be met out of earnings—Whether future living expenses properly deductible in assessing figure for loss of earnings. **Daish v Wauton** [1972] 1 25, CA.

Income tax—Calculation of tax payable on lost earnings—Method of calculation—Deduction of tax paid on actual earnings from tax payable on total assumed income—Deduction of difference from award of damages—Allowance for expenses and earned income relief exclusively referable to assumed additional income. **Lyndale Fashion Manufacturers v Rich** [1973] 1 33, CA.

Income tax—Deduction of amount representing income tax. **Billingham v Hughes** [1949] 1 684, CA, **British Transport Commission v Gourly** [1955] 3 796, HL.

Income tax—No deduction in respect of income tax. **Jordan v Limmer and Trinidad Lake Asphalt Co Ltd** [1946] 1 527, KBD.

Income tax—Whether assessment to be based on gross earnings or net earnings after payment of tax. **British Transport Commission v Gourley** [1955] 3 796, HL.

Industrial injury benefits—Plaintiff's failure to claim disablement benefit and special hardship allowance in time—Failure due to plaintiff's ignorance of her legal entitlement to benefits—Subsequent claim by plaintiff to benefits disallowed as time-barred—Whether one-half the value of the benefits plaintiff would have received deductible—Law Reform (Personal Injuries) Act 1948, s 2(1). **Eley v Bedford** [1971] 3 285, QBD.

Job attainment—Loss of grammar school place—Loss of powers of concentration—Effect on future job. **Jones v Lawrence** [1969] 3 267, Assizes.

National assistance—Whether national assistance deductible in assessing damages for loss of earnings. **Foxley v Olton** [1964] 3 248, QBD.

National insurance contributions—Whether assessment to be based on net earnings after deducting employee's contributions. **Cooper v Firth Brown Ltd** [1963] 2 31, Assizes.

Pension—Compulsory contributory police pension—Whether pension should be taken into account when assessing damages for loss of earnings. **Parry v Cleaver** [1969] 1 555, HL.

Pension—Pension payable from superannuation fund to which employee and employer contributed—Whether pension should be excluded when assessing damages. **Judd v Board of Governors of the Hammersmith, West London and St Mark's Hospitals** [1960] 1 607, QBD.

Pension—Retirement pension paid by Ministry of Social Security and two pensions from employers' funds—Whether retirement pension should be taken into account when assessing damages for loss of earnings. **Hewson v Downs** [1969] 3 193, Assizes.

Pension—Service pension—Naval rating's disability pension awarded on basis of one hundred per cent disability—Discretion of Minister to withhold or reduce pension where compensation payable—Whether pension should be disregarded when assessing damages for loss of earnings or loss of amenities—Order in Council, dated Sept 29, 1949, concerning retired pay, pensions, etc, for members of the naval forces, art 52(1). **Estob v Robinson** [1964] 1 848, QBD.

Pension—Service pension—National serviceman's disability pension awarded—Discretion of Minister to withhold or reduce pension where compensation payable—Whether pension should be disregarded when assessing damages—Pensions Appeal Tribunals Act 1943, s 11—Royal Warrant 1949 (Cmd No 7699 dated May 24, 1949), para 52. **Carroll v Hooper** [1964] 1 845, QBD.

Pension—Service pension—United States veteran's benefit—Benefit to disabled serviceman payable by law—Whether taken into account when assessing damages. **Browning v War Office** [1962] 3 1089, CA.

DAMAGES (cont)**Personal injury (cont)—****Loss of future earnings (cont)—**

Quantification of loss—Plaintiff skilled engineer carrying on one-man company—Company keeping only rudimentary records and 'unreliable' accounts—Plaintiff's lost capacity to direct company efficiently—Decline in profits in years following accident—Marked rise in turnover—Rise and losses due to subcontracting—Inability of plaintiff to ensure subcontracting work profitable—Loss not quantifiable—Lost capacity to find employment outside company as engineer. *Ashcroft v Curtin* [1971] 3 1208, CA.

Shortened expectation of life—Loss of future earning capacity—Whether assessment to be based on plaintiff's shortened expectation of life or on what should have been his normal working life. *Pope v D Murphy & Son Ltd* [1960] 2 873, Assizes.

Unemployment benefit—Injuries causing plaintiff to retire year early—Unemployment benefit received during year following retirement deductible. *Cheeseman v Bowaters United Kingdom Paper Mills Ltd* [1971] 3 513, CA.

Unemployment benefit—Whether deductible in assessing damages. *Foxley v Olton* [1964] 3 248, QBD.

Voluntary payment to plaintiff by third party—Payment by employer—Ex gratia payment of annual sum equivalent to pension plaintiff would have received on retirement—Whether amount of payment deductible from award for loss of future earnings. *Cunningham v Harrison* [1973] 3 463, CA.

Loss of joint earnings—

Husband and wife—Husband and wife performing midgets—Act not joint one, but husband exceptionally dependent on wife—No work done by husband during wife's incapacity although husband fit to work—Whether husband entitled to damages in respect of loss of half the joint earnings during period of wife's illness. *Behrens v Bertram Mills Circus Ltd* [1957] 1 583, QBD.

Medical evidence— *See Evidence* (Medical evidence—Agreed reports—Damages—Personal injuries claim).

Medical examination of plaintiff at defendant's request—

Stay of proceedings. *See Practice* (Stay of proceedings—Medical examination of plaintiff at defendant's request).

Nervous shock—

Damages recoverable for injury to health due to nervous shock or anxiety, but only if reasonably foreseeable consequence—Defence to divorce suit negligently conducted on respondent wife's behalf—Wife peculiarly liable to nervous shock—Knowledge of this on part of defendant solicitor not alleged—Damage for injury to wife's health by anxiety state too remote. *Cook v S* [1967] 1 299, CA.

Wife witnessing accident in which husband killed and children injured—Morbid depression, a form of psychiatric illness, suffered by wife as a result of the shock—£4,000 awarded in the exceptional circumstances of the accident witnessed by the wife. *Hinz v Berry* [1970] 1 1074, CA.

Nursing—

Cost of future nursing and domestic attendance—Avoidance of expense—Availability of National Health Service facilities—Likelihood of benefits under Chronically Sick and Disabled Persons Act 1970—Injuries requiring constant attendance of two nurses—Likelihood that required nursing assistance would not always be available—Consequential use of free nursing provided by National Health Service—Likelihood of benefits provided by local authority in accordance with statutory duty—Relevance in assessing cost of future nursing—Law Reform (Personal Injuries) Act 1948, s 2(4). *Cunningham v Harrison* [1973] 3 463, CA.

Cost of future nursing and domestic attendance—Likelihood that plaintiff would be looked after by parents at home rather than in institution—Allowance for services to be performed by mother—Allowance for home help—Irrelevant that mother would not have to give up employment—Living expenses not deductible since they would be incurred in any event. *Taylor v Bristol Omnibus Co Ltd* [1975] 2 1107, CA.

Fees paid to nursing home—Deduction of hotel expenses not incurred by plaintiff. *Shearman v Folland* [1950] 1 976, CA.

Nursing expenses necessarily incurred for remainder of plaintiff's life. *Roach v Yates* [1937] 3 442, CA.

Pain and suffering—

Deceased unconscious for most of time between accident and death—Amount of assessment. *Mills v Stanway Coaches Ltd* [1940] 2 586, CA.

Survival of action—Claim by administrator for benefit of deceased person's estate—Law Reform (Miscellaneous Provisions) Act 1934, s 1(1)(2). *Rose v Ford* [1937] 3 359, HL.

Pension—

Consideration of service pension in assessing damages for personal injuries. *Payne v Railway Executive* [1951] 2 910, CA.

Permanent effect—

Quantum. *Wilson v Pilley* [1957] 3 525, CA.

Person under disability—

Administration by Court of Protection. *See Minor* (Money recovered—Control).

Practice—

Consolidation of actions— *See Practice* (Consolidation of actions—Actions for damages for personal injuries).

Separate trial—

Liability and damages. *See Practice* (Trial—Separate trials—Action begun by writ—Different questions—Trial of one or more questions before others—Liability and damages—Claim for personal injuries).

Serious disfigurement—

Estrangement of husband—Loss of husband as result of disfigurement. *Lampert v Eastern National Omnibus Co Ltd* [1954] 2 719, QBD.

DAMAGES (cont)

Personal injury (cont)—

Skull—

Fracture—Steel erector forced to take up other, less congenial work at equal or greater pay—Permanent slight deafness and vertigo—Three per cent epilepsy risk, loss of ambition and enthusiasm—Permanent limitation of field of work. **Domsalla v Barr (Trading as AB Construction)** [1969] 3 487, CA.

Slight injury—

Whether standard figure for slight injury. *See* Personal injury—Amount of damages—Small award—Award of 75—Whether standard figure for slight injuries, *ante*.

Spastic—

Quadriplegia—Considerable physical incapacity—Constant need for mother's help—Memory, thinking and intelligibility seriously impaired—Awareness of condition—Lost prospect of marriage and children—Lost possibility of employment—Curtailement of life. **Powell v Phillips** [1972] 3 864, CA.

Tetraplegia—Complete loss of sensation from level of collarbone to and including soles of feet—Some ability to use hands and arms—Plaintiff aged sixteen and a half at time of accident—Studying to become child psychologist rather than doctor as result of accident with expectations of eventual lower salary—Necessity for constant attention and nursing throughout rest of life, probably 25 years. **Povey v Governors of Rydal School** [1970] 1 841, Assizes.

Special damage—

Expenses incurred by husband in respect of wife's injuries paid by husband out of joint bank account—Responsibility for motor accident apportioned as to two-thirds to husband—Which spouse entitled to recover expenses, as special damage, against defendant. **Gage v King** [1960] 3 62, QBD.

Subsequent further injury to plaintiff—

Amount of damages. *See* Personal injury—Amount of damages—Subsequent further injury to plaintiff, *ante*.

Thalidomide children—

Amount of damages. **S v Distillers Co (Biochemicals) Ltd** [1969] 3 1412, QBD.

Physical injury or economic loss—

Hidden defects—

Building—Inadequate foundations—Builder owner of premises—Liability to subsequent purchaser—Damage to structure of building owing to defects in foundations occurring after building coming into hands of subsequent purchaser—Whether subsequent purchaser entitled to damages for cost of repairs or diminution in market value. **Dutton v Bognor Regis United Building Co Ltd** [1972] 1 462, CA.

Practice—

Consolidation of actions—

Personal injuries cases. *See* Practice (Consolidation of actions—Actions for damages for personal injuries).

Punitive damages. *See* Exemplary damages, *ante*.

Remoteness of damage—

Breach of contract. *See* Contract (Damages for breach—Remoteness of damage).

Collision between tram-car and hearse—

Coffin overturned but not thrown out of hearse—Whether apprehension of injury to human being essential. **Owens v Liverpool Corp** [1938] 4 727, CA.

Damage to crops—

Loss of deficiency payment—Fire—Railway—Fire caused by sparks from railway engine—Loss of deficiency payment farmer would have received in respect of crop—Whether loss too remote. **J Langlands (Swanley) Ltd v British Transport Commission** [1956] 2 702, QBD.

Economic loss not consequent on physical damage—

Electric cable severed causing power failure in plaintiff's factory—Molten metal in furnace damaged and profit lost—Melting of other metal impossible during interruption and further profit lost—Whether damages recoverable for loss of profit in respect of melting which could not be undertaken. **Spartan Steel & Alloys Ltd v Martin & Co (Contractors) Ltd** [1972] 3 557, CA.

Electric cable severed causing power failure in plaintiff's factory—Remoteness of economic loss as head of damage. **SCM (United Kingdom) Ltd v W J Whittall & Son Ltd** [1970] 3 24, CA.

Escape of metal foil blown on to electricity board's equipment causing power failure—Damage to plaintiffs consequent on electricity board's power failure—Clogged machinery and consequential loss of production and profits—Whether too remote. **British Celanese Ltd v A H Hunt (Capacitors) Ltd** [1969] 2 1252, QBD.

Exceptionally only that risk would become actuality—Whether damage too remote. **The Wagon Mound (No 2)** [1966] 2 709, PC.

Foreseeability—

Husband and wife injured in same accident—Injuries causing personality change in husband—Wife suffering from pre-existing nervous condition—Husband's changed behaviour affecting her personality and capacity to work—Whether foreseeable consequence of injury to husband. **Malcolm v Broadhurst** [1970] 3 508, QBD.

Natural and probable consequences—Responsibility in negligence for such consequences as distinct from direct consequences. **Overseas Tankship (UK) Ltd v Morts Dock & Engineering Co Ltd** [1961] 1 404, PC.

Type but not extent of injury foreseeable—Burn on person in pre-malignant condition—Development of cancer resulting in death—Whether defendants liable in damages for loss of expectation of life and under Fatal Accidents Acts. **Smith v Leech Brain & Co Ltd** [1961] 3 1159, QBD.

DAMAGES (cont)

Remoteness of damage (cont)—

Foreseeability (cont)—

Type but not extent of injury foreseeable—Physical condition of plaintiff such as to aggravate extent of injury—Treatment of injury—Necessity for medical treatment foreseeable—Plaintiff allergic to treatment administered by doctor—Doctor not negligent—Treatment not novus actus interveniens—Plaintiff suffering extensive injury in consequence of treatment—Whether defendant liable for full extent of injury. **Robinson v The Post Office** [1974] 2 737, CA.

Type of injury reasonably foreseeable but precise nature of injury not reasonably foreseeable—Frostbite—Plaintiff required by employers to make long journey in unheated motor van in severe weather conditions—Some injury to health reasonably foreseeable—Plaintiff permanently injured by frostbite—Liability of employers. **Bradford v Robinson Rentals Ltd** [1967] 1 267, Assizes.

Loss of dividends—

Plaintiff a company director and shareholder—Incapacitated for doing work for company—Reduced profits of company—Reduced distribution to plaintiff—Whether amount by which distribution to plaintiff reduced recoverable. **Lee v Sheard** [1955] 3 777, CA.

Loss of profit—

No notice to defendant of special circumstances—Purchase of boiler for use in business—Need to extend business—Seller ignorant of need—Delay in delivery. **Victoria Laundry (Windsor) Ltd v Newman Industries Ltd (Coulson & Co Ltd, third party)** [1949] 1 997, CA.

Mental shock—

Accident to child—Mother hearing scream and seeing something of accident while seventy to eighty yards away. **King v Phillips** [1953] 1 617, CA.

Fun fair booth knocked down by elephant—No physical injury to plaintiff who was inside booth—Whether damages recoverable for shock. **Behrens v Bertram Mills Circus Ltd** [1957] 1 583, QBD.

Husband killed in car accident—Wife in same car but rendered unconscious by accident—Wife later told, in hospital, of husband's death—Whether damages recoverable for shock from hearing of accident. **Schneider v Eisovitch** [1960] 1 169, QBD.

Rescuer helping voluntarily at scene of railway accident with many casualties—Subsequently suffering prolonged and disabling nervous shock—Whether injury too remote. **Chadwick v British Transport Commission** [1967] 2 945, QBD.

Negligence—

Economic loss not consequent on physical damage. *See* Remoteness of damage—Economic loss not consequent on physical damage, *ante*.

Generally. *See* Negligence (Remoteness of damage).

Servant—Recovery from servant. **Lister v Romford Ice & Cold Storage Co Ltd** [1957] 1 125, HL.

Neurosis—

Neurosis caused by accident—Neurotic pain and consequential disablement for heavy work—Disablement taken into account in assessing general damages recoverable for personal injuries due to breach of statutory duty. **Beiscak v National Coal Board** [1965] 1 895, Assizes.

Risk taken to avoid inconvenience—

Plaintiff shut in cubicle of public lavatory owing to defective lock—No attendant present—Plaintiff injured while returning to the ground after endeavouring to climb out of cubicle. **Sayers v Harlow Urban District Council** [1958] 2 342, CA.

Solicitor—

Negligence of solicitor advising against re-sale. **Simmons v Pennington & Son (a firm)** [1955] 1 240, CA.

Negligence of solicitor instructed to draft wills—Failure to advise clients that wills would be revoked by their marriage. **Hall v Meyrick** [1957] 1 208, QBD, [1957] 2 722, CA.

Subsequent injury—

Original injury resulting in another injury—Accident to injury—Plaintiff's ability to use bi-focal spectacles impaired—Fall—Whether original defendants liable for injuries sustained in fall. **Wieland v Cyril Lord Carpets Ltd** [1969] 3 1006, QBD.

Suicide—

Accident causing serious personal injuries to deceased due to negligence of defendant—Death of deceased by his own hand just under a year later—Depression cause of death but causal link between accident and death not conceded by defendant—Apportionment of sum paid in settlement between claim under Fatal Accidents Acts 1846 to 1959 and claim under Law Reform (Miscellaneous Provisions) Act 1934. **Farmer v Rash** [1969] 1 705, QBD.

Accident sustained by deceased due to negligence of employers—Suicide by deceased at later date—Whether chain of causation between injury and death broken by suicide—Fatal Accidents Act 1846, s 1. **Pigney v Pointers Transport Services Ltd** [1957] 2 807, Assizes.

Res judicata—

Damages in two cases different—

Cases founded on same facts. *See* Estoppel (Res judicata—Damages in two cases different—Cases founded on same facts).

Sale of land—

Breach of contract. *See* Sale of land (Damages for breach of contract).

Rescission of contract—

See Sale of land (Rescission of contract—Damages).

Separate tortfeasers—

Successive torts. *See* Measure of damages—Separate tortfeasers—Successive torts, *ante*.

DAMAGES (cont)

Special damage—

Malicious falsehood. *See* **Malicious falsehood** (Damages—Pecuniary loss—Special damage not pleaded).

Special damage—Pleading. *See* **Pleading** (Damage—Special damage).

Special damages—

Loss of wages during operation which was inevitable in any event at future date. *See* **Personal injury**—Amount of damages—Relevance of future contingency in assessment of damages—Loss of wages as result of injury culminating in operation—Special damages.

Tax—

Allowance for incidence of tax on lost future earnings. *See* **Personal injury**—Loss of future earnings—Income tax, *ante*.

Third party—

Expenses—

Recovery by plaintiff—Personal injury cases. *See* **Personal injury**—Expenses of third party, *ante*.

Trade union—

Expulsion. *See* **Trade union** (Expulsion of member—Damages).

War injury. *See* **War injury**.

Widow—

Damages under Fatal Accidents Acts—

Remarriage—Possibility of deceased's widow remarrying. *See* **Fatal accident** (Damages—Marriage prospects—widow).

Wife—

Loss of husband's consortium. *See* **Husband and wife** (Consortium—Damages—Wife's loss of consortium).

Wrongful dismissal—

Generally. *See* **Master and servant** (Wrongful dismissal—Measure of damages).

Managing director. *See* **Company** (Director—Managing director—Wrongful dismissal—Measure of damages).

Wrongful dismissal. *See* **Master and servant** (Wrongful dismissal—Measure of damages).

DANCER

Income tax—

Contract of service—

Contract an incident in carrying on of profession. *See* **Income tax** (Emoluments from office or employment—Employment—Contract of service—Contract an incident in carrying on of profession—Professional dancer).

DANCING

Licence. *See* **Entertainment** (Music and dancing licence).

DANGEROUS ACT

Death caused by dangerous act—

Manslaughter—

Mens rea. *See* **Criminal law** (Manslaughter—Causing death by unlawful act—Mens rea—Dangerous act).

DANGEROUS ANIMAL

See **Animal** (Dangerous animal).

DANGEROUS DRIVING

Generally. *See* **Road traffic** (Dangerous driving).

Indictment—

Joinder of charges. *See* **Indictment** (Joinder of charges—Road traffic offences—Dangerous driving).

DANGEROUS DRUGS

Generally. *See* **Drugs** (Dangerous drugs).

Poison. *See* **Poison**.

DANGEROUS EMPLOYMENT

Safe system of working. *See* **Safe system of working** (Dangerous employment).

DANGEROUS MACHINERY

Factory—

Duty to fence. *See* **Factory** (Dangerous parts of machinery—Duty to fence).

Fencing—

Building operations. *See* **Building** (Building operations—Fencing of machinery—Dangerous machinery).

Threshing machine. *See* **Agriculture** (Threshing machine).

DANGEROUS STRUCTURES

Control of buildings. *See* **Public health** (Dangerous structures).

DANGEROUS THINGS

Negligence.

see **Negligence** (Dangerous things).

DANGEROUS VEHICLE

See **Road traffic** (Dangerous vehicle).

DANGEROUS WEAPON

See **Criminal law** (Dangerous weapons).

DATE

Enforcement notice. *See* **Town and country planning** (Enforcement notice—Validity—Need to specify date on which notice takes effect).

DAUGHTER

Income tax—

Child relief—

Income of daughter. *See* **Income tax** (Child relief—Income of child).

Maintenance—

Family provision. *See* **Family provision** (Daughter).

DEAD BODY

Conspiracy to prevent burial of dead body. *See* **Criminal law** (Conspiracy—Burial—Prevention).

Coroner's power to detain. *See* **Coroner** (Inquest—Custody of body).

DEAF PERSON

Arrest—

Conduct of arrest. *See* **Arrest** (Arrest without warrant—Conduct of arrest—Communication to person being arrested—Arrest of deaf person unable to lip-read).

DEAFNESS

Partial deafness in one ear—

Damages. *See* **Damages** (Personal injury—Ear—Partial deafness in one ear).

DEALER

Hire-purchase. *See* **Hire-purchase** (Dealer).

DEALING

Securities—

Dealing without licence. *See* **Criminal law** (Dealing in securities without a licence).

DEATH

Accident—

Insurance—

Public policy—Death resulting from criminal act. *See* **Insurance** (Accident insurance—Perils insured against—Accident—Public policy—Hearth and home policy—Liability to third parties—Extent of cover—Public policy precluding claim).

Appellant—Criminal appeal. *See* **Criminal law** (Appeal—Death of appellant).

Assessment to capital gains tax—

Time limit—

Gains arising before death. *See* **Capital gains tax** (Time limit for assessment—Chargeable gains which arose or accrued to deceased before his death).

Cause of death—

Homicide. *See* **Criminal law** (Homicide—Causation—Cause of death).

Causing death by dangerous driving. *See* **Road traffic** (Dangerous driving—Causing death by dangerous driving).

Causing death by unlawful act—

Manslaughter—

Mens rea. *See* **Criminal law** (Manslaughter—Mens rea—Causing death by unlawful act).

Certificate—

Affidavit supporting. *See* **Practice** (Chancery Division—Affidavit—Affidavit supporting—Certificate of birth, marriage or death).

Damages in respect of death—

Fatal Accidents Acts. *See* **Fatal accident** (Damages).

Death of party to proceedings—

Privy Council—

Death before appeal heard. *See* **Privy Council** (Abatement of appeal—Death of party).

Death of spouse—

Bigamous marriage. *See* **Nullity** (Bigamous marriage—Onus of proof as to death).

Effect on proceedings—

Substitution of executors. *See* **Practice** (Parties—Substitution—Action against deceased person—Defendant dead at issue of writ—Substitution of executors).

Estate duty. *See* **Estate duty**.

Evidence. *See* **Evidence** (Death).

Partnership for joint lives. *See* **Partnership** (Dissolution—Death).

Passenger on aircraft—

Liability of carrier. *See* **Carriage by air** (Carriage of passenger—International carriage—Damage sustained by death of passenger in air accident).

Presumption—

Grant of administration—

Presumption of death. *See* **Intestacy** (Grant of administration—Application—Presumption of death).

Husband and wife. *See* **Husband and wife** (Presumption of death).

Proof—

Bigamous marriage—

Onus of proof. *See* **Nullity** (Bigamous marriage—Onus of proof as to death).

Statutory tenant—

Implied grant of lease. *See* **Landlord and tenant** (Implied grant of lease—Death of statutory tenant).

Statutory tenant. *See* **Rent restriction** (Death of tenant).

Statutory tenant—

Transmission of statutory tenancy. *See* **Landlord and tenant** (Tenancy—Tenancy by estoppel—Transmission of statutory tenancy on death of tenant).

DEATH (cont)

Survival of cause of action—

Financial provision—

Application in divorce proceedings. *See* **Divorce** (Financial provision—Application—Practice and procedure—Death of applicant).Generally. *See* **Executor and administrator** (Survival of cause of action).

Taxpayer—

Profits of profession or vocation—

Income tax. *See* **Income tax** (Profits—Profession or vocation—Death of taxpayer).

Tenant—

Notice to quit—

Validity. *See* **Landlord and tenant** (Validity of notice to quit—Death of tenant).

Variation of settlement—

Extinction of party's interests as if dead. *See* **Variation of settlement** (Extinction of party's interests as if dead).

War pension—

Claim—

Burden of proof. *See* **War pension** (Claim—Burden of proof—Death due to or substantially hastened by injury attributable to war service).**DEATH DUTY**

Advancement—

Lessening incidence of death duty. *See* **Trust and trustee** (Powers of trustee—Advancement—Proposed exercise partly with a view to lessening the incidence of death duty on the death of the life tenant).Estate duty. *See* **Estate duty**.New South Wales. *See* **New South Wales** (Death duty).Payment. *See* **Will** (Payment of death duty).**DEATH SENTENCE**

Review—

Gibraltar. *See* **Gibraltar** (Criminal law—Special courts—Death sentence—Special provision for review of death sentence).**DEBENTURE**

Bonus debentures—

Income tax. *See* **Income tax** (Profits—Bonus debentures).

Exchange—

Company amalgamation—

Capital gains tax. *See* **Capital gains tax** (Disposal of assets—Company amalgamation—Exchange of shares or debentures).Priority. *See* **Company** (Debenture—Priority).

Receiver—

Generally. *See* **Company** (Debenture—Receiver).

Ratification—

Whether subsequent receiver, appointed by debenture-holders, can ratify contract not authorised by former receiver. *See* **Agent** (Ratification—Validity—Receiver appointed by debenture-holders of first company).

Redemption—

Tax advantage. *See* **Income tax** (Tax advantage—Transaction in securities—Tax advantage in consequence of transaction—Redemption of debentures).**DEBT**

Acknowledgment—

Limitation of action. *See* **Limitation of action** (Acknowledgment—Debt).Assignment. *See* **Chose in action** (Assignment—Debt).

Attachment—

Garnishee proceedings. *See* **Execution** (Garnishee order).

Winding-up of company—

Restriction of rights of creditor as to attachment. *See* **Company** (Winding-up—Restriction of creditor's rights as to attachment).Bankruptcy. *See* **Bankruptcy**.

Debtor—

Appointment of debtor as executor. *See* **Executor and administrator** (Executor—Appointment—Appointment of debtor as executor).

Deceased's estate—

Payment of debts. *See* **Administration of estates** (Order of application of assets).

Deferment of debt—

Obtaining pecuniary advantage by deception. *See* **Criminal law** (Obtaining pecuniary advantage by deception—Evasion of debt).

Discharge conditional on transfer of land by debtor to creditor—

Whether a contract for sale of land. *See* **Sale of land** (Contract of sale—Agreement to discharge debt).

Evasion of debt—

Obtaining pecuniary advantage by deception. *See* **Criminal law** (Obtaining pecuniary advantage by deception—Evasion of debt).

Foreign currency—

Company—

Winding-up. *See* **Company** (Compulsory winding-up—Distribution of assets—Debt in foreign currency).Rate of exchange. *See* **Currency control** (Debt in foreign money—Rate of exchange). 197230386

Funded debt—

Stamp duty. *See* **Stamp duty** (Issue of loan capital—Funded debt).

DEBT (cont)

Gaming. *See* Gaming (Debt).

Interest on debt—

Winding-up of company—

Application of bankruptcy rules. *See* Company (Winding-up—Application of bankruptcy rules—Interest on debts).

Judgment debt—

Non-payment. *See* Non-payment of judgment debt, *post*.

Liability—

Demand for payment—

Demand as ingredient of cause of action—Instalments—Whole debt payable on demand following default—Demand having effect of changing nature of debt—Creditor not having made demand for payment of whole debt—Whether creditor entitled to bring proceedings for recovery of whole debt. *Esso Petroleum Co Ltd v Alstonbridge Properties Ltd* [1975] 3 358, ChD.

Mortgaged policy—

Repayment—

Mortgage retaining debt. *See* Mortgage (Repayment—Mortgage retaining debt out of proceeds of mortgaged policy).

Mutual trading—

Rebates—

Recoverability as debts—Legal right to rebate arising before debt quantifiable—Amounts credited in respondent company's accounts by way of rebate to customer shareholders—Whether amounts credited recoverable. *J M Construction Co Ltd v Hutt Timber and Hardware Co Ltd* [1965] 1 647, PC.

Non-payment of judgment debt—

Committal—

Bar to committal order—Extortion—Creditor requiring payment of costs of bankruptcy notice—Dismissal of bankruptcy petition on ground of extortion—Effect on application for committal order for non-payment of debt—Nature of proceedings under Debtors Act 1869, s 5. *Re A Judgment Summons (No 25 of 1952)*, ex parte Henlys Ltd [1953] 1 424, CA.

Effect on debt—Debtors Act 1869, ss 4, 5. *Jinks v Jinks* [1936] 3 1051, CA.

Need of evidence as to means—Debtors Act 1869, s 5(2). *Barefoot v Clarke* [1949] 1 1039, CA.

Order—Procedure—Procedure where no previous order for payment by instalments but evidence that debtor has means—Order to lie in office so long as debtor pays instalments. *Re Sanders*, ex parte Bentley [1947] 2 828, ChD.

Order—Revocation—Jurisdiction—County court order—Whether county court judge has jurisdiction to revoke order—Debtors Act 1869, s 5. *Wiltshire v Fell* [1959] 3 862, CA.

Order—Suspension—Condition—Payment of monthly instalments—Variation of amount of instalments—Jurisdiction—County court—Whether county court has jurisdiction to vary amount of instalments—Debtors Act 1869, s 5, proviso (2)—County Court Rules 1936, Ord 24, r 18, r 19. *J Cooke & Sons Ltd v Binding* [1961] 2 693, CA.

Crown debt—

Imprisonment for non-payment of debt—Abolition of imprisonment for debt—Whether Debtors Act 1869 binding on the Crown—Debtors Act 1869, s 4. *Attorney-General v Randall* [1944] 2 179, CA.

Novation. *See* Contract (Novation—Debt).

Refunding—

Discount—

Income tax. *See* Income tax (Discounts—Refunding of debt).

Release—

Income tax—

Deduction in computing profits. *See* Income tax (Deduction in computing profits—Debt—Subsequent release).

Satisfaction by legacy—

Annuity under deed—

Bequest of sum for purchase of legacy of same amount. *Re Mannors (decd)* [1949] 2 201, CA.

Summary recovery of civil debt. *See* Magistrates (Civil debt—Summary recovery).

Will—

Direction to pay debts.

see Will (Debts—Direction to pay debts).

Gift—

Property capable of disposition. *See* Will (Gift—Property capable of disposition—Debt).

DECEIT

Exemplary damages. *See* Damages (Exemplary damages—Deceit).

Fraud distinguished—

Forgery. *See* Criminal law (Forgery—Intent to defraud—Fraud distinguished from deceit).

DECENCY

Outrage to public decency—

Conspiracy. *See* Criminal law (Conspiracy—Outrage to public decency).

DECEPTION

Obtaining pecuniary advantage by deception. *See* Criminal law (Obtaining pecuniary advantage by deception).

Obtaining property by deception. *See* Criminal law (Obtaining property by deception).

DECIMALISATION

Practice—

Costs—

Taxation—Bankruptcy—Decimal Currency Act 1969, Sch 1. **Practice Direction** [1971] 1 511.

Taxation—Decimal Currency Act 1969, Sch 1. **Practice Direction** [1970] 3 441.

Probate and Divorce Registries—

Expression of sums of money—Decimal Currency Act 1969, Sch 1. **Practice Direction** [1970] 3 176, Prob and Div.

Probate—

Form of grant. *See* **Probate** (Grant—Form—Expression of sums of money—Decimalisation).

Shares—

Alteration in description—

Whether alteration of condition in company's memorandum of association. *See* **Company** (Memorandum of association—Capital clause—Alteration—Statement of amount of share capital—Description of shares—Decimalisation).

DECLARATION

Agent's right to commission. *See* **Agent** (Commission—Right to commission—Declaratory judgment).

Crown—

Declaration against Crown—

Interlocutory proceedings—Jurisdiction. *See* **Crown** (Relief against the Crown—Interlocutory relief—Jurisdiction—Interim declaration in lieu of interim injunction).

Customs and excise. *See* **Customs and excise** (Declaration).

Discretion to grant—

Court of Appeal. *See* **Court of Appeal** (Declaratory judgment—Discretion).

Declaration as to rights under contract—

Declaration of agent's right to commission—No commission accrued due—RSC Ord 25, r 5. **Jacobs v Aveling-Barford Ltd** [1936] 1 297, KBD.

Declaration regarding scope of reference to arbitration—

Circumstances in which declaration appropriate—Whether declaration granted where injunction refused. **Government of Gibraltar v Kenney** [1956] 3 22, QBD.

Principles governing exercise of discretion—

Declaration regarding the future—Application for declaration serving no useful purpose—Declaration of entitlement to commit breach of professional etiquette. **Mellstrom v Garner** [1970] 2 9, CA.

Declaration sought as to potential copyright in future documents—Possible infringement by documents not yet in existence—Whether declaration could be made—RSC Ord 25, r 5. **Odhams Press Ltd v London and Provincial Sporting News Agency (1929) Ltd** [1936] 1 217, CA.

Declaration sought that trade union's decision to expel member, and subsequent decision on appeal to suspend him were ultra vires and void—Period of suspension from office almost expired—Substantial issue not academic in character, when action brought—Whether declaration should be granted. **Gibson v Union of Shop, Distributive and Allied Workers** [1968] 2 252, ChD.

Grant of declaration where no cause of action vested in plaintiff. **Maerkle v British & Continental Fur Co Ltd** [1954] 3 50, CA.

Grant where damages not an adequate remedy—Dock worker's irregular dismissal. **Vine v National Dock Labour Board** [1956] 3 939, HL.

Ground for refusing declaration that it would serve no useful purpose. **Bennett v Chappell** [1965] 3 130, CA.

Restriction not affecting land. *See* **Restrictive covenant affecting land** (Declaration whether covenant affecting land enforceable—Covenants not to build or fell trees).

Restrictive Practices Court. *See* **Restrictive trade practices** (Court—Power to make declaration—No other relief sought).

Divorce—

Custody proceedings—

Declaration that divorced parent not fit to have custody. *See* **Divorce** (Custody—Declaration that divorced parent not fit to have custody).

Easement—

Jurisdiction of county court. *See* **County court** (Jurisdiction—Declaration—Easement).

False—

Customs and excise. *See* **Customs and excise** (Declaration—False declaration).

Jurisdiction—

Applicant to show injuria—

Planning permission—Ultra vires—Applicant for declaration that permission ultra vires must show injuria as well as damnum. *See* **Town and country planning** (Permission for development—Ultra vires—Declaration—Applicant must show injuria as well as damnum).

County court—

Easement. *See* **County court** (Jurisdiction—Declaration—Easement).

Declaration as to marital status—

Commencement of proceedings in Divorce Registry—Proceedings in London—RSC Ord 112. **Practice Direction** [1970] 3 1024, Div.

Residence of parties as basis of jurisdiction—RSC Ord 15, r 16. **Qureshi v Qureshi** [1971] 1 325, Div.

Declaration not claimed in statement of claim—

Injunction sole relief claimed and that relief refused—Declaratory relief necessary—Declaration made by Court of Appeal. **Harrison-Broadley v Smith** [1964] 1 867, CA.

DECLARATION (cont)**Jurisdiction (cont)—**

Determination of inferior tribunal made without or in excess of jurisdiction—

Declaration that determination of statutory tribunal a nullity—Whether appropriate form of relief. *Anisminic Ltd v The Foreign Compensation Commission* [1967] 2 986, CA, [1969] 1 208, HL.

Discretion—

Invalidity of certain rules and regulations of Football Association Ltd, and Football League Ltd, as being in unjustifiable restraint of trade—Relief sought by plaintiff not in contractual relation with the Association or the League—RSC Ord 25, r 5. *Eastham v Newcastle United Football Club Ltd* [1963] 3 139, ChD.

Issue open in criminal proceedings where plaintiff convicted—Caravan site—Owner of site previously convicted for non-compliance with enforcement notice—Property rights depending on issue of validity of enforcement notice—Plaintiff allowed to proceed for declaration of invalidity of enforcement notice. *Munnich v Godstone Rural District Council* [1966] 1 930, CA.

Exclusion of jurisdiction by statute—

Necessity for clear exclusion—Discretionary statutory power to impose conditions on grant of permission—Whether jurisdiction excluded by provision of distinct statutory procedure or by discretionary nature of statutory power—Town and Country Planning Act 1947, s 14(2), s 17(1). *Pyx Granite Co Ltd v Ministry of Housing and Local Government* [1959] 3 1, HL.

Necessity for clear exclusion—Proceedings in pursuance of a determination of the Race Relations Board—Whether statutory procedure ousting jurisdiction to grant declaration to alleged discriminator—Race Relations Act 1968, s 19(1), (2), (10). *London Borough of Ealing v Race Relations Board* [1972] 1 105, HL.

Special remedy—Election to pursue it rather than go to court—Patent—Extension of term—Application of patentee to Comptroller General—Application stayed to have preliminary point decided by High Court—Whether jurisdiction of High Court excluded by special procedure under Patents Act 1949, s 24(2). *Re Al-Fin Corporation's Patent* [1969] 3 396, ChD.

Hypothetical question—

Basis of assessing compensation for compulsory acquisition of land—Whether planning permission might reasonably have been expected to be granted—Question of factual nature, not question of construction—Absence of jurisdiction—Originating summons set aside—Exclusivity of jurisdiction of Lands Tribunal over disputes as to compensation—Land Compensation Act 1961, s 16(3)(b). *Re Croydon Development Plans 1954 and 1959* [1967] 2 589, ChD.

Determination by Race Relations Board on unlawful act of discrimination—Communication of opinion and request for assurance against repetition—Whether live issue between board and alleged discrimination sufficient to found jurisdiction. *London Borough of Ealing v Race Relations Board* [1971] 1 424, QBD.

Dividend stripping operation—Question how, assuming that taxpayer company was a dealer in securities, its accounts should be made up—Decision of House of Lords on question pending—Abuse of process of the court—RSC Ord 18, r 19—Income Tax Act 1952, s 341. *Argosam Finance Co Ltd v Oxbey (Inspector of Taxes)* [1964] 3 561, CA.

Question suitable for being decided as preliminary issue—Saving of costs if question so decided. *Hampshire County Council v Shonleigh Nominees Ltd* [1970] 2 144, ChD.

Locus standi of applicant—

Sufficiency of interest to support claim—Action by director for exclusion from board meetings—Whether sufficient proprietary interest to maintain action for declaration. *Hayes v Bristol Plant Hire Ltd* [1957] 1 685, ChD.

Sufficiency of interest to support claim—Commons registration—Registration of claims in respect of properties within area of rural district—Application by rural district council for declarations that claimant had no such rights—Council having no proprietary rights in properties concerned—Indirect financial interest by reason of effect on rateable values—Existence of rights affecting council's powers under planning legislation—Whether council having locus standi as plaintiff. *Thorne Rural District Council v Bunting* [1972] 1 439, ChD.

No justiciable dispute—

Dispute on a matter of professional ethics, not of legal right—British Medical Association's ethical rules—No jurisdiction to make declaration under RSC Ord 15, r 17. *Cox v Green* [1966] 1 268, ChD.

Question relating to validity of decision of statutory tribunal—

Suspension of dock workers. *Barnard v National Dock Labour Board* [1952] 2 424, QBD, [1953] 1 1113, CA.

Legitimacy. See Legitimation (Declaration of legitimacy).

Marriage—

Declaration of subsistence of marriage. *See Marriage* (Declaration of subsistence of marriage).

Validity. *See Marriage* (Validity—Declaration).

Nullity of marriage. *See Nullity* (Declaration).

Originating summons. *See Originating summons* (Declaration on originating summons).

Statement of claim—

Statement of claim should set out declaration sought. *See Statement of claim* (Specifying relief or remedy claimed—Declaration).

DECLARATORY JUDGMENT

See Declaration.

DECONSOLIDATION OF ACTIONS

See Practice (Deconsolidation of actions).

DECREE

- Divorce. *See* **Divorce** (Decree).
- Foreign decree—
 - Recognition—
 - Nullity. *See* **Nullity** (Recognition of foreign decree).
- Granted in absence of party—
 - Matrimonial proceedings—
 - Personal liability of solicitor for costs. *See* **Solicitor** (Payment of costs by solicitor personally—Matrimonial proceedings—Decree granted in absence of party).
- Judicial separation. *See* **Husband and wife** (Judicial separation—Decree).

DECREE ABSOLUTE

- Divorce. *See* **Divorce** (Decree absolute).

DECREE NISI

- Divorce. *See* **Divorce** (Decree nisi).

DEDICATION

- Highway. *See* **Highway** (Dedication).

DEDUCTION

- Estate duty. *See* **Estate duty** (Valuation—Allowances).
- Income tax—
 - Annual payment. *See* **Income tax** (Annual payment—Deduction of tax).
 - Deduction in computing profits. *See* **Income tax** (Deduction in computing profits).

DEED

- Consideration—
 - Nominal consideration stated—
 - Admissibility of evidence to show true consideration. **Turner v Forwood** [1951] 1 746, CA.
- Construction—
 - Constitution of a society—
 - Meaning attached to objects by members—Activities of the society—Admissibility—Rating and Valuation (Miscellaneous Provisions) Act 1955, s 8(1)(a). **Berry v St Marylebone Corp** [1957] 3 677, CA.
 - Construction as valid rather than invalid—
 - Application of doctrine *ut res magis valeat quam pereat*—Whether deed created a valid power or a trust that would be void for uncertainty. **Re Baden's Deed Trusts** [1969] 1 1016, CA.
- Conveyance. *See* **Sale of land** (Conveyance).
- Covenant—
 - Covenant to settle 'property'—
 - Inclusion of reversionary interest—Claim for damages for breach of covenant—Right of volunteer to sue—Volunteer a covenantee. **Cannon v Hartley** [1949] 1 50, ChD.
 - Positive covenant—
 - Enforceability—Registered transfer of land—Covenant with person not a party. **Chelsea & Walham Green Building Society v Armstrong** [1951] 2 250, ChD.
 - Enforceability—Roads and sewers declared to be held in trust for owners of land—Covenant by owners to contribute to upkeep—Liability of successors in title of owners using roads and sewers. **Halsall v Brizell** [1957] 1 371, ChD.
- Deed of assent—
 - Assent used where conveyance was required—
 - Intention to pass legal estate—Whether instrument effective as a conveyance—Law of Property Act 1925, s 52(1). **Re Stirrup's Contract** [1961] 1 805, ChD.
- Escrow—
 - Condition—
 - Implied condition—Conveyance executed in anticipation of sale—Deposit paid—Balance of purchase money outstanding—Whether conveyance was escrow until balance paid. **Thompson v McCullough** [1947] 1 265, CA.
 - Implied condition—Conveyance executed in anticipation of sale—Time for completion—Condition that sale be completed in due course in accordance with normal conveyancing practice—Sale of land—Conveyance executed by vendors and delivered to solicitor—Conveyance executed by purchaser—Purchaser failing to pay purchase price—Notice to complete delivered by vendors to purchaser—Purchaser failing to pay within time specified by notice—Whether executed deed delivered by vendors to solicitor in escrow—Whether escrow subject to a condition as to time within which completion to take place—Whether condition becoming impossible of fulfilment after expiry of time specified by completion notice. **Glessing v Green** [1975] 2 696, CA.
 - Implied condition—Conveyance executed in anticipation of sale—Time for completion—Reasonable inference from circumstances—Transfer executed by vendor and delivered to his solicitor—Purchaser entitled to delivery of transfer on payment of purchase price—Delay in completion by purchaser—Whether escrow subject to implied condition as to time of payment—Whether condition that payment should be made promptly or within a reasonable time. **Kingston v Ambrian Investment Co Ltd** [1975] 1 120, CA.

DEED

Escrow—

Condition—

Implied condition—Lease executed—Parts of lease not exchanged—Whether deed effectively delivered as escrow. **Vincent v Premo Enterprises (Voucher Sales) Ltd** [1969] 2 941, CA.

Implied condition—Sealing—Delivery—Sealing by body corporate—Lease—Parts of lease not exchanged—Whether corporation bound by lease. **Beesly v Hallwood Estates Ltd** [1960] 2 314, ChD, [1961] 1 90, CA.

Execution of deed—

Date of execution—Deed delivered as an escrow—Stamp duty. *See* **Stamp duty** (Rate of duty—Rate in force on date instrument executed—Execution of deed—Delivery as an escrow).

Suspensive event—

Effect. **Vincent v Premo Enterprises (Voucher Sales) Ltd** [1969] 2 941, CA.

Estoppel by deed. *See* **Estoppel** (Deed).

Exchange—

Stamp duty. *See* **Stamp duty** (Conveyance on sale—Instrument whereby property or estate or interest in property on sale thereof transferred to or vested in purchaser—Deed of exchange).

Execution—

Date of execution—

Stamp duty—Rate of stamp duty in force. *See* **Stamp duty** (Rate of duty—Rate in force on date instrument executed—Execution of deed).

Execution by one party—

Settlement—Settlement in satisfaction of covenant containing a release of the covenant—Sufficiency of execution by one party—Execution upon faith of execution by other parties. **Naas v Westminster Bank Ltd** [1940] 1 485, HL.

Sealing—

Whether signature essential—Law of Property Act 1925, s 73(1). **Stromdale & Ball Ltd v Burden** [1952] 1 59, ChD.

Insufficiently stamped deed—

Title—

Sale of land. *See* **Sale of land** (Title—Insufficiently stamped deed).

Legality—

Public policy—

Divorce—Divorce by foreign court—Covenant that deed should have effect notwithstanding terms of judgment. **Addison v Brown** [1954] 2 213, QBD.

Lien on—

Solicitors. *See* **Solicitor** (Lien).

Non est factum—

Generally. *See* **Document** (Non est factum).

Mistake. *See* **Mistake** (Nature of document—Non est factum).

Order of court requiring execution. *See* **Practice** (Chancery Division—Order—Order requiring execution of deed).

Rectification—

Conveyance—

Land conveyed to father and son as joint tenants—Death of son—Father as surviving joint tenant accountable for estate duty in respect of son's share of land—Evidence that parties had intended father and son should take as tenants in common—Whether court should order rectification of conveyance—Whether possible tax advantage bar to relief. *Re* **Colebrook's Conveyances** [1973] 1 132, ChD.

Deed of covenant—

No relief required as between the parties—Rectification to secure reduction of tax payable by party to deed—Whether court should order rectification. **Whiteside v Whiteside** [1949] 2 913, CA.

Generally. *See* **Mistake** (Rectification).

Parties to proceedings—

Transfer of property—Rectification as between purchasers—Whether vendor a necessary party. **Wilson v Wilson** [1969] 3 945, ChD.

Voluntary settlement—

Intention of settlor—Trustees' knowledge of intention—Powers of trustees—Majority decision—Settlement executed by settlor of one part and trustees of other part—Intention of settlor that trustees' powers generally should be exercisable by majority decision—Trustees other than solicitor trustee ignorant of that intention—Settlement as drafted failing to give effect to intention—Settlor on professional advice mistakenly believing that words used gave effect to intention—Claim for rectification by settlor—Claim opposed by one of non-solicitor trustees—Jurisdiction of court to grant rectification—Discretion—Circumstances in which discretion should be exercised to grant rectification against opposition of trustee. *Re* **Butlin's Settlement Trust** [1976] 2 483, ChD.

Separation. *See* **Husband and wife** (Separation deed).

Surrender—

Tenancy. *See* **Landlord and tenant** (Surrender of tenancy—Surrender by deed in consideration of new lease).

Variation of settlement—

Deed made in consideration of marriage. *See* **Variation of settlement** (Ante-nuptial settlement—Deed made in consideration of marriage).

DEED OF ARRANGEMENT

See **Bankruptcy** (Deed of arrangement).

DEED POLL

Child—

Divorced parents—

Change of surname. *See* **Minor** (Change of surname).**DEER***See* **Game** (Deer).**DEFAMATION**Generally. *See* **Libel and slander**.

Pleading—

Particulars. *See* **Pleading** (Particulars—Libel).

Privilege—

Solicitor. *See* **Solicitor** (Disciplinary proceedings—Disciplinary committee—Privilege against liability for defamation).Slander of goods. *See* **Slander of goods**.Slander of title. *See* **Slander of title**.

Trade union—

Right to sue. *See* **Trade union** (Legal proceedings—Right of union to sue—Defamatory statements relating to reputation of trade union).**DEFAULT**

Mortgage—

Mortgagee's right to possession in absence of default under mortgage. *See* **Mortgage** (Possession of mortgaged property—Mortgagee's right to recover possession—No default under mortgage).**DEFECTIVE GOODS**

Principal and agent—

Liability of principal. *See* **Agent** (Liability of principal—Defective goods).**DEFECTIVE PREMISES**Negligence. *See* **Negligence** (Defective premises).**DEFECTIVE TOOL**

Employer's liability to workman—

No opportunity for intermediate examination. *See* **Negligence** (Dangerous things—Employer's liability to workman—No opportunity for intermediate examination—Tool supplied for use in trade).**DEFENCE**Abortion. *See* **Criminal law** (Abortion—Defence).

Acknowledgment of debt—

Limitation of action. *See* **Limitation of action** (Acknowledgment—Debt—Defence in foreign action denying liability).Act of state. *See* **Constitutional law** (Act of state).Action for account. *See* **Account** (Action for—Defence).

Assault—

Trespass to the person. *See* **Trespass to the person** (Assault—Defence).

Breach of covenant to repair—

Landlord and tenant. *See* **Landlord and tenant** (Breach of covenant to repair—Defence).

Certificate—

Solicitor—

Practice. *See* **Solicitor** (Practice—Defence certificate).

Contract—

Illegality. *See* **Contract** (Illegality—Defence to claim).

Copyright—

Infringement of copyright. *See* **Copyright** (Infringement—Defence).

Criminal proceedings—

Burden of proof. *See* **Criminal evidence** (Burden of proof).Duress. *See* **Criminal law** (Duress as a defence).Intoxication. *See* **Criminal law** (Intoxication as a defence).Dangerous driving. *See* **Road traffic** (Dangerous driving—Defence).

Divorce—

Desertion—

Just cause. *See* **Divorce** (Desertion—Defence—'Just cause').Reasonable belief in deserted spouse's adultery. *See* **Divorce** (Desertion—Defence—Reasonable belief in deserted spouse's adultery).

Highway—

Obstruction—

Benefit to public. *See* **Highway** (Obstruction—Defence—Benefit to public).Lawful excuse. *See* **Highway** (Obstruction—Obstruction of free passage—Lawful excuse).

Pitching stall on highway—

Lawful excuse. *See* **Highway** (Obstruction—Pitching stall on highway—Lawful excuse).Injunction. *See* **Injunction** (Defence).Laches. *See* **Equity** (Laches—Defence).

Libel—

Fair comment. *See* **Libel and slander** (Fair comment).Justification. *See* **Libel and slander** (Justification).

Necessity—

Trespass to land. *See* **Trespass to land** (Defence—Necessity).Negligence. *See* **Negligence** (Defence).

Self-defence—

Assault. *See* **Criminal law** (Assault—Self-defence).

DEFENCE (cont)

- Statutory—
 - Food and Drugs Act. *See* **Food and drugs** (Defence to proceedings).
 - Trade description. *See* **Trade description** (Defence to proceedings).
- Statutory nuisance—
 - War damage. *See* **Nuisance** (Statutory nuisance—Defence—War damage).
- Striking out—
 - Jurisdiction of Court of Appeal. *See* **Court of Appeal** (Jurisdiction—Striking out defence).
- Tort—
 - Availability of defence. *See* **Tort** (Availability of defence).
- Trespass—
 - Cattle—
 - Duty to fence. *See* **Animal** (Trespass—Cattle—Defence).
- Trespass to land. *See* **Trespass to land** (Defence).
- Trustees—
 - Severing. *See* **Trust and trustee** (Trustees costs—Re-imbursement of trustee—Contractual right).

DEFENCE BOND

- Transfer—
 - Transfer on death of holder—
 - Right of transferee. **Note** [1954] 1 519.

DEFERRED LEGACY

- Estate duty. *See* **Estate Duty** (Incidence—Pecuniary legacies—Deferred legacies).

DEFERRED SENTENCE

- Crime. *See* **Sentence** (Deferment of sentence).
- Location of Crown Court—
 - Conviction of further offence before different location. *See* **Crown Court** (Transfer of proceedings between locations—Sentence—Deferred sentence passed on offender).

DEFICIENCY

- Administration of estate. *See* **Administration of estates** (Deficiency).

DEFINITIVE MAP

- See* **Highway** (Definitive map).

DEGREE

- University—
 - Examination. *See* **University** (Examination—Conferring of degrees).

DEL CREDERE AGENT

- See* **Agent** (Del credere agent).

DELAY

- Arbitration—
 - Dismissal of claim for want of prosecution. *See* **Arbitration** (Practice—Want of prosecution).
- Building contract—
 - Completion. *See* **Building contract** (Extension of time—Contractor's right to extension for delay by nominated sub-contractor).
- Certiorari. *See* **Certiorari** (Delay).
- Contract—
 - Frustration. *See* **Contract** (Frustration—Delay).
- Dismissal of action for. *See* **Practice** (Dismissal of action for want of prosecution—Delay).
- Divorce—
 - Delay in presenting petition. *See* **Divorce** (Discretionary bars—Delay).
- Enforcement notice. *See* **Town and Country Planning** (Enforcement notice—Delay).
- Lease—
 - Agreement to purchase. *See* **Landlord and tenant** (Lease—Agreement to purchase lease—Delay).
- Matrimonial proceedings—
 - Appeals from magistrates' courts. *See* **Husband and wife** (Summary proceedings—Appeal to Divisional Court—Delay).
- Repairs—
 - Landlord and tenant. *See* **Landlord and tenant** (Repair—Delay).
- Sale of land—
 - Interest on unpaid purchase money. *See* **Sale of land** (Interest on unpaid purchase money).
- Specific performance. *See* **Specific performance** (Delay).
- Third party proceedings—
 - Dismissal for want of prosecution. *See* **Practice** (Third party proceedings—Dismissal for want of prosecution—Inordinate and inexcusable delay).

DELEGATION

- Agent—
 - Implied authority—
 - Estate agent. *See* **Estate agent** (Authority—Authority to delegate—Implied authority).
- Coal mine—
 - Delegation of duty—
 - Common employment. *See* **Vicarious liability** (Common employment—Coal mine—Delegation of duty).
- Dock Labour Board—
 - Delegation by board. *See* **Employment** (Dock labour scheme—Dock labour scheme—Dock Labour Board—Disciplinary functions—Delegation).

DELEGATION (cont)

Local authority—

Delegation of functions to committees. *See* **Local authority** (Appointment of committees—Delegation of functions to committees).

Power to censor films. *See* **Cinema** (Censorship—Local authority—Delegation of powers).

Ministerial power to appoint members of statutory tribunal—

Agricultural Land Tribunal. *See* **Agricultural Land Tribunal** (Appointment of members—Appointment by Minister of Agriculture—Delegation of power of appointment).

Ministerial power to give directions—

Cultivation control. *See* **Cultivation control** (Directions—Ministerial power to give directions).

Planning authority—

Decisions whether planning permission required or not. *See* **Town and country planning** (Development—Permission for development—Variation of detailed planning permission).

Safe system of working—

Delegation of duty. *See* **Safe system of working** (Delegation of duty to servant).

Statutory duty. *See* **Statutory Duty** (Delegation).

Trustee—

Delegation of powers—

Absence abroad. *See* **Trust and trustee** (Delegation of trusts—Delegation by trustee during absence abroad).

Generally. *See* **Trust and trustee** (Powers of trustees—Delegation of powers).

Vicarious liability—

Delegation of duty—

Common employment—Coal mine. *See* **Vicarious liability** (Common employment—Coal mine—Delegation of duty).

DELIVERY

Fixed date—

Sale of goods. *See* **Sale of goods** (Time of performance).

Gift. *See* **Gift** (Delivery).Sale of goods. *See* **Sale of goods** (Delivery).**DELUSIONS**

Desertion—

Effect. *See* **Divorce** (Desertion—Intention—Capability of respondent spouse to have animus deserendi—Delusions).

DEMAND

Payment of debt. *See* **Debt** (Liability—Demand for payment).

Return of goods—

Detinue. *See* **Detinue** (Demand for delivery of goods).

DEMANDING MONEY WITH MENACES

See **Criminal law** (Demanding money with menaces).

DEMISE

Extent of demise. *See* **Landlord and tenant** (Lease—Extent of demise).

DEMOLITION

Building. *See* **Building** (Demolition).

Clearance of site. *See* **Town and country planning** (Works for the erection of a building—Demolition of existing buildings and clearance of site).

Insurance—

Accident. *See* **Insurance** (Accident insurance—Perils insured against—Demolition).

Intention to demolish business premises—

Opposition to grant of new tenancy. *See* **Landlord and tenant** (Opposition to grant of new tenancy of business premises—Intention of landlord to demolish or reconstruct premises comprised in holding).

Order. *See* **Housing** (Demolition order).

DEMONSTRATIVE LEGACY

See **Administration of estates** (Legacy—Demonstrative legacy).

DEMURRAGE

See **Shipping** (Demurrage).

DEMURRER

Indictment. *See* **Indictment** (Demurrer).

DENTIST

Employment—

National insurance—

Treatment as employed person. *See* **National insurance** (Employed person—Contract of service—Employments to be treated as employment under contract of service—Employment where dental practitioner remunerated by salary).

Erasure from register for crime or infamous conduct—

Erasure prohibited if offence of a trivial nature or committed in exonerating circumstances—

Matters to be taken into account by disciplinary committee—Dentist convicted of theft—Disciplinary proceedings against dentist—Dentist having previous convictions for dishonesty—Whether committee should first consider nature of offence in isolation from previous convictions—Whether previous convictions to be taken into account by committee—Dentists Act 1957, s 25(1)(a)(2)(a). *Ziderman v General Dental Council* [1976] 2 334, PC.

DENTIST (cont)

Negligence—

Fracture of jaw—

Res ipsa loquitur. *See* **Negligence**—(Res ipsa loquitur—Evidence sufficient to raise presumption—Dentist—Extraction of tooth—Fracture of jaw).

Practice of dentistry by unregistered person—

Practice of dentistry including advice in connection with the fitting of artificial teeth—

Alteration to denture by unregistered person—Whether practice of dentistry—Dentists Act 1921, ss 1, 14(2). *Twyford v Puntschart* [1947] 1 773, KBD.

Practice of dentistry including treatment or attendance in connection with the fitting of artificial teeth—

Repair of denture by unregistered person—Impression of mouth taken—Whether practice of dentistry—Dentists Act 1921, s 1(1), s 14(2). *Almy v Thomas* [1953] 2 1050, QBD.

Professional misconduct—

Infamous or disgraceful conduct in a professional respect—

What constitutes such conduct—Dentist charged with overcharging and wrongful certification under National Health Service—Question of infamous conduct one of mixed fact and law—Degree of culpability—Dentists Act 1957, s 25(1)(b). *Felix v General Dental Council* [1960] 2 391, PC.

DENTISTRY

Practice by unregistered person. *See* **Dentist** (Practice of dentistry by unregistered person).

DEPENDANT

Compensation—

Workman's family—

Entitlement—Workmen's compensation. *See* **Workman's compensation** (Dependants entitled to compensation—Members of workman's family dependant on earnings of the workman at the time of his death).

Damages—

Fatal accident. *See* **Fatal accident** (Damages).

Maintenance—

Family provision. *See* **Family provision** (Dependant).

Will—

Specific donees. *See* **Will** (Gift—Specific donees—Dependants).

DEPORTATION

Colonial legislation. *See* **Statute** (Colonial legislation—Repugnancy—Deportation).

Commonwealth immigrant. *See* **Commonwealth immigrant** (Deportation).

Deportation order—

Extra-territorial effect of order—

Deportation from Palestine—Palestine Defence (Emergency) Regulations 1945, reg 112. *R v Secretary of State for Foreign Affairs and Secretary of State for the Colonies, ex parte Greenberg* [1947] 2 550, Vacation Court.

Fiji—

Immigration ordinance—

Repugnancy. *See* **Fiji** (Deportation—Immigration ordinance—Repugnancy).

Immigrant. *See* **Immigration** (Deportation).

DEPOSIT

Auction—

Auctioneer's lien on deposit for commission and disbursements. *See* **Auctioneer** (Lien—Lien on deposit for commission and disbursements).

Documents of title—

Charge—

Common law retaining lien. *See* **Lien** (Deposit of documents of title).

Sale of land—

Estate agent. *See* **Estate agent** (Deposit).

Generally. *See* **Sale of land** (Deposit).

Purchaser's lien. *See* **Sale of land** (Purchaser's lien—Deposit).

Recovery of deposit. *See* **Sale of land** (Recovery of deposit).

Trustee Savings Bank. *See* **Trustee Savings Bank** (Deposit).

DEPOSITIONS

Committal for trial. *See* **Criminal evidence** (Committal for trial—Depositions).

Evidence at trial. *See* **Criminal law** (Trial—Depositions as evidence).

Preliminary hearing before justices. *See* **Criminal law** (Committal—Preliminary hearing before justices—Depositions).

Summing-up by trial judge—

Reference to depositions. *See* **Criminal law** (Trial—Summing-up—Depositions).

DEPRECIATION ALLOWANCE

Income tax—

Deduction in computing profits. *See* **Income tax** (Deduction in computing profits—Depreciation allowance).

DEPUTY CIRCUIT JUDGE

Mode of address. *See* **Judge** (Circuit judge—Deputy circuit judge—Mode of address).

DERMATITIS

Damages. *See* **Damages** (Personal injury—Dermatitis).

DEROGATION FROM GRANT

Doctrine—

Scope of doctrine—

Whether it extends to conferring right to enter and do work for the advantage of land granted. **Ward v Kirkland** [1966] 1 609, ChD.

DESCENDANT

Meaning—

Will—

Whether including collateral relations. **Re Thurlow (decd)** [1972] 1 10, ChD.

Will—

Gift—

Male descendants. *See* **Will** (Gift—Specific donees—Male descendants).

Specific donees. *See* **Will** (Gift—Specific donees—Descendants).

DESCENT

Heirloom—

Will. *See* **Will** (Heirloom—Descent).

DESCRIPTION

Sale of goods by description. *See* **Sale of goods** (Description).

Trade. *See* **Trade description**.

Vessel—

Charterparty. *See* **Shipping** (Charterparty—Description of vessel).

DESERTER

Armed forces of foreign state. *See* **Constitutional law** (Foreign sovereign state—Armed forces of foreign state—Deserter or absentee without leave from forces of designated country).

DESERTION

Deserted wife's right to remain in matrimonial home. *See* **Husband and wife** (Deserted wife's right to remain in matrimonial home).

Divorce. *See* **Divorce** (Desertion).

Person subject to military law—

Evidence. *See* **Court-Martial** (Evidence—Desertion).

Summary matrimonial jurisdiction. *See* **Husband and wife** (Summary proceedings—Desertion).

Variation of settlement—

Divorce on grounds of husband's desertion—

House purchased by spouses on trust for sale. *See* **Variation of settlement** (Post-nuptial settlement—House purchased by spouses on trust for sale—Divorce on grounds of husband's desertion).

DESIGN

Action to restrain threat of proceedings for infringement—

Counterclaim for infringement—

Counterclaim by plaintiffs for cancellation of registration—Threats admitted at trial—Right of defendants to open case on question of infringement—Registered Designs Act 1949, s 26(2). **W Lusty & Sons Ltd v Morris Wilkinson & Co (Nottingham) Ltd** [1954] 2 347, ChD.

Injunction—

Undertaking (in lieu of injunction) to deliver up machines and drawings—

Enforcement—Order to file affidavit and thereafter make delivery within fixed time. **Kangol Industries Ltd v Alfred Bray & Sons Ltd** [1953] 1 444, ChD.

Innocent infringement—

Circumstances sufficient to put defendant on enquiry—

Onus of proving infringement innocent—Registered design—Failure to make investigation in registry—Whether defence of innocent infringement established—Registered Designs Act 1949, s 9(1)—United Kingdom Designs (Protection) Ordinance of Nigeria (cap 204), s 3. **John Khalil Khawam (trading as John Khalil Khawam & Co) v K Chellaram & Sons (Nig) Ltd** [1964] 1 945, PC.

Practice—

Motion—

Actions and matters relating to registered designs—Procedure—Registered Designs Act 1949—RSC Ord 53F. **Practice Direction** [1960] 3 593, ChD.

Registration—

Article—

Part of an article—Part made and sold separately—Meter for measuring electrical current—Design of front of meter—Front part of meter not intended to be sold separately—Whether front of meter a part 'made and sold separately'—Registered Designs Act 1949, ss 1(1), 44. **Sifam Electrical Instrument Co Ltd v Sangamo Weston Ltd** [1971] 2 1074, ChD.

Boat plans—

Whether registrable. **Dorling v Honnor Marine Ltd** [1964] 1 241, CA.

New or original design—

More mechanical device—Design for fuse for use in vulcanising machine—Novelty claimed only for shape of fuse—Shape already anticipated in other articles in same class—Fuse only for use in a particular type of machine—Shape dictated solely by functional considerations—Patents and Designs Act 1907 (as amended up to May 26, 1938), ss 49(1), 93. **Stenor Ltd v Whitesides (Clitheroe) Ltd** [1947] 2 241, HL.

Prior publication—

Disclosure—Disclosure by person other than the registered proprietor. **Kangol (Manufacturing) Ltd v Centrokromise (London) Ltd** [1937] 3 179, ChD.

DESIGN (cont)

Rules—

Validity—

Rules for preserving validity of design applications pending commencement of new Act—
Validity of Designs Rules 1949 (S I 1949 No 2368), r 26(2). *Usher v Barlow* [1952] 1 205, CA.

DESIGN RULES

See **Design** (Rules).

DESTRUCTION

Gaming machine. *See* **Gaming** (Gaming machine—Forfeiture and destruction).

Obscene publications. *See* **Criminal law** (Obscene publications—Destruction).

Will. *See* **Will** (Revocation—Destruction).

DETENTION

Children and young persons. *See* **Children and young persons** (Detention).

Commonwealth immigrant—

Immigrant refused admission to United Kingdom. *See* **Commonwealth immigrant** (Admission—

Refusal of admission—Removal of immigrant—Detention pending further examination or removal).

Defence regulations. *See* **Emergency legislation** (Detention under defence regulations).

Illegal entrant. *See* **Immigration** (Detention).

DETENTION CENTRE

Consecutive prison sentence. *See* **Sentence** (Consecutive sentences—Prison sentence made consecutive to existing detention centre sentence).

DETENTION ORDER

Mental defective. *See* **Mental health** (Mental defective—Detention order).

DETINUE

Copyright—

Infringing copy—

Remedy of copyright owner. *See* **Copyright** (Infringement—Remedy—Remedy of copyright owner against possessor of infringing copy—Action for conversion or detinue).

Damages—

Assessment—

Assessment of value to be paid in default of return of goods—Value to be assessed as at date of judgment. *Rosenthal v Alderton & Sons Ltd* [1946] 1 583, CA.

Measure of damages—

Detention of goods normally let out on hire—Owner entitled to reasonable hiring charge. *Strand Electric and Engineering Co Ltd v Brisford Entertainments Ltd* [1952] 1 796, CA.

Hire-purchase—Sale of goods by hirer. *See* **Hire-purchase** (Damages—Sale of goods by hirer—Measure of damages in conversion or detinue).

Sale of goods by bailee—Gratuitous bailee—Notification of bailor of intention to terminate bailment—Instructions unobtainable—Sale without instructions—Value of goods—Date at which assessable—Knowledge or supposed knowledge of bailor. *Sachs v Miklos* [1948] 1 67, CA.

Sale of goods by bailee—Gratuitous bailee—Instructions of owner of goods unobtainable—Sale without instructions—Date at which damages assessable—Expenditure by bailee on goods. *Munro v Willmott* [1948] 2 983, KBD.

Demand for delivery of goods—

Refusal to comply with demand—

Interim order for delivery up—Proof of title—Retention by shippers of bills of lading against general balance of consignor's account—Claim by purchaser for delivery of goods from shippers—Need to produce bills of lading. *Trucks & Spares Ltd v Maritime Agencies (Southampton) Ltd* [1951] 2 982, CA.

Nature of demand—Demand for redelivery of goods to place appointed by owners—Demand made in purported pursuance of terminated hire-purchase agreement—Whether any obligation on bailee to return goods to owner—Whether demand sufficient to found action of detinue. *Capital Finance Co Ltd v Bray* [1964] 1 603, CA.

Nature of demand—Instructions to despatch goods to specified destination—Failure to despatch goods—Whether instructions 'demand for delivery up of goods' sufficient to found claim in detinue. *Heskell v Continental Express Ltd* [1950] 1 1033, KBD.

Proprietary interest of demandor—Property had passed to buyer of goods—Arrangement to cancel sale—Seller to collect goods from buyer's agent—Refusal of agent to deliver up goods—Cause of action against agent. *Jarvis v Williams* [1955] 1 108, CA.

Judgment—

Effect—

Judgment for return of chattel or recovery of its specified value—Obligation on defendant to deliver chattel—Chattel immovable without being cut up, but available to be so removed from premises of a third person—In the absence of any positive step by defendant to discharge the obligation to effect delivery of chattel, leave given to issue execution for its value. *Metals & Ropes Co Ltd v Tattersall* [1966] 3 401, CA.

Forms of judgment—

Judgment for return of chattel or recovery of its value and damages for its detention—Entitlement of plaintiff to separate assessments of value and damages—Distinctions between remedies in conversion and in detinue. *General and Finance Facilities Ltd v Cooks Cars (Romford) Ltd* [1963] 2 314, CA.

Limitation period—

When time begins to run. *See* **Limitation of action** (When time begins to run—Actions of tort—Detinue).

DETINUE (cont)

Plaintiff's right to immediate possession of goods—

Plaintiff acquiring goods by illegal transactions—

Defendant withholding possession from plaintiff—Title to motor vehicle acquired by illegal transactions—Whether court will grant relief—*Ex turpi causa non oritur actio*. **Sajan Singh v Sardara Ali** [1960] 1 269, PC.

Proof—

Prima facie case—

Burden shifted to defendant—Failure to return article bailed—Cause of loss explained—Luggage locked in boot of motor coach lost while coach unattended. **Houghland v R R Low (Luxury Coaches) Ltd** [1962] 2 159, CA.

Sheriff—

Writ of fieri facias—

Seizure—Sale on debtor's premises—Goods lost during view—Negligence of sheriff in leaving goods unattended during view. **Watson v Murray & Co** [1955] 1 350, QBD.

DEVALUATION

Sterling—

Contract for sale of goods—

Stipulation as to payment—Currency of account—Waiver. *See* **Contract** (Breach—Waiver—Conduct amounting to waiver—Contract for sale of goods—Stipulation as to payment—Currency of account).

Damages—

Breach of contract—Contract providing for revaluation of currency. *See* **Contract** (Damages for breach—Devaluation—C if contract containing provision for incidence of revaluation of currency).

DEVELOPMENT

Development scheme—

Compulsory purchase in pursuance of scheme—

Assessment of compensation. *See* **Compulsory purchase** (Compensation—Assessment—Development scheme—Compulsory purchase in pursuance of scheme).

Land—

Compensation—

Displacement from land. *See* **Compensation** (Displacement from land).

Restrictive covenant affecting land. *See* **Restrictive covenant affecting land**.

Planning control. *See* **Town and country planning** (Development).

DEVELOPMENT CHARGE

Determination. *See* **Town and country planning** (Development charge).

DEVELOPMENT COUNCIL

See **Industry** (Development council).

DEVELOPMENT PLAN

Schools. *See* **Education** (Development plan).

DEVELOPMENT VALUE

Determination. *See* **Town and country planning** (Development value—Determination).

Unexpended balance. *See* **Town and country planning** (Development value—Unexpended balance of established development value).

DEVIATION

Bill of lading. *See* **Shipping** (Bill of lading—Deviation).

DEVISE

Administration of estate. *See* **Administration of estates** (Devise).

Gift. *See* **Will** (Gift).

DIMINISHED RESPONSIBILITY

Defence. *See* **Criminal law** (Murder—Diminished responsibility).

DIPLOMATIC PRIVILEGE

Generally. *See* **Constitutional law** (Diplomatic privilege).

Wardship proceedings—

Diplomat's child—

Extent of immunity from legal process. *See* **Ward of court** (Jurisdiction—Diplomat's child—Extent of immunity from legal process).

DIRECTIONS

Admiralty proceedings. *See* **Admiralty** (Practice—Directions—Application of Admiralty registrar's practice directions).

Cultivation control. *See* **Cultivation control** (Directions).

Summons—

Failure to take out—

Dismissal of action for. *See* **Practice** (Dismissal of action for want of prosecution—Inordinate delay without excuse—Plaintiffs in default in not proceeding with action).

Summons for directions. *See* **Practice** (Summons for directions).

DIRECTIVES

European Economic Community. *See* **European Economic Community** (Directives).

DIRECTOR

Company—

Confidential information—

Breach of confidence. *See* **Equity** (Breach of confidence—Injunction—Information obtained by director of company).Conspiracy. *See* **Criminal law** (Conspiracy—Company—Director).Generally. *See* **Company** (Director).**DIRECTOR OF PUBLIC PROSECUTIONS**

Consent to institution of proceedings—

Proceedings for gross indecency. *See* **Criminal law** (Gross indecency—Proceedings—Consent of director of Public Prosecutions).**DISABILITY**Aggravation of pre-war disability by war service. *See* **War pension** (Aggravation of injury by war service—Aggravation of pre-war disability).

Deafness—

Arrest of person suffering from—

Conduct of arrest without warrant. *See* **Arrest** (Arrest without warrant—Conduct of arrest—Communication to person being arrested—Arrest of deaf person unable to lip-read).

Inability to speak English—

Arrest of person suffering from—

Conduct of arrest without warrant. *See* **Arrest** (Arrest without warrant—Conduct of arrest—Communication to person being arrested—Arrest of person who cannot speak English).

Person under a disability—

Attendance allowance. *See* **National insurance** (Attendance allowance).Limitation of action. *See* **Limitation of action** (Persons under disability).

Rating relief—

Facilities for disabled person. *See* **Rates** (Structures supplied for use of invalids, disabled or handicapped persons).

War service—

Attributability of injury to war service. *See* **War pension** (Attributability of injury to war service).**DISABLED PERSON**

Structure supplied for relief of disabled person—

Rates—

Relief. *See* **Rates** (Structures supplied for use of invalids, disabled or handicapped persons).**DISABLEMENT**

Benefit—

Industrial injury. *See* **Industrial injury** (Disablement benefit).

War pension—

Claim—

Burden of proof—War pension. *See* **War pension** (Claim—Burden of proof—Disablement).Entitlement. *See* **War pension** (Award of entitlement—Disablement necessary condition of award of entitlement).**DISABLEMENT BENEFIT**Industrial injury. *See* **Industrial injury** (Disablement benefit).**DISCHARGE**Bankrupt. *See* **Bankruptcy** (Discharge).

Contract—

Repudiation. *See* **Contract** (Repudiation).

Custody—

Discharge from custody after committal for contempt of court. *See* **Contempt of court** (Discharge from custody after committal for contempt).Fugitive offender. *See* **Extradition** (Discharge of fugitive).Guarantee. *See* **Guarantee** (Discharge of guarantee).Interlocutory injunction. *See* **Injunction** (Interlocutory—Discharge).

Juror—

Indictment—

Consent certificate. *See* **Indictment** (Consent certificate—Discharge of juror).Mortgage. *See* **Mortgage** (Discharge).

Prison—

Discharge from prison—

Discretion of Prison Commissioners. *See* **Prison** (Discharge from prison—Remission of part of sentence—Discretion of Prison Commissioners).

Prisoner—

Criminal proceedings—

Generally. *See* **Criminal law** (Trial—Discharge of defendant).Postponement of trial. *See* **Criminal law** (Trial—Postponement—Discharge of accused).Writ of sequestration. *See* **Contempt of court** (Sequestration—Discharge of writ of sequestration).**DISCIPLINARY COMMITTEE**General Medical Council. *See* **Medical practitioner** (Disciplinary committee).**DISCIPLINE**

Barrister—

Senate of the Four Inns of Court. *See* **Counsel** (Disciplinary jurisdiction—Senate of the Four Inns of Court).

DISCIPLINE (cont)

Dentist—

Infamous conduct—

Erasure of name from register. *See* **Dentist** (Erasure from register for crime or infamous conduct).

Disciplinary board—

Natural justice. *See* **Natural justice** (Disciplinary board).

Fire brigade. *See* **Fire brigade** (Discipline).Navy. *See* **Navy** (Discipline).Prison. *See* **Prison** (Discipline).Solicitor. *See* **Solicitor** (Disciplinary proceedings).**DISCLAIMER**Bankruptcy. *See* **Bankruptcy** (Disclaimer of onerous property).

Contract—

Administration of estate. *See* **Administration of estates** (Contract entered into by testator—Disclaimer of contract).

Estate duty on disclaimer, as on a gift. *See* **Estate duty** (Disclaimer).False trade description. *See* **Trade Description** (False trade description—Application in course of trade or business—Disclaimer of false trade description).Gift. *See* **Gift** (Disclaimer).Interest on intestacy. *See* **Intestacy** (Interest on intestacy—Disclaimer).

Lease—

War damage. *See* **War damage** (Disclaimer of lease).

Onerous property—

Compulsory winding-up of company. *See* **Company** (Disclaimer of onerous property).

Trade description—

False trade description—

Application in course of trade or business. *See* **Trade description** (False trade description—Application in course of trade or business—Disclaimer).

Will—

Gift. *See* **Will** (Gift—Disclaimer).

DISCLOSURE

Confidential information—

Medical practitioner—

Generally. *See* **Medical practitioner** (Doctor and patient—Disclosure of confidential information).

Venereal disease. *See* **Nullity** (Venereal disease—Disclosure of confidential information by doctor).

Medicine—

Disclosure of composition. *See* **Medicine** (Sale by retail—Disclosure of composition).

Sale of land—

Generally. *See* **Sale of land** (Disclosure).

Vendor's duty to disclose defect in title—

Leasehold. *See* **Sale of land** (Title—Leasehold—Disclosure).

Wardship proceedings—

Official Solicitor's report *See* **Ward of court** (Practice—Official Solicitor's report—Disclosure).

DISCONTINUANCE

Order—

Town and country planning—

Compensation. *See* **Town and country planning** (Discontinuance order—Compensation).

Possession of land—

Dispossession. *See* **Limitation of action** (Land—Discontinuance of possession—Dispossession).

Trade—

Income tax. *See* **Income tax** (Discontinuance of trade).

DISCOUNT

Income tax. *See* **Income tax** (Discounts).

DISCOVERY

Automatic discovery—

Default. *See* **Default**—Automatic discovery, *post*.

Breach of covenant—

Business premises—

Opposition to grant of new tenancy. *See* **Landlord and tenant** (Opposition to grant of new tenancy of business premises—Breach of covenant—Discovery).

Confidential use of documents disclosed. *See* **Production of documents**—Confidence, *post*.

Crown privilege—

Rules of court—

Power of Rules Committee. *See* **Statutory instrument** (Rules of court—Power of Rules Committee—Power to make rule relating to production of documents and Crown privilege).

Default—

Automatic discovery—

Failure to deliver list of documents—Right of party to apply for dismissal of action without obtaining an order for discovery—Condition imposed as term for not dismissing action—RSC Ord 24, rr 2(1), 3(1), 17(1). **Chipchase v Rosemond** [1965] 1 145, ChD.

DISCOVERY (cont)

Default (cont)—

Defendant debarred from defending in default of discovery—

County court order that 'defence be struck out' in default of discovery—Whether order valid and effective as order debaring defendant from defending. *See County court* (Order debaring defendant from defending in default of discovery—Order that be struck 'defence be struck out' in default of discovery).

Failure to comply with order for discovery—

Effect—Jurisdiction of court—Jurisdiction to make such order as it thinks just—Compliance with order imminent—Order by way of penalty—Order for discovery made against defendant—Defendant complying with order out of time—Defendant ordered to pay balance of plaintiff's claim into court or be debarred from defending—Whether order proper—RSC Ord 24, r 16(1). *Husband's of Marchwood Ltd v Drummond Walker Developments Ltd* [1975] 2 30, CA.

Defendant for purposes of discovery only—

No reasonable cause of action against party from whom discovery sought—

Purpose of order to obtain information so that proceedings may be brought against third parties—Circumstances in which order may be made—Defendant having innocently facilitated commission of wrongful acts—Commissioners of Customs and Excise—Information in possession of commissioners including names of importers of goods—Information obtained under statutory powers—Importation of goods constituting an infringement of plaintiffs' patent—Plaintiffs seeking order for discovery against commissioners to enable plaintiffs to proceed against importers. *Norwich Pharmacal Co v Comrs of Customs and Excise* [1973] 2 943, HL.

Discovery against parties to proceedings—

Party—

Defendant in default of appearance—Defendant not a proper party to action—Whether discovery should be ordered against defendant. *Gould v National Provincial Bank Ltd* [1960] 1 544, ChD.

Party in representative capacity—

Executor defendants sued on alleged oral contract as representing the estate of the deceased—First defendant a solicitor—Second defendant the widow of the deceased—Second defendant given documents in her individual capacity—First defendant having knowledge as partner in firm of solicitors for clients owning the documents, but not parties to the action—No cleavage between second defendant's representative and individual capacities—Order made on second defendant for discovery—RSC, Ord 6, r 3, Ord 24, r 7. *Buchanan-Michaelson v Rubinstein* [1964] 3 850, ChD, [1965] 1 599, CA.

Discovery against persons not parties to proceedings—

Claim in respect of personal injuries or death—

Extent of discovery—Medical records—Disclosure to party's medical advisers only—Circumstances in which disclosure to legal advisers or to party himself should be ordered—Administration of Justice Act 1970, s 32(1). *Davidson v Lloyd Aircraft Services Ltd* [1974] 3 1, CA.

Meaning of 'in respect of'—Claim for personal injuries against hospital—Plaintiff's solicitors allowing claim to become statute-barred—Action against solicitors for breach of duty—Documents relating to injury in possession of hospital—Application for order for discovery against hospital—Whether claim against solicitors claim 'in respect of' personal injuries—Administration of Justice Act 1970, s 32(1). *Paterson v Chadwick* [1974] 2 772, QBD.

Non-party in form but party in substance—

Solicitor instructed by insurance company to act on behalf of motorist—Agreement giving company absolute and complete control of proceedings—Demand by motorist for production and inspection of documents relating to trial. *Re Crocker* [1936] 2 899, ChD.

Discovery on summons for directions—

Factors to be considered—

Action on a contract—Documents relevant only to amount recoverable if contract proved—Not necessary at interlocutory stage or to save costs—RSC Ord 24, r 7(1), r 8. *Buchanan-Michaelson v Rubinstein* [1965] 1 599, CA.

Divorce proceedings. *See Divorce* (Discovery).

Duty of solicitor—

Ensuring that clients appreciate their duty in regard to disclosure on discovery—

Wide scope of discovery—Preservation of relevant documents that might otherwise be subject to destruction in accordance with business routine. *Rockwell Machine Tool Co Ltd v E P Barrus (Concessionaires) Ltd* [1968] 2 98, ChD.

Exclusion of right to discovery—

Action to enforce penalty—

Other remedies sought—Discovery of documents relating to other claims—Gasworks Clauses Act 1847, ss 21, 23—Waterworks Clauses Act 1847, ss 62, 63. *Colne Valley Water Co v Watford and St Albans Gas Co* [1948] 1 104, CA.

Execution—

Discovery in aid of execution. *See Execution* (Discovery in aid of execution).

Income tax—

Additional assessment. *See Income tax* (Additional assessment—Discovery).

Intention of landlord to occupy premises—

Opposition to grant of new tenancy. *See Landlord and tenant* (Opposition to grant of new tenancy of business premises—Intention of landlord to occupy holding for purpose of a business to be carried on by him—Discovery relating to intention to occupy).

DISCOVERY (cont)

Interlocutory motion—

Jurisdiction—

Infringement of copyright—Defendant in possession of infringing copies—Plaintiffs seeking on motion order for disclosure of information as to suppliers—Strong prima facie case of infringement—Jurisdiction to order discovery on motion—Order limited to names and addresses known to defendant. **RCA Corporation v Reddingtons Rare Records** [1975] 1 38, ChD.

Interrogatory—

Examination of 'opposite parties'—

Joint tortfeasors—Administration of interrogatories by one tortfeasor to another—Necessity of notice—RSC Ord 31, r 1. **Clayson v Rolls Royce Ltd** [1950] 2 884, CA.

Imputation of unchastity—

Objection to answer on ground that answers might tend to prove adultery and to expose to risk of ecclesiastical penalties. **Blunt v Park Lane Hotel Ltd, and Briscoe** [1942] 2 187, CA.

Answer amounting to acknowledgment of debt for limitation purposes. *See* **Limitation of action** (Acknowledgment—Interrogatory—Interrogatory to obtain evidence that document written before issue of writ amounted to acknowledgment).

Interrogatory as to state of person's health—

Answer to interrogatory dependent on expert opinion—Admissibility. **Model Farm Dairies (Bournemouth) Ltd v Newman** [1942] 2 445, CA.

Interrogatories to executors—

Matters believed by deceased—Matters of expert opinion—RSC Ord 31, r 2. **Rofe v Kevorkian** [1936] 2 1334, CA.

Negligence action—

Interrogatory to defendant as to statements at coroner's inquest—Coroner's notes of his deposition appended to interrogatory—Defendant asked whether he made statements attributed to him by coroner—Whether interrogatory allowed. **Sloan v Hanson** [1939] 1 333, CA.

Interrogatory to defendant as to statement made by employee at coroner's inquest—Defendant asked to admit statements made by their employee at inquest—Employee not an agent to make admissions—Interrogatory not allowed. **Burr v Ware Rural District Council** [1939] 2 688, CA.

Privilege—

Communications between spouses—Privilege claimed by widow in respect of communication during marriage—Evidence Amendment Act 1853, s 3. **Shenton v Tyler** [1939] 1 827, CA.

Incriminating interrogatories—Libel—Undertaking not to prosecute—Right of company to assert privilege. **Triplex Safety Glass Co Ltd v Lancegaye Safety Glass (1934) Ltd** [1939] 2 613, CA.

Legal professional privilege—Communication between solicitor and client—Authority to solicitor to settle claim—Interrogatory as to whether authority given. **Conlon v Conlons Ltd** [1952] 2 462, CA.

Legal professional privilege—

Accident report—

Report obtained for the purpose of advice from solicitor concerning anticipated litigation, and for other purposes—Whether report privileged. **Seabrook v British Transport Commission** [1959] 2 15, QBD.

Report of private inquiry—Private inquiry held by British Transport Commission into cause of accident—Privilege claimed in affidavit on ground that purpose of report 'inter alia' to furnish evidence and information to commission's solicitor—Statement in report that plaintiff told purpose of inquiry not to establish guilt but cause of accident—Whether claim of privilege established by affidavit—Whether report itself privileged. **Longthorn v British Transport Commission** [1959] 2 32, QBD.

Affidavit and list of documents in support of claim—

Need to be specific—Need to state clearly circumstances giving rise to claim for privilege—Commissioners of Customs and Excise—Communications between officers of commissioners and solicitor—Communications in anticipation of arbitration proceedings—Claim made in wide and equivocal terms—Uncertainty whether including documents not attracting privilege. **Alfred Crompton Amusement Machines Ltd v Comrs of Customs and Excise** [1971] 2 843, QBD.

Communications between defendant and insurers—

Communications before plaintiffs' formal claim—RSC Ord 31, r 19A(2). **Westminster Airways Ltd v Kuwait Oil Co Ltd** [1950] 2 596, CA.

Communication between legal adviser and client—

Authority to solicitor to settle claim—Interrogatory as to whether authority given. *See* **Interrogatory—Privilege—Legal professional privilege—Communication between solicitor and client—Authority to solicitor to settle claim, ante.**

Communications between legal adviser and client—

Salaried legal adviser—Legal adviser employed full-time by client—Solicitor or barrister employed in legal department of government department or commercial concern—Communications between legal adviser and employer privileged so long as legal adviser acting in that capacity. **Alfred Crompton Amusement Machines Ltd v Comrs of Customs and Excise (No 2)** [1972] 2 353, CA.

Communications between parties to litigation—

Accident in course of employment—Contemporaneous statement made by plaintiff to defendant employers' insurers—Made in anticipation of litigation—Whether privileged. **Britten v F H Pilcher & Sons** [1969] 1 491, QBD.

DISCOVERY (cont)

Legal professional privilege (cont)—

Communications by party to proceedings—

Bank's internal memoranda—Correspondence between branch manager and district head office—Action against bank for negligent advice given by branch manager—Whether memoranda and correspondence privileged. *Woods v Martins Bank Ltd* [1958] 3 166, Assizes.

Communications coming into existence after litigation anticipated—

Communications not prepared primarily with a view to litigation—Commissioners of Customs and Excise—Investigations by commissioners to fix wholesale value of goods for purpose of assessing purchase tax—Documents consisting of internal memoranda prepared within commissioners' department in course of investigations—Documents obtained primarily to enable commissioners to fix wholesale value—Documents also obtained as material to place before commissioners' solicitor should litigation result. *Alfred Crompton Amusement Machines Ltd v Comrs of Customs and Excise (No 2)* [1972] 2 353, CA.

Moment from which litigation anticipated—Anticipation when some definite prospect of litigation and before cause of action, or part of it, has arisen—Commissioners of Customs and Excise—Purchase tax—Arrangement between taxpayer and commissioners in 1964 as to calculation of wholesale value of taxpayer's goods—Letter from taxpayer's solicitors in July 1967 challenging arrangement—Investigations carried out thereafter by commissioners as to wholesale value—Commissioners giving formal opinion as to wholesale value in December 1969—Taxpayer disputing assessment and requiring reference to arbitration—Whether arbitration proceedings anticipated by commissioners from July 1967 or from December 1969. *Alfred Crompton Amusement Machines Ltd v Comrs of Customs and Excise (No 2)* [1972] 2 353, QBD and CA.

Report of accountants concerning construction of article of company—Report ordered before but delivered after commencement of proceedings—Position of directors in respect of privileged documents. *W Dennis & Sons Ltd v West Norfolk Farmers' Manure and Chemical Co-operative Co Ltd* [1943] 2 94, ChD.

Communications with counsel—

Instructions for brief—Whether respondent to party and party taxation (co-respondent in divorce suit) entitled to inspect brief delivered to petitioner's counsel. *Hobbs v Hobbs and Cousens* [1959] 3 827, Div.

Communications with foreign lawyers—

Documents coming into existence for the purposes of proceedings contemplated in foreign court—Action in England—Contemplated foreign litigation relating to same subject of dispute—English proceedings not contemplated—RSC Ord 24, r 7. *Re Duncan (decd)* [1968] 2 395, Prob.

Director of Public Prosecutions—

Whether director entitled to legal professional privilege. *Auten v Rayner* [1960] 1 692, QBD.

Document coming into existence after litigation anticipated—

Document not prepared primarily with view to litigation—Commissioners of Customs and Excise—Purchase tax—Documents coming into existence for purpose of fixing wholesale value of taxpayer's goods—Commissioners anticipating that valuation would be disputed by taxpayer and that arbitration proceedings would follow—Documents also for use of legal advisers in anticipated arbitration proceedings—Whether documents subject of legal professional privilege. *Alfred Crompton Amusement Machines Ltd v Comrs of Customs and Excise (No 2)* [1973] 2 1169, HL.

Document prepared with a view to litigation—

Document prepared by plaintiff for purpose of instructing solicitor and obtaining advice—Tape recording by plaintiff of conversation with defendant—Whether tape recording a document prepared by plaintiff for solicitor. *Grant v Southwestern and County Properties Ltd* [1974] 2 465, ChD.

Hospital case notes—Copy prepared by plaintiff's solicitors for purposes of action for damages for personal injuries. *Watson v Cammell Laird & Co (Shipbuilders & Engineers) Ltd* [1959] 2 757, CA.

Medical reports—Report concerning hospital treatment resulting in injury—Written statements made by medical staff pursuant to administrative memorandum—Statements made before litigation pending—Whether statements privileged. *Patch v United Bristol Hospitals Board* [1959] 3 876, Assizes.

Extent of privilege—

Accountant's documents incidental to audit of client's accounts—Correspondence with Inland Revenue regarding client's liability to tax—Whether privileged. *Chantrey Martin & Co v Martin* [1953] 2 691, CA.

Report prepared for action for personal injuries—Report alleged by plaintiff to be libellous of him—Action for libel—Whether report privileged in libel action. *Schneider v Leigh* [1955] 2 173, CA.

Legal advice obtained in furtherance of crime or fraud—

Loss of privilege—Fraud—Scope—Fraud not extending to every act or scheme giving rise to civil liability—Client obtaining advice on title to land and validity of pre-emption clause in favour of plaintiff—Sale of land by clients to third party—Claim by plaintiff against clients and third party for breach of pre-emption clause, inducement of breach of contract and conspiracy—Whether claims amounting to allegation of fraud—Whether privilege lost. *Crescent Farm (Sidcup) Sports Ltd v Sterling Offices Ltd* [1971] 2 1192, ChD.

Loss of privilege—

Fraud or illegality. *See* Legal professional privilege—Legal advice obtained in furtherance of crime or fraud—Loss of privilege, *ante*.

Negotiations without prejudice—

Document obtained as result of negotiations—RSC Ord 31, r 18. *Rabin v Mendoza & Co* [1954] 1 247, CA.

DISCOVERY (cont)

Legal professional privilege (cont)—

Successor in title of client—

Legal advice obtained when litigation not pending—Communication to third party—Counsel's opinion as to title of land—Client wishing to sell to third party land subject to right of pre-emption clause—Client entering into conditional contract for sale of land to third party—Client passing to third party counsel's opinion together with conveyancing documents—Whether privilege attached to counsel's opinion enuring for benefit of third party as successor in title. **Crescent Farm (Sidcup) Sport Ltd v Sterling Offices Ltd** [1971] 3 1192, ChD.

Waiver—

Effect—Plaintiff company calling their solicitor to give evidence of telephone conversation between him and their managing director—Waiver of privilege in respect of matters dealt with in conversation—Extent of waiver—Whether including documents coming into existence after litigation anticipated. **George Doland Ltd v Blackburn Robson Coates & Co (a firm)** [1972] 3 959, QBD.

Marine insurance actions—

Order for ship's papers—

Order before delivery of defence—Scuttling cases—When order should be made—Factors to be considered by judge—Factors to be considered in deciding whether to order stay pending compliance with order for ship's papers—RSC Ord 72, r 10(1)(2). **Probatina Shipping Co Ltd v Sun Insurance Office Ltd** [1974] 2 478, CA.

When discovery ordered—Discretion of judge—RSC Ord 31, rr 12, 12A, 14. **Keevil and Keevil Ltd v Boag** [1940] 3 346, CA.

Privilege—

Communications between spouses—

Interrogatory. *See* Interrogatory—Privilege—Communications between spouses, *ante*.

Communications with agents with a view to litigation—

Proceedings before Industrial Court and tribunals—Communications with agents other than legal advisers—Communications with a view to litigation—Whether privileged. **M & W Grazebrook Ltd v Wallens** [1973] 2 868, NIRC.

Confidential documents—

Documents obtained in confidence from third parties for purposes of litigation—Documents copies of documents belonging to third parties—Whether confidential nature of documents a ground of privilege. **Alfred Crompton Amusement Machines Ltd v Comrs of Customs and Excise (No 2)** [1973] 2 1169, HL.

Documents obtained in confidence and for limited purpose—Documents obtained under statutory powers—Commissioners of Customs and Excise—Information relating to importation of goods—Importation of goods constituting an infringement of plaintiffs' patent—Plaintiffs wishing to obtain information as to names of importers in order to bring proceedings against them—Whether commissioners privileged from disclosing information on grounds of public interest. **Norwich Pharmacal Co v Comrs of Customs and Excise** [1972] 3 813, CA.

Documents obtained in confidence from third parties for purposes of litigation—Party to litigation not obliged to produce documents or copies entrusted to his custody by third party in confidence—Obligation to disclose existence of documents—Power of court to order production of confidential documents if in public interest. **Alfred Crompton Amusement Machines Ltd v Comrs of Customs and Excise (No 2)** [1972] 2 353, CA.

Documents obtained under statutory powers—Commissioners of Customs and Excise—Information relating to importation of goods—Importation of goods constituting an infringement of plaintiffs' patent—Plaintiffs wishing to obtain information as to names of importers in order to bring proceedings against them—Whether commissioners privileged from disclosing information on grounds of public interest. **Norwich Pharmacal Co v Comrs of Customs and Excise** [1973] 2 943, HL.

Documents relating solely to defendant's case—

Medical reports—Order for exchange—Validity—RSC Ord 30, r 6(1), (4). **Worrall v Reich** [1955] 1 363, CA.

Police officer's notebook—Action against officer—Claim for damages for false imprisonment. **Brooks v Prescott** [1948] 1 907, CA.

Exposure of party to forfeiture—

Landlord and tenant—Forfeiture of lease for breach of covenant—Tenant's counterclaim for relief against forfeiture—Reply by landlord alleging financial unsoundness of tenant—Matters arising other than forfeiture issue—Discovery limited to such matters. **Mascherpa v Direck Ltd** [1960] 2 145, CA.

Incriminating matter—

Matter relevant to issues revised by defence—Part of form—Alleged scandalous matter disentitling author to copyright. **Sitewell v Sun Engraving Co Ltd** [1937] 4 366.

Inspection of documents by court—

Inspection to ascertain whether claim properly made—Circumstances in which court's power to inspect documents should be exercised. **Alfred Crompton Amusement Machines Ltd v Comrs of Customs and Excise (No 2)** [1972] 2 353, CA.

Inspection to ascertain whether claim properly made. **Westminster Airways Ltd v Kuwait Oil Co Ltd** [1950] 2 596, CA. **Conway v Rimmer** [1968] 2 304, HL.

Necessity for inspection by, or report to, judge—Reference to privileged matter in other proceedings—Waiver of privilege—RSC Ord 31, r 19A(2). **Infields Ltd v P Rosen & Son** [1938] 3 591, CA.

Interrogatory. *See* Interrogatory—Privilege, *ante*.Legal professional privilege. *See* Legal professional privilege, *ante*.

Local authority—

Correspondence between departments—Correspondence between authority and Minister of Health—Reports and proceedings of committees of authority. **Blackpool Corp v Locker** [1948] 1 85, CA.

DISCOVERY (cont)

Privilege (cont)—

Production contrary to public interest—

Affidavit in support of claim—Affidavit not required to be made by Minister—Sufficient if made by head of department or other responsible official. **Alfred Crompton Amusement Machines Ltd v Comrs of Customs and Excise (No 2)** [1972] 2 353, CA.

Claim by head of department—Commissioners of Customs and Excise—Certificate claiming privilege made by chairman of board of Customs and Excise—Chairman effective head of department. **Crompton (Alfred) Amusement Machines Ltd v Commissioners of Customs and Excise** [1971] 2 843, QBD.

Class of documents—Affidavit in support of claim—Claim of privilege made on instruction of government department—Subsequent affidavit by Minister supporting claim that document privileged as belonging to a privileged class—Affidavit insufficient as not showing claim was Minister's personal unbiased decision, and not specifying nature of class of documents. **Re Grosvenor Hotel, London** [1964] 1 92, CA.

Class of documents—Certificate of Home Secretary claiming Crown privilege for file of documents relating to plaintiffs' case—Specific nature of documents not stated—Sufficiency of certificate. **Merricks v Nott-Bower** [1964] 1 717, CA.

Class of documents—Class must be shown to consist only of documents compatible with claim to privilege—Documents relating to the framing of policy for the exercise of a statutory power conferred by Transport Act 1962, s 33(3)—Whether claim duly made. **Re Grosvenor Hotel, London (No 2)** [1964] 3 354, CA.

Class of documents—Communications between Minister of Transport, Treasury Solicitor and railway authority—Conclusiveness of certificate of Minister—Documents relating to framing of policy for the exercise of a statutory power—Whether court has residual jurisdiction to override certificate and to require production—Transport Act 1962, s 33(3)—RSC Ord 24, r 15. **Re Grosvenor Hotel, London (No 2)** [1964] 3 354, CA.

Class of documents—Commissioners of Customs and Excise—Claim that disclosure would reveal commissioners' method of investigation, reduce traders' co-operation and hamper collection of information—Whether privilege can be claimed on a class basis. **Crompton (Alfred) Amusement Machines Ltd v Commissioners of Customs and Excise** [1971] 2 843, QBD.

Class of documents—Local government inquiry—Departmental briefs for guidance of inspectors—Correspondence between inspectors and Ministry of Housing and Local Government—Conclusiveness of certificate of Minister—Whether production of documents necessary in interest of justice—Local Government Act 1958, s 23(2)—RSC Ord 24, r 8, r 15. **Wednesbury Corp'n v Ministry of Housing and Local Government** [1965] 1 186, CA.

Documents containing information obtained under statutory powers—Confidential information obtained from third parties—Commissioners of Customs and Excise—Purchase tax—Information obtained from customers of taxpayers—Knowledge of third parties that information could be disclosed likely to hamper future exercise of statutory duties by commissioners. **Alfred Crompton Amusement Machines Ltd v Comrs of Customs and Excise (No 2)** [1973] 2 1169, HL.

Exclusion of oral evidence of witness relating to document. **Gain v Gain** [1962] 1 63, Div.

Extent of privilege—Oral evidence of witness under subpoena—Application by Crown to set aside subpoena. **Broome v Broome (Edmundson cited)** [1955] 1 201, Div

Information obtained by Gaming Board from police—Letter giving information on character and reputation of applicant for certificate of consent—Alleged criminal libel in letter—Police under no duty to supply information to board—Information essential to proper functioning of board—Public interest requiring such information be immune from disclosure—Ground of immunity not properly described as Crown privilege. **Rogers v Secretary of State for the Home Department, Gaming Board for Great Britain v Rogers** [1972] 2 1057, HL.

Injurious to the public interest—Factors to be considered—Crown Proceedings Act 1947, s 28(1). **Ellis v Home Office** [1953] 2 149, CA.

Persons entitled to resist discovery on ground of public interest—Bodies other than central departments of government—Society incorporated by royal charter for protection of children—Society having limited statutory power—Confidential information—Undertaking by society not to disclose identity of informant—Society authorised by Secretary of State to bring care proceedings in juvenile courts—Proceedings against society—Whether privilege from discovery on ground of public interest limited to central departments of government—Whether society entitled to resist disclosure of identity of informant on ground of public interest. **D v National Society for the Prevention of Cruelty to Children** [1976] 2 993, CA.

Police records—Fraud against police officer alleged—Certificate of Minister of Crown that production would not be in public interest—Remote personal and business relationship of Minister to defendant—Bias of Minister—Finality of certificate. **Auten v Rayner** [1958] 3 566, CA.

Practice of court—RSC Ord 31, r 19A(2). **Duncan v Cammell Laird & Co Ltd** [1942] 1 587, HL.

Practice on taking objection to production. **Re Grosvenor Hotel, London (No 2)** [1964] 3 354, CA.

Probationary reports on probationer police constable—Report of superintendent of police to chief constable for purpose of obtaining advice of Director of Public Prosecutions—Jurisdiction of court to decide whether, on balance of public interests, document should be disclosed—Certificate of Home Secretary not conclusive—Documents to be produced for inspection by the court. **Conway v Rimmer** [1968] 1 874, HL.

Right of Attorney-General to claim privilege in face of court without swearing an affidavit. **Auten v Rayner** [1960] 1 692, QBD.

DISCOVERY (cont)

Privilege (cont)—

Statutory secrecy—

Return to Potato Marketing Board—Refusal of marketing board official to produce—Agricultural Marketing Act 1931, s 17—RSC Ord 39, r 6. **Rowell v Pratt** [1937] 3 660, HL.

Waiver of privilege—

Medical reports—Agreement to exchange reports—Action by plaintiff for personal injuries—Defendants obtaining medical reports on plaintiff—Plaintiff disclosing his reports at defendants' request—Plaintiff disclosing reports with view to agreeing them—Whether production of plaintiff's reports giving rise to implied agreement to exchange reports—Whether production amounting to waiver by defendants of privilege attaching to their medical reports. **Causton v Mann Egerton (Johnsons) Ltd** [1974] 1 453, CA.

Proceedings begun by originating summons—

Circumstances in which discovery will be ordered—

Discovery to be ordered unless good reason why discovery should not be ordered. **Coni v Robertson** [1969] 2 609, ChD.

Special circumstances—Application under Inheritance (Family Provision) Act 1938—R S C Ord 54F, rr 1, 14. **Re Borthwick (decd)** [1948] 2 179, ChD.

Special circumstances—Application under s 209 of Companies Act 1948—Whether special circumstances. **Re Press Caps Ltd** [1948] 2 638, ChD.

Special circumstances—Landlord and tenant—New tenancy—Originating summons adjourned into court for trial with witnesses—Whether special circumstances—Landlord and Tenant Act 1954, s 30(1)(f). **Wine Shippers (London) Ltd v Bath House Syndicate Ltd** [1960] 3 283, CA.

Special circumstances—Landlord and tenant—New tenancy—Whether special circumstances. **John Miller (Shipping) Ltd v Port of London Authority** [1959] 2 713, ChD, **Re St Martin's Theatre** [1959] 3 298, ChD.

Production of documents—

Action for negligence against manufacturers—

Dermatitis alleged to be due to product—Application for production of complaints after date of purchase of product—Form of order. **Board v Thomas Hedley & Co Ltd** [1951] 2 431, CA.

Confidence—

Implied undertaking—Implied undertaking not to make improper use of disclosed documents—Further undertaking unnecessary, except in special cases. **Altersyke v Scott** [1948] 1 469, ChD.

Implied undertaking—Third party—Public interest in disclosure of information—Implied undertaking by party obtaining discovery not to use documents for collateral purpose—Duty of third party to whom documents passed—Documents disclosed by defendants in action passed to newspaper publishers—Action raising matters of general public interest—Publishers proposing to publish article dealing with matters raised by action—Article making use of information obtained from defendants' documents—Article critical of defendants—Public interest in proper administration of justice—Whether publishers under a duty not to use documents for purposes other than purpose for which discovery made—Whether publishers entitled to use documents for ulterior purpose when disclosure in public interest. **Distillers Co (Biochemicals) Ltd v Times Newspapers Ltd** [1975] 1 41, QBD.

County court. *See* County court (Production of document).

Document—

Meaning—Tape recording—Tape recording of conversation between parties—Whether tape recording a 'document'—R S C Ord 24, r 10(1). **Grant v Southwestern and County Properties Ltd** [1974] 2 465, ChD.

Exhibit—

Trustee applying for directions whether to institute action against two respondent beneficiaries—Whether the two beneficiaries entitled to production and inspection of exhibits to affidavits in support of summons—Exhibits relating to evidence supporting action. **Re Moritz (decd)** [1959] 3 767, ChD.

Failure to obtain document by discovery before trial—

Application to adduce document as fresh evidence on appeal. *See* Court of Appeal (Evidence—Further evidence—Document—Discovery).

Foreign proceedings. *See* Evidence (Foreign tribunal—Examination of witness in relation to matters pending before foreign tribunal—Production of documents).

Inspection—

Objection to production for inspection—Professional lien—Inspection having effect of defeating lien—Inspection necessary for disposing fairly of action—Action by client against accountant for return of papers—Accountant claiming right of lien over papers in respect of unpaid fees—Accountant counterclaiming fees—Client wishing to obtain information in papers rather than papers themselves—Whether inspection should be ordered—RSC Ord 24, r 13(1). **Woodworth v Conroy** [1976] 1 107, CA.

Notice to produce—

Confidential medical report regarding mental defective—R S C Ord 31, r 16. **R v Statutory Visitors to St Lawrence's Hospital, Caterham, ex parte Pritchard** [1953] 2 766, QBD.

Objection to production—

Finding of court of first instance that no proper objection to production had been made—Opportunity for making such objection allowed—Appeal—Discretion of court—No ground for interfering with exercise of discretion. **Re Grosvenor Hotel, London** [1964] 1 92, CA.

Order for production for inspection—

Banker's books—Bank carrying on investment business—Inspection of entries relating to transactions with customers other than the plaintiff—Interrogatory in lieu of inspection—R S C Ord 31, r 19A (3). **Thornett v Barclays Bank (France) Ltd** [1939] 2 163, CA.

DISCOVERY (cont)

Production of documents (cont)—

Privilege—

Generally. *See* Privilege, *ante*.Legal professional privilege. *See* Privilege (Legal professional privilege).

Production before commencement of proceedings—

Claim in respect of personal injuries—Discretion—Circumstances in which discovery should be ordered—Duty of proposed plaintiff to set out in writing nature of allegation so as to show documents might be material to claim—Legally aided plaintiff—Desirability of early disclosure which might affect continuance of claim—Likelihood of documents showing whether substantial prospect of success—Discovery likely to assist in disposing fairly of dispute or result in saving of costs—Administration of Justice Act 1970, s 31—R S C Ord 24, r 8. **Shaw v Vauxhall Motors Ltd** [1974] 2 1185, CA.

Claim in respect of personal injuries—Medical records—Disclosure to prospective plaintiff's medical adviser only—Use of documents—Plaintiff not bound by medical expert's report—Right of plaintiff's counsel to question expert in relation to records to determine whether a case. **Deistung v South Western Metropolitan Regional Hospital Board** [1975] 1 573, CA.

Claim in respect of personal injuries—Production where claim likely to be made in subsequent proceedings—Likely to be made—Likelihood of claim depending on outcome of discovery—Claim likely to be made if documents on discovery indicating good cause of action—Whether court precluded from ordering production if only basis for saying claim not likely is absence of documents sought to be discovered—Administration of Justice Act 1970, s 31. **Dunning v Board of Governors of the United Liverpool Hospital** [1973] 2 454, CA.

Production before delivery of statement of claim—

Exceptional circumstances—R S C Ord 31, r 14. **Speyside Estate and Trust Co Ltd v Raymond Freeman (Blenders) Ltd** [1949] 2 796, ChD.

Production for inspection of documents referred to in pleadings or affidavits—

Reference to document—Record of conversation—Tape recording—Allegation in pleading that conversation between parties 'was being recorded'—Whether tape recording a document to which 'reference is made' in pleading—R S C Ord 24, r 10. **Grant v Southwestern and County Properties Ltd** [1974] 2 465, ChD.

Similar cases—

Relevance—Action by insurance company to avoid a policy—Non-disclosure of convictions of motoring offences—Application for discovery of documents in similar cases—Road Traffic Act 1934, s 10(3). **Merchants' and Manufacturers' Insurance Co Ltd v Davies** [1937] 2 767, CA.

Relevance—Action for damages for negligence—Master and servant—Application for discovery of documents concerning accidents of the same type—R S C Ord 31, r 12. **Edmiston v British Transport Commission** [1955] 3 823, CA.

Relevance—Discovery directed solely to credit—Passing-off action—Allegation in statement of claim that defendant supplied Scotch whisky to importers in specified countries for admixture with local spirits—Admixture passed off in those countries as genuine Scotch whisky—Application by plaintiffs for discovery of other documents alleged to relate to similar transactions in order countries and in connection with other spirits—Evidence of defendants' knowledge of and complicity of foreign importers—Whether discovery should be ordered. **George Ballantine & Son Ltd v F E R Dixon & Son Ltd** [1974] 2 503, ChD.

Relevance of documents—

Libel—

Malicious falsehood—Damage—General damage—No special damage alleged—Action by actress alleging injury in way of her profession—Whether discovery of documents relating to earnings before date of publication should be ordered—Defamation Act 1952, s 3(1)(b). **Calvet v Tomkies** [1963] 3 610, CA.

Ship's papers. *See* Marine insurance actions—Order for ship's papers, *ante*.**DISCRETION**

Adoption—

Making of order. *See* Adoption (Order—Discretion).Appeal against exercise of discretion. *See* Appeal (Review of exercise of discretion).

Care and control order in respect of infant—

Appeal—

Review of exercise of discretion. *See* Appeal (Discretion—Review of exercise of discretion—Duty of appellate court—Infant—Care and control order).

Certiorari—

Refusal—

Delay in application. *See* Certiorari (Delay—Discretion—Refusal of order).

Charging order—

Land. *See* Execution (Charging order—Land—Discretion).

Costs—

Collision at sea—

Wreck commissioner. *See* Shipping (Collision—Costs—Discretion of wreck commissioner).

County court. *See* County court (Costs—Discretion).

Criminal proceedings—

Acquittal. *See* Criminal law (Costs—Acquittal—Discretion).

Divorce—

Co-respondent. *See* Divorce (Costs—Co-respondent—Discretion).Generally. *See* Divorce (Costs—Discretion of court).Generally. *See* Costs (Order for costs—Discretion of judge).

Order for costs—

Legal aid. *See* Legal aid (Order for costs—Exercise of discretion).

DISCRETION (cont)

Costs (cont)—

Taxation. *See* **Costs** (Taxation—Discretion).

County court—

New trial. *See* **County court** (New trial—Discretion of county court judge to allow).Declaration. *See* **Declaration** (Discretion to grant).

Divorce—

Discretion statement. *See* **Divorce** (Discretion—Discretion statement).

Foreign decree—

Discretion to refuse to recognise. *See* **Divorce** (Foreign decree—Recognition by English court—Discretion to refuse to recognise divorce).Generally. *See* **Divorce** (Discretion).

Petition within three years of marriage—

Discretion to allow. *See* **Divorce** (Petition—Petition within three years of marriage—Discretion to allow).Substitution of decree of judicial separation for decree nisi. *See* **Divorce** (Decree nisi—

Substitution of decree of judicial separation—Discretion).

Evidence—

Hearsay evidence—

Civil proceedings—Discretion of court to admit where no notice of intention given. *See* **Document** (Admissibility in evidence—Out-of-court statement—Notice of intention to give in evidence—Discretion of court to admit even though notice not given).

Extension of time for appeal—

Court of Appeal. *See* **Court of Appeal** (Time for appeal—Extension of time for appeal—Discretion).

Extradition—

Discharge of fugitive. *See* **Extradition** (Discharge of fugitive—Discretion of court).

Family provision—

Extension of time for application. *See* **Family provision** (Time for application—Extension—Discretion of court).Small estate. *See* **Family provision** (Small estate—Discretion).

Forfeiture of lease—

Arrears of rent—

Relief. *See* **Landlord and tenant** (Relief against forfeiture—Arrears of rent—Discretion).

Immigration officer—

Admission of Commonwealth immigrant. *See* **Commonwealth immigrant** (Admission—Refusal of admission—Discretion of immigration officer).

Immoral user of premises—

Forfeiture of lease—

Relief. *See* **Landlord and tenant** (Relief against forfeiture—Immoral user of premises—Court's discretion to grant relief).Injunction. *See* **Injunction** (Discretion).Investment grant. *See* **Investment grant** (Discretion to grant).

Judge—

County court—

New trial. *See* **County court** (New trial—Discretion of county court judge to allow).

Review of exercise of discretion on appeal—

Discretion of county court judge to allow new trial. *See* **County court** (New trial—Discretion of county court judge to allow—Review of exercise of discretion).Generally. *See* **Court of Appeal** (Discretion of judge—Review of exercise of discretion).

Local authority—

Housing—

Clearance area—Method of dealing with area. *See* **Housing** (Clearance area—Method for securing clearance of area—Discretion of local authority).

Magistrates—

Adjournment. *See* **Magistrates** (Adjournment—Discretion of justices).

Review by appellate court—

Duty of court. *See* **Appeal** (Review of exercise of discretion).

Ministerial—

Extension of time—

Submission of compulsory purchase order under Housing Acts for confirmation. *See* **Housing** (Compulsory purchase—Confirmation of order by Minister—Time for submission—Extension of time).

New trial—

County court. *See* **County court** (New trial—Discretion of county court judge to allow).

Official Referee—

Review of exercise of discretion. *See* **Court of Appeal** (Discretion of Official Referee—Review of exercise of discretion).

Possession order—

Discretion to suspend. *See* **Landlord and tenant** (Recovery of possession—Order for possession—Suspension of order—Discretion).Rescission of winding-up order. *See* **Company** (Compulsory winding-up—Winding-up order—

Rescission—Application for rescission—Discretion of court).

Restitution order—

Criminal proceedings. *See* **Sentence** (Restitution order—Discretion).Restraint of foreign proceedings. *See* **Conflict of laws** (Foreign proceedings—Restraint of foreign proceedings—Discretion).Review of exercise on appeal. *See* **Appeal** (Review of exercise of discretion).Separate trials. *See* **Criminal law** (Separate trials—Discretion of judge).

DISCRETION (cont)

Special case—

Arbitration—

Discretion of court to refuse to direct statement of special case. *See* **Arbitration** (Special case—Direction by court—Direction to arbitrator to state question of law or award in form of special case—Discretion of court).

Stay of proceedings—

Proceedings arising out of acts in respect of which proceedings have been, or could be, brought in the Industrial Court. *See* **Industrial relations** (Proceedings—Duplication).

Street trading licence—

Discretion of borough council to choose between competing applicants. *See* **Street trading** (Licence—Application—Competing applications—Discretion).

Suspension of execution—

Order for possession of mortgaged property. *See* **Mortgage** (Possession of mortgaged property—Suspension of execution of order for possession—Discretion of court).

Time limit—

Extension. *See* **Limitation of action** (Extension of time limit).

Transfer of action—

County court to county court. *See* **County court** (Transfer of action—Transfer to another county court—Discretion).

County court to High Court. *See* **County court** (Transfer of action—Transfer to High Court—Discretion).

High Court to county court. *See* **County court** (Transfer of action—Transfer from High Court—Discretion).

Tribunal—

Judicial discretion—

Appeal to Divisional Court. *See* **Tribunal** (Appeal to Divisional Court on point of law—Point of law—Exercise of a judicial discretion).

Trust—

Discretionary trust. *See* **Trust and trustee** (Discretionary trust).

Will—

Trustee—

Discretion as to recipients. *See* **Will** (Trustee—Discretion as to recipients).

Winding-up of company—

Avoidance of disposition of property after commencement of winding-up. *See* **Company** (Compulsory winding-up—Avoidance of disposition of property after commencement of winding-up—Discretion of court).

Insurance company—

Factors in deciding exercise of discretion. *See* **Company** (Insurance company—Winding-up—Margin of solvency—Margin of solvency not maintained—Discretion of court).

Witness—

Presence in court during examination of earlier witnesses. *See* **Witness** (Presence in court during examination of earlier witnesses).

Writ—

Extension of validity. *See* **Writ** (Extension of validity—Good and sufficient reason—Discretion).

DISCRETIONARY TRUST

Variation of settlement—

Extinction of party's interests as if dead—

Effect. *See* **Variation of settlement** (Extinction of party's interests as if dead—Effect—Discretionary trust).

Variation of trusts by the court. *See* **Variation of trusts** (Discretionary trusts).

DISCRIMINATION

Employer discriminating against worker—

Discrimination on account of exercise of trade union rights. *See* **Industrial relations** (Trade union membership and activities—Rights of worker against employer—Unfair industrial practice by employer—Discrimination by employer against worker by reason of).

Racial—

Colour, race or ethnic or national origins. *See* **Race relations** (Discrimination).

Constitution of Sierra Leone. *See* **Sierra Leone** (Constitution—Discrimination—Race).

DISEASE

Industrial—

Compensation. *See* **Workmen's compensation** (Industrial disease).

DISENTAILING ASSURANCE

Infant. *See* **Trust and trustee** (Appointing person to convey property—Infant beneficially interested).

DIS-ESTABLISHMENT

Church in Wales. *See* **Ecclesiastical law** (Church in Wales—Dis-establishment).

DISHONESTY

Theft. *See* **Criminal law** (Theft—Dishonesty).

DISMISSAL

Action—

Abuse of process of court. *See* **Action** (Dismissal—Abuse of process of court).

Want of prosecution—

County court jurisdiction. *See* **County court** (Jurisdiction—Dismissal of action for want of prosecution).

Practice. *See* **Practice** (Dismissal of action for want of prosecution).

Apprentice. *See* **Master and servant** (Apprenticeship—Dismissal of apprentice).

DISMISSAL (cont)

Bankruptcy petition. *See* **Bankruptcy** (Petition—Dismissal)

Complaint to justices in respect of fire certificate—

Whether an order. *See* **Fire** (Certificate—Refusal to issue—Appeal from refusal to justices—Dismissal of complaint by justices—Appeal to quarter sessions—Jurisdiction to hear appeal—Order).

Criminal appeal. *See* **Criminal law** (Appeal—Dismissal).

Employment—

Crown servant. *See* **Crown** (Crown servant—Dismissal at pleasure by Crown).

Dismissal at pleasure—

Crown servant. *See* **Crown** (Crown servant—Dismissal at pleasure by Crown).

Natural justice. *See* **Natural justice** (Master and servant—Dismissal of servant).

Personal injury—

Award of damages following dismissal in consequence of injury. *See* **Damages** (Personal injury—Dismissal from work in consequence of injury—Dismissal following award at trial).

Redundancy. *See* **Redundancy** (Dismissal by reason of redundancy).

Teacher—

Appointment during pleasure—Right to be heard before dismissal. *See* **Natural justice** (Public authority—Dismissal of employee).

Trade union official. *See* **Trade union** (Official—Dismissal—Elected officer).

Tribunal—

Membership—Bias. *See* **Tribunal** (Membership—Bias—Inquiry into dismissal).

Wrongful dismissal—

Damages—Contract. *See* **Contract** (Damages for breach—Wrongful dismissal).

Managing director. *See* **Company** (Director—Managing director—Wrongful dismissal).

Redundancy. *See* **Redundancy** (Dismissal by reason of redundancy).

Statutory power—

Ceylon. *See* **Master and servant** (Dismissal—Statutory power).

Student—

College—

Governing body. *See* **Education** (College—Governing body).

Summary dismissal. *See* **Master and servant** (Wrongful dismissal—Summary dismissal).

Unfair dismissal. *See* **Unfair dismissal**.

Wrongful dismissal. *See* **Master and servant** (Wrongful dismissal).

DISORDERLY HOUSE

See **Criminal law** (Disorderly house).

DISPOSAL OF ASSETS

Capital gains tax. *See* **Capital gains tax** (Disposal of assets).

DISPOSITION

Settlement for tax purposes. *See* **Income tax** (Settlement—Meaning—Disposition).

DISPOSSESSION

Land—

Dispossession of true owner. *See* **Limitation of action** (Land—Adverse possession—Dispossession of true owner).

DISPUTE

Trade dispute—

Generally. *See* **Trade dispute**.

Master and servant. *See* **Master and servant** (Trade dispute).

DISQUALIFICATION

Driving licence—

Committal of offender to Crown Court—

Power to disqualify in addition to imposing sentence of borstal training. *See* **Crown Court** (Committal of offender to Crown Court for sentence—Borstal training—Road traffic offence—Disqualification).

Driving licence. *See* **Road traffic** (Disqualification for holding licence).

Justices' licence—

On-licence. *See* **Licensing** (On-licence—Disqualification).

Office—

Member of local authority. *See* **Local authority** (Disqualification for office as member of local authority).

DISSOLUTION

Company. *See* **Company** (Dissolution).

Partnership. *See* **Partnership** (Dissolution).

Registered trade union. *See* **Trade union** (Dissolution—Registered trade union).

Unincorporated association. *See* **Unincorporated association** (Dissolution).

DISTRESS

Distress damage feasant—

Cattle straying—

Lien of distrainor—Inappropriate claim by distrainor—Claim for '£2 for salvage'—Duty of owner to estimate and tender proper compensation. **Sorrell v Paget** [1949] 2 609, CA.

Leave to exercise remedy. *See* **Emergency legislation** (Distress—Distress damage feasant—Leave to exercise remedy).

DISTRESS (cont)

Distress for rent—

Bailiff in possession—

'Walking possession'—Whether any charge can legally be made for bailiff's expenses—Distress for Rents Act 1737, s 10—Distress (Costs) Act 1817, ss 1, 2—Distress (Costs) Act 1827—Law of Distress Amendment Act 1888, s 8—Distress for Rent Rules 1920 (S R & O 1920 No 1712), r 22, App 2. **Day v Davies** [1938] 1 686, CA.

Entry—

Whether right to open door and enter premises for purpose of levying distress for rent. **Southam v Smout** [1963] 3 104, CA.

Illegal distress—

Damages—Right to substantial damages—Law of Distress Amendment Act 1908, ss 1(c), 2, 4(2)(b). **Interoven Stove Co Ltd v Hibbard and Painter** [1936] 1 263, KBD.

Impounding goods—

Goods remaining in tenant's house—Walking possession agreement—No visible sign that goods impounded—Hired goods re-taken by owner at tenant's request—Owner ignorant of distraint and walking possession agreement—Action for treble damages—Whether goods validly impounded against owner—Whether owner, ignorant of impounding, liable in penal action for pound-breach—Statute, 2 Will & Mar c 5 (1689), s 3—Distress for Rent Act 1737, s 10. **Abingdon Rural District Council v O'Gorman** [1968] 3 7, CA.

Legality of distress—

Non-payment of rent by tenant—Agent paying sum equivalent to rent to landlord—Whether rent paid. **Smith v Cox** [1940] 3 546, KBD.

Priority. *See* Priority, *post*.

Distress warrant—

Judgment moneys and costs, for—

Suspension as to judgment moneys. *See* Execution (Wrongful and irregular execution—Distress warrant for judgment moneys and costs suspended as to judgment moneys).

Leave to distrain. *See* Emergency legislation (Distress—Leave to distrain).

Priority—

Distress for rent and distress for rates—

Whether distress for rent having priority. **Hickman v Potts** [1940] 4 491, HL.

Unpaid taxes—

Company—

Winding-up commenced before completion of distress. *See* Company (Winding-up—Preferential payments—Taxes—Distress levied but not completed before commencement of winding-up).

DISTRESS DAMAGE FEASANT

Generally. *See* Distress (Distress damage feasant).

DISTRIBUTIONCoal. *See* Coal (Distribution).

Date of distribution—

Settlement—

Class gift. *See* Settlement (Class gift—Distribution date).

Deceased's estate. *See* Administration of estates (Distribution).

Limitation—

Remoteness—

Rule against perpetuities. *See* Rule against perpetuities (Remoteness—Limitation by reference to statutes of distribution).

Rule against perpetuities. *See* Rule against perpetuities (Distribution).Settlement. *See* Settlement (Distribution).Trust fund. *See* Trust and trustee (Distribution).

Unincorporated association—

Dissolution—

Distribution of surplus assets among members. *See* Unincorporated association (Dissolution—Distribution of surplus assets among members).

Winding-up of company—

Distribution of assets. *See* Company (Compulsory winding-up—Distribution of assets).

DISTRIBUTOR

Dangerous things—

Liability in negligence. *See* Negligence (Dangerous things—Distributor's liability).

DISTRICT AUDITOR

Local government audit—

Surcharge. *See* Local government (Audit—Surcharge—Powers of district auditor).

DISTRICT REGISTRY

Appeal—

Appeal from district registrar. *See* Appeal (District registrar, from).

Costs—

Taxation—

Certificate—Signing certificate. *See* Costs (Taxation—Certificate—Signing certificate—District registry).

Issue of originating summons. *See* Originating summons (Issue—Seal—District registry).

DISTURBANCE

Compensation—

Compulsory acquisition of land—

Assessment of compensation. *See* Compulsory purchase (Compensation—Assessment—Compensation for disturbance).

DISTURBANCE (cont)

Compensation (cont)—

Compulsory acquisition of land (cont)—

Right to compensation. *See* **Compulsory purchase** (Compensation—Right to compensation—Compensation for disturbance).

Compensation. *See* **Compulsory purchase** (Compensation—Disturbance).

Easement—

Right of way. *See* **Easement** (Right of way—Disturbance).

DISUSED BURIAL GROUND

See **Burial** (Burial ground—Disused).

DIVERSION

Highway. *See* **Highway** (Diversion).

DIVIDEND

Advance corporation tax. *See* **Income tax** (Corporation tax—Advance corporation tax).

Company. *See* **Company** (Dividend).

Income tax—

Annual payment distinguished. *See* **Income tax** (Annual payment—Meaning—Dividend distinguished).

Deduction of tax. *See* **Income tax** (Annual payment—Payment out of profits etc already taxed—

Deduction of tax—Deduction by person through whom payments made—Dividends).

Generally. *See* **Income tax** (Dividends).

DIVINE SERVICE

Westminster Abbey—

Right of member of public to attend. *See* **Ecclesiastical law** (Divine service—Attendance—Westminster Abbey—Right of member of public to attend).

DIVISIONAL COURT

Appeal to Divisional Court—

Bankruptcy proceedings. *See* **Bankruptcy** (Appeal—Divisional Court).

Law Society Disciplinary Committee from. *See* **Solicitor** (Disciplinary proceedings—Appeal).

Magistrates' courts from—

Matrimonial causes. *See* **Husband and wife** (Summary proceedings—Appeal to Divisional Court).

Point of law—

Tribunal. *See* **Tribunal** (Appeal to Divisional Court on point of law).

Review of exercise of discretion—

Duty of court. *See* **Appeal** (Review of exercise of discretion).

Appeal to House of Lords—

Criminal cause or matter. *See* **Criminal law** (Appeal—Criminal cause or matter—Decision of Divisional Court).

Chancery Division—

Habeas corpus—

Refusal of application by Divisional Court of Queen's Bench Division—Right to apply to Divisional Court of Chancery Division. *See* **Habeas corpus** (Application for habeas corpus in criminal matter—Courts to which application may be made—Refusal of application by Divisional Court of Queen's Bench Division—Whether right to apply to Divisional Court of Chancery Division).

Committal order—

Power to review committal order—

Breach of custody order. *See* **Minor** (Custody—Order—Breach—Breach by father of order made in favour of mother).

Divorce—

Jurisdiction—

Application for rehearing. *See* **Divorce** (Appeal—Divisional Court—Jurisdiction—Application for rehearing).

Jurisdiction—

Appeal from master's order for trial of preliminary point of law. *See* **Appeal** (Jurisdiction—Divisional Court—Appeal from master's order for trial of preliminary point of law).

Case stated—

Application to quarter sessions for declaration negating or limiting right of way—Case stated under Baines' Act—Whether Divisional Court having jurisdiction to entertain case—National Parks and Access to the Countryside Act 1949, s 31(1)—Quarter Sessions Act 1849, s 11. **British Transport Commission v Worcestershire County Council** [1954] 2 350, QBD.

Point of law not raised before justices—Further findings of fact not required—Whether Divisional Court will determine point. **Ross v Moss** [1965] 3 145, QBD.

Point of law not raised before justices or by case stated—Whether Divisional Court should entertain the point of law. **Whitehead v Haines** [1964] 2 530, QBD.

Divorce—

Application for rehearing. *See* **Divorce** (Appeal—Divisional Court—Jurisdiction—Application for rehearing).

Practice—

Expedited hearings—

Cases stated—Prerogative orders—Expedited hearing list—Procedure. **Practice Note** [1974] 3 528, QBD.

Matrimonial proceedings—

Hearing of appeal. *See* **Husband and wife** (Summary proceedings—Appeal to Divisional Court—Hearing of appeal).

Queen's Bench Divisional Court orders—

Postal despatch of copy orders. **Practice Direction** [1964] 2 955, QBD.

DIVISIONAL COURT (cont)

Queen's Bench Division—

Habeas corpus—

Second application—Jurisdiction. *See* Habeas corpus (Application for habeas corpus in criminal matter—Courts to which application may be made—Refusal of application by Divisional Court of Queen's Bench Division—Second application to differently constituted Divisional Court of same division).

DIVORCEAccess to children. *See* Custody—Access, *post*.

Adultery—

Admission—

Admission by wife of adultery with co-respondent—Admissibility against co-respondent. **Spring v Spring and Jiggins** [1947] 1 886, Div.

Failure to deny adultery not constituting admission—Allegation of husband's adultery investigated by inquiry agent—Husband cautioned by agent before being questioned—No denial of adultery by husband—Adverse inference not to be drawn from absence of denial. **Hathaway v Hathaway** [1970] 2 701, Div.

Memorandum of appearance—Admission in answer supported by affidavit—Memorandum filed by co-respondent stating intention not to defend by denying adultery—Testimony of wife at hearing showing adultery with co-respondent—Whether evidence of adultery against co-respondent. **Inglis v Inglis and Baxter** [1967] 2 71, Div.

Memorandum of appearance—Answers by respondent and co-respondent in memoranda of appearance showing intention not to defend—Matrimonial Causes Rules 1957 (S 1 1957, No 619), r 13(1), App 3. **Jensen v Jensen and Howard** [1964] 2 231, Div.

Birth of child—

Confession by wife that expected child result of adultery—No proof of non-access. **Frampton v Frampton and Bushell** [1941] 1 305, Div.

Entry in register of births—Failure by wife to state name of father—Whether admission—Births and Deaths Registration Act 1874, ss 1, 7. **Mayo v Mayo** [1948] 2 869, Div.

Entry in register of births—Illegitimate child—Register signed by reputed father. **Perring v Perring and Simpson** [1949] 2 334, Div.

Entry in register of births—Illegitimate child—Register signed by reputed father—No identification of father's signature—Name and occupation of co-respondent the same as those entered as being the father's—Appearance entered by co-respondent but no defence to charge of adultery—Whether evidence justified finding of adultery against co-respondent—Costs against co-respondent—Births and Deaths Registration Act 1953, s 10, s 34. **Jackson v Jackson and Pavan** [1960] 3 621, Div.

Period of gestation—174 days. **Clark v Clark** [1939] 2 59, Div.

Period of gestation—346 days. **Wood v Wood** [1947] 2 95, Div.

Period of gestation—349 days. **Hadlum v Hadlum** [1948] 2 412, CA.

Period of gestation—360 days—Standard of proof—Facts within judicial knowledge. **Preston-Jones v Preston-Jones** [1951] 1 124, HL.

Condonation. *See* Condonation—Adultery, *post*.Conduct conducing. *See* Conduct conducing—Adultery, *post*.Damages against co-respondent. *See* Damages—Co-respondent, *post*.

Decree—

Form of decree. **Practice Direction** [1959] 1 345, Div.

Defence—

Insanity. *See* Adultery—What constitutes—Insanity—Whether ignorance that act was wrong was a defence, *post*.

Delay—

Discretionary bar. *See* Discretionary bars—Delay—Charge of adultery, *post*.

Deserted spouse by—

Termination of desertion. *See* Desertion—Termination—Adultery by deserted spouse, *post*.

Disclosure of adultery by petitioner—

Duty of solicitor. *See* Disclosure of adultery by petitioner—Duty of solicitor, *post*.

Discretion. *See* Discretion, *post*.Estoppel. *See* Estoppel—Adultery, *post*.

Evidence—

Admission. *See* Adultery—Admission, *ante*.

Birth of child. *See* Adultery—Birth of child, *ante*.

Blood groups. *See* Paternity (Blood test—Divorce—Adultery).

Cross examination—'Have you ever committed adultery'—General charge of adultery pleaded—Particulars of specific acts—Denial in evidence of specific acts—Supreme Court of Judicature (Consolidation) Act 1925, s 198. **Barber v Barber** [1948] 2 856, Div.

Discretion statement as evidence of adultery. *See* Evidence—Discretion statement as evidence of adultery, *post*.

Hotel bill and register—Evidence of hotel witness. **Raspin v Raspin** [1953] 2 349, Div.

Proof—Onus and standards of proof. *See* Adultery—Proof—Onus and standards of proof, *post*.

Finding of adultery—

Effect on order for alimony pendente lite. *See* Alimony—Pendente lite—Adultery of wife, *post*.

Interrogatories. *See* Practice—Interrogatories—Adultery, *post*.

Irretrievable breakdown of marriage. *See* Irretrievable breakdown of marriage—Adultery, *post*.

Particulars. *See* Practice—Particulars—Adultery, *post*.

Petitioner finding it intolerable to live with respondent. *See* Irretrievable breakdown of marriage—Adultery, *post*.

DIVORCE (cont)

Adultery (cont)—

Proof—

Onus and standard of proof—Accomplice—Need of corroboration. **Fairman v Fairman** [1949] 1 938, Div. **Galler v Galler** [1954] 1 536, CA.

Onus and standard of proof—Certificate proof—193840001 Certificates of virginity—Intervention by King's Proctor—Costs of intervention where decree allowed to stand. **Thompson (otherwise Hulton) v Thompson (Causton intervening)** [1938] 4 1, CA.

Onus and standard of proof—Charge of adultery by husband—Plea by wife that adultery committed without her consent during a rape on her by the co-respondent. **Redpath v Redpath and Milligan** [1950] 1 600, CA.

Onus and standard of proof. **Ginesi v Ginesi** [1948] 1 373, CA. **Gower v Gower** [1950] 1 804, CA.

Onus and standard of proof—No evidence given by respondent in disproof of charge of adultery—Matrimonial Causes Act 1950, s 32(3). **Poyser v Poyser** [1952] 2 949, CA.

Onus and standard of proof—Presumption—Inclination and opportunity—Summary Jurisdiction (Married Women) Act 1895, s 7. **England v England** [1952] 2 784, Div.

Onus and standard of proof—Undefended case—Husband's petition alleging wife's adultery with man named—Evidence at hearing of adultery with another man also given—Irregularity. **S v S** [1964] 3 915, CA.

Onus and standard of proof—Wife alleging adultery by husband with woman named from 1963 onwards—Finding of adultery by husband with woman named between 1963 and 1964 in previous suit—Onus on husband and woman named to disprove on balance of probabilities previous finding of adultery—Civil Evidence Act 1968, s 12(1), (2). **Sutton v Sutton** [1969] 3 1348, Div.

Onus and standard of proof—Wife's association with co-respondent—No evidence of affectionate or compromising behaviour. **Bastable v Bastable and Sanders** [1968] 3 701, CA.

Undefended case—Onus and standard of proof. *See* Adultery—Proof—Onus and standard of proof—Undefended case, *ante*.

Undefended case—Procedure. **Practice Direction** [1973] 2 983, FamD, **Practice Direction** [1973] 3 180, FamD.

Reveal—

Subsequent act disclosed in discretion statement. **Wilmot v Wilmot and Martin (Day intervening)** [1948] 2 123, Div.

What constitutes—

Consensual act—Adultery with child twelve years of age—Child incapable in law of consenting to act of sexual intercourse. **Barnett v Barnett and Brown** [1957] 1 388, District Registry.

Insanity—Whether ignorance that act was wrong was a defence. **S v S (O otherwise P (by her Guardian) intervening) B Cited** [1961] 3 133, Div.

Intercourse by unmarried woman with married man. **Abson v Abson** [1952] 1 370, Div.

Masturbation of co-respondent by respondent. **Sapsford v Sapsford and Furtado** [1954] 2 373, Assizes.

Penetration essential—Attempt to commit adultery distinguished. **Dennis v Dennis (Spillett cited)** [1955] 2 51, CA.

Prostitution—Husband conducting to adultery—Discretion. **Sheldon v Sheldon (Townley formerly Murray intervening)** [1937] 1 779, Div.

Advertisement—

Notice of proceedings advertised in newspapers. *See* Practice—Advertisement—Newspaper notice relating to divorce proceedings, *post*.

Agreement or arrangement—

Practice. *See* Practice, *post*.

Alimony—

Ancillary relief—

Conduct of parties—Information not disclosed at hearing of petition—Res judicata—Supreme Court of Judicature (Consolidation) Act 1925, s 190. **Robinson v Robinson** [1943] 1 251, Div.

Arrears—

Enforcement—Judgment summons—Debtors Act 1869, s 5—R S C Ord 41, r 5—Matrimonial Causes Rules 1947 (S R & O 1947 No 523), r 62(2). **Findlay v Findlay** [1947] 2 71, CA.

Assessment—

Alimony pendente lite. *See* Alimony—Pendente lite—Amount, *post*.

Factors to be considered—Position of parties if marital obligations fulfilled—Wealthy husband living on capital and business expenses—South African domicile of husband—Wife born in America and now resident in England with children of the marriage—Wife's own adultery—Obligation to make order that should be just—Whether jointure principle applicable—Whether high incidence of United Kingdom income tax should be taken into account—Matrimonial Causes Act 1950, s 20(2). **Schlesinger v Schlesinger** [1960] 1 721, Div.

Discovery. *See* Practice—Ancillary relief—Application for monetary provision—Discovery, *post*.

Judicial separation—

Subsequent dissolution of marriage—Whether order for alimony brought to an end automatically. **Wood v Wood** [1957] 2 14, CA.

Pendente lite—

Adultery of wife—No clear confession—Conduct of husband—Supreme Court of Judicature (Consolidation) Act 1925, s 190(3)—Administration of Justice (Miscellaneous Provisions) Act 1938, s 14. **Bullock v Bullock and Vargolici** [1942] 2 259, Div.

Adultery of wife—Whether order for alimony automatically lapses on finding of adultery—Extenuating circumstances. **Gordon v Gordon** [1969] 3 1254, Div.

DIVORCE (cont)

Alimony (cont)—

Pendente lite (cont)—

Adultery of wife—Wife's petition for judicial separation—Plea of conduct condoning and condonation—Court's power to order—Matrimonial Causes Act 1950, s 20(1). **Waller v Waller** [1956] 2 234, CA.

Amount—Whether wife's earning capacity should be taken into account—Wife's petition for restitution of conjugal rights—Matrimonial Causes Act 1950, s 19(1). **Griffith v Griffith** [1957] 1 494, Div.

Death of husband—Abatement of order for alimony. **Scott v Scott** [1952] 2 890, Div.

Judicial separation—Revival of lis by appeal—Wife's right to pursue claim for alimony pendente lite pending appeal—Matrimonial Causes Act 1950, s 20(1). **Schlesinger v Schlesinger** [1958] 3 20, Div.

Nullity—Wilful refusal by wife—Whether alimony pendente lite continues until decree absolute. **S (otherwise B) v S** [1944] 1 439, Div.

Termination with decree absolute. **O'Mahoney v O'Mahoney** [1959] 1 163, Div.

Termination with decree absolute—Revival of lis by appeal—Proper tribunal to extend order—Supreme Court of Judicature (Consolidation) Act 1925, ss 27(1), 190(3). **Cavendish-Bentinck v Cavendish-Bentinck** [1948] 2 285, CA.

Wife receiving national assistance—Matrimonial Causes Act 1950, s 19(1). **Sterne v Sterne** [1957] 1 92, CA, **Slater v Slater** [1960] 3 217, CA.

Registration in magistrates' court—

Variation of order—Appeal—High Court procedure. **Practice Note** [1960] 2 238, Div.

Service—

Husband's address—Disclosure of address from government records. **Practice Notes** [1957] 2 504, [1965] 2 670, Div.

Settlement of wife's property for benefit of children—

Children wards of court in custody and care of mother—Jurisdiction. **Atkins v Atkins** [1939] 3 872, Div.

Undertaking before decree nisi to pay wife £3 per week alimony as from the date of the decree nisi—

Effect of undertaking. **Gaisberg v Storr** [1949] 2 411, CA.

Variation—

Appeal—Onus—Factors—Whether past domestic infelicity may be taken into account as precluding wife sharing in subsequent increase in earnings—Whether wife's extravagance or thrift a factor—Whether registrar entitled to take into consideration as against wife that she had taken proceedings for judicial separation rather than divorce. **Sansom v Sansom** [1966] 2 396, Div.

Variation of post-nuptial settlement—Settlement of contingent benefits for existing children of marriage—Settlement 'because of' the marriage—Supreme Court of Judicature (Consolidation) Act 1925, s 192. **Joss v Joss** [1943] 1 102, Div.

Amendment—

Answer. *See Practice—Answer—Amendment, post.*

Petition. *See Petition—Amendment, post.*

Ancillary and alternative relief—

Jurisdiction—

Competence of divorce county court—197031024 County Courts Act 1959, s 74. **Practice Direction** [1970] 3 1024, Div.

Ancillary relief—

Agreement or arrangement between parties—

Practice—See Practice—Agreement or arrangement between parties, post.

Alimony. *See Alimony, ante.*

Appeal—

Practice. See Practice—Appeal—Leave to appeal—Ancillary relief, post.

Application—

High Court—Hearing—Divorce towns. *See Practice—Hearing—Divorce towns—Defended causes—High Court ancillary applications,*

Discovery. See Practice—Ancillary relief—Application for monetary provision—Discovery, post.

Financial provision. *See Financial provision, post.*

Jurisdiction—

Re-marriage. *See Jurisdiction—Re-marriage—Whether jurisdiction to grant ancillary relief after remarriage after decree absolute, post.*

Maintenance—

Estoppel. *See Financial provision—Estoppel in maintenance proceedings, post.*

Maintenance. *See Maintenance, post.*

Answer. *See Practice—Answer, post.*

Appeal—

Appeal from order of magistrates' courts—

Review of exercise of discretion—Duty of appellate court. *See Appeal (Review of exercise of discretion).*

Costs—

Jurisdiction of Court of Appeal—Trial judge's discretion as to ordering costs—Costs against unsuccessful wife—Grounds for order—Persistence in case without foundation—Amount of costs—Legally aided wife—Court of Appeal's power—Substitution of own view for trial judge's—Legal Aid and Advice Act 1949, s 2(2)(e)—Legal Aid (General) Regulations 1962 (S I 1962 No 148), reg 18(1)(2)(3). **Gooday v Gooday** [1968] 3 611, CA.

Order made on decree nisi—Whether part of decree—Whether appeal lies after decree made absolute—Fresh evidence—Supreme Court of Judicature (Consolidation) Act 1925, s 31(1)(e). **Kingston v Kingston (Gilder party cited)** [1958] 1 397, CA.

DIVORCE (cont)

Appeal (cont)—

Costs (cont)—

Security for wife's costs—Application for new trial by unsuccessful husband petitioner—Jurisdiction of court to order security—Evidence to be considered on hearing of wife's application for security—Need for evidence of wife's means—Failure of husband to pay costs of hearing of petition—Stay of hearing of appeal. **Brightstein v Brightstein** [1947] 2 121, CA.

Transcript of shorthand notes of judgment of Divisional Court—Legal Aid (General) Regulations 1950, (S I 1950, No 1359), reg 14(3). **Harvey v Harvey** [1955] 3 82, Div.

Wife's costs of husband's appeal—Discretion of court—Wife's allegation of husband's cruelty—Liability of co-respondent on issue of cruelty. **Kara v Kara and Holman** [1948] 2 16, CA.

Court of Appeal—

Appeal from Divisional Court—Jurisdiction to entertain—Supreme Court of Judicature (Consolidation) Act 1925, s 27. **Peek v Peek** [1948] 2 297, CA.

Undefended suit—Petition by husband—Right of wife to appear in Court of Appeal. **Gillooly v Gillooly** [1950] 2 1118, CA.

Undefended suit—Transcript of shorthand note of counsel's argument and judge's observations—Whether necessary for Court of Appeal. **Westgate v Westgate** [1959] 2 496, CA.

Damages—

Appeal by co-respondent—Appeal after decree absolute—Opportunity to co-respondent to appeal from decree nisi—Enlargement of time for appeal—Supreme Court of Judicature (Consolidation) Act 1925, s 31(1)(e)—R S C Ord 58 r 15. **O'Neill v O'Neill and Piggott** [1949] 2 649, CA.

Decree absolute—

Extension of time for appealing—Applicant having chosen not to defend and having been advised against appealing—Time and opportunity to appeal against decree nisi—Supreme Court of Judicature (Consolidation) Act 1925, s 31(1)(e)—Matrimonial Causes Rules 1957 (S I 1957 No 619) r 36(1). **Stevens v Stevens** [1965] 1 1003, CA.

Jurisdiction of Court of Appeal—No error of court of trial—No opportunity to appeal against decree nisi—Petition not served on appellant—Supreme Court of Judicature (Consolidation) Act 1925, s 31(1)(e)—Matrimonial Causes Rules 1944 (S R & O 1944, No 389), r 36. **Everitt v Everitt** [1948] 2 545, CA.

Leave to appeal—Applicant having had opportunity to appeal against decree nisi—Supreme Court of Judicature (Consolidation) Act 1925, s 31(1)(e). **Hurlstone v Hurlstone** [1956] 1 804, CA.

Divisional Court—

Documents—Paging and numbering of documents in counsel's brief. **Practice Direction** [1964] 2 479, Div.

Jurisdiction—Application for re-hearing—No appearance entered by applicant—No appeal 'in ordinary course' to Court of Appeal—Matrimonial Causes Rules 1950 (S I 1950 No 1940), r 36(1). **Skull v Skull** [1954] 1 1030, Div.

Jurisdiction—Application for re-hearing—'Error' of court—Interlocutory order—Order setting aside decree nisi and directing new trial—R S C Ord 58, r 15—Evidence withheld from court—Matrimonial Causes Rules 1944 (S R & O 1944, No 389), r 36. **Peek v Peek** [1948] 2 297, CA.

Jurisdiction—Application for re-hearing—'Error' of court—New evidence obtained after trial—Unsuccessful party entitled to appeal to Court of Appeal—Matrimonial Causes Rules 1947 (S R & O 1947, No 523), r 36. **Prince v Prince** [1950] 2 375, CA.

Jurisdiction—Application for re-hearing—Discretion—Exercise governed by public interest—Court must be satisfied of substantial grounds for believing decree obtained contrary to justice—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 36(1). **Owen v Owen** [1964] 2 58, Div.

Jurisdiction—Application for re-hearing—'Error' of court—Discovery after date of hearing of alleged adultery by other spouse—Matrimonial Causes Rules 1950, (S I 1950 No 1940), r 36(1), (2). **Wells-King v Wells-King** [1955] 1 585, Div.

Jurisdiction—Application for re-hearing—'Error' of court—Evidence adduced by each party—Application to adduce fresh evidence—Matrimonial Causes Rules 1937 (S R & O 1937, No 1113), r 36(1). **Petty v Petty** [1943] 2 511, Div.

Jurisdiction—Application for re-hearing—'Error' of court—Appeal by unsuccessful party to Court of Appeal on ground of misdirection—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 36(1). **Turner v Turner** [1961] 3 944, CA.

Jurisdiction—Application for re-hearing—'Error' of court—After decree absolute—Procedural regularity—Matrimonial Causes Rules 1947 (S R & O 1947, No 523), r 36. **Edwards v Edwards** [1951] 1 63, Div.

Jurisdiction—Application for re-hearing—'Error' of court—Husband not contesting first hearing—Matrimonial Causes Rules 1937 (S R & O 1937, No 1113), r 36(1). **Winter v Winter** [1942] 2 390, Div.

Jurisdiction—Re-hearing of wife's application for maintenance—Matrimonial Causes Act 1950, s 23—Matrimonial Causes Rules 1957 (S I 1957, No 619), r 36(1). **Kosianowski-Lorenz v Kosianowski-Lorenz** [1964] 2 99, Div.

Fresh evidence—

Conditions of admissibility. **Hext v Hext** [1963] 1 774, Div.

Evidence obtained after trial—R S C Ord 58, r 4. **Corbett v Corbett** [1953] 2 69, CA.

Perjury—Witness' confession that relevant evidence accepted at trial was perjured—R S C Ord 58, r 10. **Piotrowska v Piotrowski** [1958] 2 729, CA.

House of Lords—

Religious upbringing of child—No question of law—Supreme Court of Judicature (Consolidation) Act 1925, s 27(2). **B v B** [1955] 2 158, CA.

Notice of appeal—

Service. *See Practice—Service—Notice of appeal, post.*

DIVORCE (cont)

Appeal (cont)—

Order dismissing husband's petition—

Wife found guilty of adultery but condoned by husband—Appeal by wife against finding of adultery—Finding not stated in the order—Supreme Court of Judicature (Consolidation) Act 1925, s 27(1)—R S C Ord 58, r 1. *Lake v Lake* [1955] 2 538, CA.

Power of appellate court to order rehearing—

No case to answer—Judge ruling against submission without ordering party to elect—Trial judge taking large part in examination of witnesses—Discretion of judge—Demeanour of witnesses—Duty of judge to test demeanour of witness against whole evidence. *Yuill v Yuill* [1945] 1 183, CA.

No case to answer—Submission wrongly accepted by trial court—Two types of submission—Right of party who submitted no case to give evidence at re-hearing. *Storey v Storey* [1960] 3 279, CA.

Setting down—

Time allowed—Appeal against refusal of decree nisi—R S C Ord 58, r 4(1), r 5(1), r 15(3), (4). *Medcalf v Medcalf* [1958] 2 11, CA.

Application for rehearing—

Divisional Court—

Jurisdiction. *See* Appeal—Divisional Court—Jurisdiction—Application for rehearing, *ante*.

Arrears of alimony—

Administration action. *See* Administration of estates (Administration action—Right to bring—

Debt due from estate—Arrears of alimony due to plaintiff).

Assessment of resources—

Entitlement to legal aid—

Alimony pending suit qualifying as 'disposable income'. *See* Legal aid (Entitlement—Assessment of resources—Whether alimony taken into account in computing wife's disposable income).

Behaviour of respondent—

Behaviour such that petitioner cannot reasonably be expected to live with the respondent—

Behaviour—Meaning—Negative conduct—Conduct stemming from mental or physical illness—Wife suffering from increasingly severe neurological disorder—Wife ceasing to do any housework—Husband having to do housework and to nurse wife in 'addition to full-time employment—Whether wife's conduct capable of constituting 'behaviour'—Matrimonial Causes Act 1973, s 1(2)(b). *Thurlow v Thurlow* [1975] 2 979, FamD.

Behaviour such that petitioner cannot reasonably be expected to lure the respondent—

Desertion—Breakdown of marriage—Husband indicating to wife that he no longer had any affection for her or interest in marriage—Husband deserting wife—Whether husband's behaviour such that wife could not reasonably be expected to live with him—Matrimonial Causes Act 1973, s 1(2)(b). *Stringfellow v Stringfellow* [1976] 2 539, CA.

Behaviour such that petitioner cannot reasonably be expected to live with the respondent—

Petitioner—Petitioner at time of hearing living with respondent in same household—Petitioner living with respondent almost continuously during preceding two years—Whether petitioner precluded from claiming that she cannot reasonably be expected to live with respondent—Divorce Reform Act 1969, ss 2(1)(b), 3(4). *Bradley v Bradley* [1973] 3 750, CA.

Petitioner—Whether 'petitioner' meaning ordinary reasonable spouse looked at as a petitioner—Divorce Reform Act 1969, s 2(1)(b). *Ash v Ash* [1972] 1 582, FamD.

Reasonableness—Necessity for court to consider characteristics and behaviour of petitioner as well as of respondent—Divorce Reform Act 1969, s 2(1)(b). *Ash v Ash* [1972] 1 582, FamD.

Reasonableness—Test to be applied—Respondent mentally ill—Concept of breach of matrimonial obligations not relevant where respondent mentally ill—Test whether reasonable, after making allowances for the temperaments of both parties and disability of the respondent, to expect petitioner to put up with respondent's behaviour—Divorce Reform Act 1969, s 2(1)(b). *Katz v Katz* [1972] 3 219, FamD.

Reasonableness—Test to be applied—Breach of obligation—Whether reasonable to expect petitioner to put up with behaviour of respondent—Necessity for court to consider characteristics and behaviour of petitioner as well as of respondent—Divorce Reform Act 1969, s 2(1)(b). *Pheasant v Pheasant* [1972] 1 582, FamD.

Reasonableness—Test to be applied—Objective or subjective test—Relevance of the particular characteristics of character of spouses and whole history of the marriage—Matrimonial Causes Act 1973, s 1(2)(b). *O'Neill v O'Neill* [1975] 3 289, CA.

Reasonableness—Test to be applied—Respondent mentally ill—Mental illness to be taken into account in deciding whether it is reasonable to expect the petitioner to put up with respondent's behaviour—Divorce Reform Act 1969, s 2(1)(b). *Richards v Richards* [1972] 3 695, FamD.

Reasonableness—Test to be applied—Conduct amounting to constructive desertion—Gravity of conduct such as to justify dissolution—Relevance as criteria—Issue to be determined as question of fact taking into account characters and personalities of parties—Matrimonial Causes Act 1973, s 1(2)(b). *Livingstone-Stallard v Livingstone-Stallard* [1974] 2 766, FamD.

Pleading—

Particulars. *See* Practice—Particulars—Behaviour, *post*.

Children—

Access to—

Spouse not having custody. *See* Custody—Access, *post*.

Care and upbringing—

Arrangements required before decree absolute of divorce between parents. *See* Decree absolute—Arrangements for care and upbringing of children, *post*.

DIVORCE (cont)

Children (cont)—

Cruelty to—

Injury to health of spouse. *See* Cruelty—Child, *post*.Custody. *See* Custody, *post*.Generally. *See* Infant, *post*.Cohabitation. *See* Condonation—Cohabitation, *post*.

Collusion—

Agreements and arrangements—

Consideration by court—Discretionary bar—Abandonment of real defence in consideration of benefit not an agreement within intendment of s 4—Duty of legal advisers—Matrimonial Causes Act 1963, s 4. **Mulhouse (formerly Mulhausen) v Mulhouse (formerly Mulhausen)** [1964] 2 50, Div.Consideration by court—Essentiality of complete candour—Reasonable provision for maintenance, etc., and course of justice not endangered—Not all collusive bargains mischievous—Corrupt bargains to be distinguished from honest negotiation between parties—Matrimonial Causes Act 1963, s 4(3). **Nash v Nash** [1965] 1 480, Div.Consideration by court—Observations on the court's approach to determination of applications for directions as to agreements and arrangements—Maintenance—Financial arrangements—Matrimonial Causes Act 1965, s 5(2). **M v M (No 1)** [1967] 1 870, Div.Consideration by court—Test whether likely to lead to decree contrary to the justice of the case—Agreement involving abandonment of case which might have been successful—Whether leave to implement should be granted—Matrimonial Causes Act 1965, s 5(2). **Warren v Warren and Russell** [1970] 2 189, Div.Consideration by court—Test whether likely to lead to decree contrary to the justice of the case—Court should take into consideration what might support respondent's case and counsel's opinion on the merits—Leave to implement agreement, but not approval of an agreement that was collusive—Matrimonial Causes Act 1965, s 5(2). **Gosling v Gosling** [1967] 2 510, CA.Enforcement after decree absolute. *See* Decree absolute—Collusive agreement, *post*.Monetary agreements. *See* Collusion—Monetary agreement, *post*.Practice. *See* Practice—Agreement or arrangement between parties, *post*.

Constraint of petitioner—

Money payment to secure signing of petition—Unreality of proceedings. **Woods v Woods** [1937] 4 9, Div.

Corrupt intention—

Collusion as to part of petition tainting whole but not respondent's cross-prayer—Written statements obtained from co-respondent by husband and by husband's solicitor—Intention on part of husband to obtain statement in nature of proof—No intention to procure initiation or to provide for conduct of suit—Any collusive bargain between husband and co-respondent swept away by interview between co-respondent and husband's solicitor. **Noble v Noble and Ellis (No 2)** [1964] 1 769, CA.

Disclosure—

Negotiations which may affect conduct of suit—Correspondence concerning maintenance—No agreement—Whether duty to disclose to court—Matrimonial Causes Rules 1957 (S I 1957, No 619), r 36(1)—Matrimonial Causes Act 1965, s 5. **Pratt v Pratt** [1966] 3 272, Div.Negotiations which may affect conduct of suit—No agreement—Whether duty to disclose to court—Matrimonial Causes Act 1965, s 5(2). **Main v Main** [1969] 2 175, Div.

Discretionary bar—

Factors in deciding whether to pronounce decree notwithstanding collusion—Matrimonial Causes Act 1950, s 4(2)—Matrimonial Causes Act 1963, s 4(1), (2). **Head (formerly Cox) v Cox (Smith cited)** [1964] 1 776, Div.

Evidence—

Burden of proof—Presumption of innocence provisional—Suspicion of collusion counterbalancing presumption—Wife's petition based on cruelty—Undertaking by wife not to claim alimony if husband withdraws defence—Case proceeding as defended case—Husband withdrawing defence before trial—Whether collusive understanding affected proceedings. **Emanuel v Emanuel** [1945] 2 494, Div.Leave to call witness after evidence closed—Respondent wife alleging collusion between petitioner and co-respondent—Witnesses on collusion were petitioner and a witness from his solicitor's office—Co-respondent did not enter appearance and did not give evidence—Application by wife to call co-respondent—Court's duty to investigate issue—Matrimonial Causes Act 1950, s 4. **Noble v Noble and Ellis** [1963] 3 887, Div.

Monetary agreement—

Agreement for disposal of matrimonial property—Receipt by wife of reduced share in consideration of husband's foregoing right to claim damages—Claim for damages subsequently included in petition—Matrimonial Causes Act 1950, s 4(2). **Teale v Burt (otherwise Teale) and Burt** [1951] 2 433, CA.Husband's previous attempts to bribe wife—Secret acceptance of sum for costs—Wife's change of attitude towards divorce—Absence of bargain—Full disclosure—Matrimonial Causes Act 1937, s 4. **Beattie v Beattie** [1938] 2 74, Div.Negotiations as to maintenance during pendency of petition—Deposit of £2,000 with stakeholder before trial—Wife to receive money only if she proceeded with petition—Need to disclose negotiations to court—Supreme Court of Judicature (Consolidation) Act 1925, s 178(2)(iii) (as substituted by Matrimonial Causes Act 1937, s 4). **Lowndes v Lowndes** [1950] 1 999, Div.

What amounts to—

Abandonment of charges without consideration. **Schlesinger v Schlesinger (Nystrom and Swanson intervening)** (Hall cited) [1959] 1 155, CA.Discussion as to divorce—Evidence to be provided by husband—Hotel bill—Subsequent proceedings not collusive—Reality of the matter. **Wyatt v Wyatt** [1937] 3 885, Div.

DIVORCE (cont)

Collusion (cont)—

What amounts to (cont)—

Offer by husband of evidence by telephone—Wife's answers not amounting to acceptance—Absence of bargain. *Pilkington v Pilkington* [1939] 1 29, CA.

Compromise—

Application for decree absolute—

Withdrawal of opposition. *Hulme-King v De Silva* [1936] 1 713, PC.

Condition encouraging divorce—

Validity—

Will. *See Will* (Condition—Family matters—Condition encouraging violation of sanctity of marriage).

Condonation—

Adultery—

Adultery by wife—Disclosure—Duty of wife to disclose all material circumstances. *Inglis v Inglis and Baxter* [1967] 2 71, Div.

Adultery by wife—Husband with knowledge of adultery continuing to share bed with wife—No intercourse—Husband's offer of forgiveness rejected—Husband epileptic and partly crippled—Husband unable to see way to separate himself from wife—No proper matrimonial cohabitation—Whether condonation. *Ford v Ford and Stanford* [1970] 3 188, Assizes

Duty of court to determine whether it is satisfied that adultery has not been condoned—Evidence rebutting presumption of condonation—Wife's adultery admitted—Intercourse, the ground of condonation, before new statute, trial after—Requirement of satisfaction beyond reasonable doubt not on balance of probabilities—Matrimonial Causes Act 1950, s 4(2)—Matrimonial Causes Act 1963, s 1. *Blyth v Blyth and Pugh* [1966] 1 524, HL.

Duty of court to determine whether it is satisfied that adultery has not been condoned—Undefended suit—Evidence of petitioner of state of mind towards respondent—Parties living together—Desertion by respondent—Revival of adultery—Whether enactment abolishing revival of condoned adultery was retroactive—Matrimonial Causes Act 1950, s 4(2)—Matrimonial Causes Act 1963, s 3. *Carson v Carson and Stoyek* [1964] 1 681, Div.

Husband and guilty wife living together in same house, but with no marital intercourse—Husband desirous of reconciliation, but wife's refusal—Parties continuing to live together as before—Revival of husband's condoned adultery by subsequent act of adultery disclosed in discretion statement—Discretion of court—Exercise in wife's favour. *Wilmot v Wilmot and Martin (Day intervening)* [1948] 2 123, Div.

Knowledge of respondent's adultery—Particulars. *Hubbock v Hubbock* [1948] 2 412, CA.

Knowledge of respondent's adultery—Suspicion not amounting to knowledge—Materiality of knowledge of second association. *Burch v Burch* [1958] 1 848, Div.

Revival—Conduct less than legal cruelty. *Richardson v Richardson* [1949] 2 330, CA.

Revival—Constructive desertion—Husband's adultery condoned—Husband's subsequent conduct reviving adultery and justifying wife's departure from matrimonial home. *Roe v Roe* [1956] 3 478, Div.

Revival—Effect on liability of co-respondent. *Lloyd v Lloyd and Hill* [1947] 1 383, Div.

Revival—Revival by conduct less than adultery—Considerations to be applied. *Cundy v Cundy, Smith and Finch* [1956] 1 245, Div.

Revival—Revival by conduct less than adultery—Husband's improper association with named women—Need to serve notice of charges on named women. *Green v Green and Partridge* [1958] 3 242, Assizes.

Revival—Subsequent desertion but not for statutory period—'Matrimonial offence'—Adultery revived by desertion. *Beard v Beard* [1945] 2 306, CA.

Revival—Subsequent desertion but not for statutory period—'Matrimonial offence'—Desertion of insufficient duration not reviving adultery—Matrimonial Causes Act 1937, s 2(b). *Ainley v Ainley* [1946] 1 311, CA.

Revival—Subsequent desertion but not for statutory period—Whether desertion revived adultery. *Higgins v Higgins and Bannister* [1943] 2 86, Div.

Revival—Whether adultery disclosed in evidence but not pleaded revived condoned adultery which had been pleaded—Matrimonial Causes Act 1950, s 4. *Scott v Scott (Quine cited)* [1960] 2 699, Div.

Cohabitation—

Resumption of cohabitation—Immediate and unconditional forgiveness—Cohabitation not resumed with a view to effecting a reconciliation but in consequence of reconciliation—Matrimonial Causes Act 1963, s 2(1). *Brown v Brown* [1964] 2 828, Div.

Resumption of cohabitation—Matrimonial offence established, but relief refused on ground that one month's resumption of cohabitation constituted condonation—Omission to consider enactment providing for relief when cohabitation resumed with view to reconciliation—Matrimonial Causes Act 1963, s 2(1). *Herridge v Herridge (otherwise Harridge)* [1966] 1 93, CA.

Resumption of cohabitation—Parties cohabitating for more than three months—Matrimonial Causes Act 1965, s 42(2). *Ives v Ives (Queen's Proctor showing cause)* [1967] 3 79, Div.

Resumption of cohabitation—Resumption on promise by wife as to future conduct—Promise subsequently withdrawn. *Henderson v Henderson* [1944] 1 4, HL.

Resumption of cohabitation—Resumption with view to effecting reconciliation—Failure of innocent party to satisfy court that guilty party not forgiven. *Quinn v Quinn* [1969] 3 1212, CA.

Resumption of cohabitation—Resumption with view to effecting reconciliation—Need for mutuality—Whether mutuality of intention essential—Whether knowledge of innocent party's motive sufficient—Matrimonial Causes Act 1965, s 42(2). *Quinn v Quinn* [1969] 3 1212, CA.

Resumption of cohabitation—Return of wife to matrimonial home as housekeeper. *Cook v Cook* [1949] 1 384, Div.

DIVORCE (cont)

Condonation (cont)—

Cohabitation (cont)—

Resumption of cohabitation—Return to matrimonial home—Social conditions to be taken into account—Burden of proof—Matrimonial Causes Act 1937, s 4. **Germany v Germany** [1938] 3 64, Div.

Constructive desertion—

Sexual intercourse between husband and wife after separation—Husband thereafter unable to rely on wife's prior conduct as justification for living apart from her—Whether condonation applicable to conduct not amounting to a matrimonial offence but constituting good cause for living apart. **Howard v Howard** [1962] 2 539, Div.

Sexual intercourse between husband and wife after separation—No intention of reconciliation—Husband thereafter unable to rely on wife's prior conduct as justification for being apart from her—Condonation of prior expulsive conduct. **France v France** [1969] 2 870, CA.

Whether there can be condonation of constructive desertion where conduct also amounts to cruelty. **W v W (No 2)** [1961] 2 626, Div.

Cruelty—

Revival—Conduct not amounting to cruelty—Conduct not causing breakdown of marriage. **Benton v Benton** [1957] 3 544, CA.

Revival—Desertion for less than three years—Condonation and desertion not pleaded—Adjournment of hearing and amendment of pleadings—Corroboration of cruelty. **Kafton v Kafton** [1948] 1 435, CA.

Revival—Inference that conditional forgiveness has become absolute after lapse of time—Cruelty committed from 1930—38—Alleged revival after 1945. **Beale v Beale** [1950] 2 539, CA.

Revival—Wilful neglect to maintain reviving condoned cruelty. **Dunn v Dunn** [1962] 3 587, Div.

Wife remaining in the home after filing of her petition. **Mackrell v Mackrell** [1948] 2 858, CA.

Decree nisi, after. *See* Decree absolute—Application for leave to apply for decree to be made absolute—Condonation, *post*.

Desertion. *See* Desertion—Termination—Condonation, *post*.

Evidence—

Evidence of non-access admitted on issue of condonation—Evidence so admitted not available for proof of adultery—Rule in **Russell v Russell**—Gonorrhoea—Characteristics of disease—Judicial notice. **Glenister v Glenister** [1945] 1 513, Div.

Presumption against—Displacement by uncorroborated evidence of spouse. **Tilley v Tilley** [1948] 2 1113, CA.

Proof required—Reinstatement of wife—Prejudice of wife by husband's conduct—Formal words of forgiveness. **Fearn v Fearn** [1948] 1 459, CA.

Insanity—

Whether acts of insane person may be condoned. **Swan v Swan** [1953] 2 854, CA.

Offence—

Conduct not amounting to matrimonial offence—Whether conclusive presumption of forgiveness arising from subsequent marital intercourse applies. **Howard v Howard** [1962] 2 539, Div.

Revival of condoned offence—When revival by conduct amounting to less than a matrimonial offence sufficient—Lapse of time after condonation. **Jelley v Jelley** [1964] 2 866, CA.

Particulars. *See* Practice—Particulars—Condonation, *post*.

Reconciliation—

Necessity for reconciliation as well as reinstatement. **W v W (No 2)** [1961] 2 626, Div.

Whether full reconciliation essential to condonation—Parties cohabiting for more than three months—Matrimonial Causes Act 1965, s 42(2). **Tynan v Tynan and Waldoock and Good** [1969] 3 471, Assizes.

Sexual intercourse—

Condonation by husband—Adultery by wife—Several acts with one person—Resumption of sexual intercourse. **Wells v Wells** [1954] 3 491, CA.

Condonation by husband—Adultery by wife—Resumption of sexual intercourse—No fraud on part of the wife. **Viney v Viney** [1951] 2 204, Div.

Condonation by wife—Reconciliation followed by a single act of sexual intercourse—Forgiveness and reinstatement. **Baguley v Baguley** [1961] 2 635, CA.

Condonation by wife—Resumption of sexual intercourse. **Morley v Morley** [1961] 1 428, Div.

Intercourse induced by wife's violence—No intention by petitioner to effect reconciliation. **Maslin v Maslin** [1952] 1 477, Div.

Intercourse induced by wife's violence. **Willan v Willan** [1960] 2 463, CA.

Sodomy. *See* Sodomy—Consent—Condonation, *post*.

Conduct conducing—

Adultery—

Of husband—Wife's improper but not adulterous association with another man—Ignorance of husband—Wife's conduct not conducing to husband's adultery. **Brown v Brown** [1956] 2 1, Div.

Reasonable belief of wife's adultery induced by her conduct—Inaction of husband—Ultimate action by his leaving home and stopping payments to wife—Summary application by wife for maintenance. **Hartley v Hartley** [1955] 1 625, Div.

Desertion—

By other spouse—Adultery of husband—Expulsion of husband from matrimonial home—No adulterous conduct at date of expulsion or likelihood of adultery in the future. **Jenkins v Jenkins** [1956] 2 596, Div.

By other spouse—Desertion by husband—Adultery of wife. **Richards v Richards** [1952] 1 1384, CA.

DIVORCE (cont)

Conduct conducing (cont)—

Desertion (cont)—

Misconduct conducing to desertion distinguished from just cause. **Postlethwaite v Postlethwaite** [1957] 1 909, Div.

Distinction between conduct conducing and connivance. *See* Connivance—Motive—Distinction between conduct conducing and connivance, *post*.

Conduct of parties—

Financial provision. *See* Financial provision—Conduct of parties, *post*.

Maintenance. *See* Maintenance—Application—Conduct of parties, *post*.

Connivance—

Adultery by husband—

No condonation by wife—Continuance of connivance—'Natural consequence' of wife's connivance—Husband's desertion and wilful neglect to maintain. **Richmond v Richmond** [1952] 1 838, Div.

Consent to act of adultery—

Willing consent. **Peters v Peters** [1963] 3 67, Div.

Knowledge—

Contemplation of possible future adultery—Wife allowed to be in circumstances of temptation—Husband's inaction—Volenti non fit injuria. **Lloyd v Lloyd and Leggeri** [1938] 2 480, Div.

Ignorance of wife's adultery at time when it commenced—Knowledge of subsequent adultery over a considerable period of time—Whether husband barred from decree in respect of initial adultery. **Rumbelow v Rumbelow and Hadden** [1965] 2 767, CA.

'Passive acquiescence'—Wife watched by husband—Act of adultery observed—No intervention by husband. **Mudge v Mudge and Honeysett** (Goodwin cited) [1950] 1 607, Div.

Motive—

Consideration of conduct as a whole—Corrupt intention—Letters written by distraught wife amounting to licence to continue adulterous association. **Woodbury v Woodbury** [1948] 2 684, CA.

Distinction between conduct conducing and connivance—Wife forced by husband to leave matrimonial home—Husband knowing that a continuance of adultery by wife was a likely result. **Haynes v Haynes and Skewell** [1960] 2 401, Div.

Encouragement of situations likely to lead to adultery—Only motive to obtain conclusive evidence. **Manning v Manning, Fellows v Fellows** [1950] 1 602, CA.

Suspicion of adulterous association—Watching and eavesdropping—Opportunity created for adultery—No intention to promote or encourage adultery—Motive only to obtain evidence. **Douglas v Douglas** [1950] 2 748, CA.

Onus and standard of proof—

Adultery brought about by inquiry agent employed by husband—Presumption of law—Matrimonial Causes Act 1937, s 4. **Poulden v Poulden and Alexander** [1938] 1 508, Div.

Balance of probability. **Blyth v Blyth** [1966] 1 524, HL.

Husband's petition—Knowledge of wife's adultery—Whether attempted collusive bargain for damages amounted to connivance at adulterous association—Presumption of law against existence of connivance not reversed—Supreme Court of Judicature (Consolidation) Act 1925, s 178—Matrimonial Causes Act 1937, ss 1, 4. **Churchman v Churchman** [1945] 2 190, CA.

Termination—

General consent to husband's adultery—Forgiveness and condonation—Subsequent adultery without consent. **Gorst v Gorst** [1951] 2 956, Div.

Unilateral efforts to achieve reconciliation insufficient—Husband's connivance at one act of adultery by wife—Subsequent continuance of wife's adultery—Wife's rejection of husband's attempts at reconciliation—Matrimonial Causes Act 1950, s 4(1), (2). **Godfrey v Godfrey** [1964] 3 154, HL.

When act of incitement is no longer an effective cause of subsequent adultery—Question of fact in circumstances of each case—Full and complete reconciliation not the only test—Unilateral but unsuccessful efforts to achieve reconciliation insufficient to terminate connivance—Matrimonial Causes Act 1950, s 4(2)(b). **Godfrey v Godfrey** [1964] 3 154, HL.

Consensual separation—

Desertion. *See* Desertion—Consensual separation, *post*.

Consent—

Costs—

Legal aid. *See* Legal aid (Costs—Divorce—Divorce by consent).

Divorce by consent—

Generally. *See* Separation—Two year separation, *post*.

Petition—Transitional procedure where defended petition filed before 1st January 1971. *See* Petition—Petition filed before 1st January 1971—Defended petition—Subsequent proceedings contemplated for divorce by consent after two years' separation, *post*.

Consent applications—

Divorce Registry—

Procedure. **Practice Direction** [1974] 2 1120, FamD, **Practice Direction** [1976] 1 272, FamD.

Constructive desertion—

Condonation. *See* Condonation—Constructive desertion, *ante*.

Generally. *See* Desertion—Constructive desertion, *post*.

Contempt of court—

Party in contempt—

Right to be heard. *See* Contempt of court (Party in contempt—Right to be heard—Divorce).

DIVORCE (cont)

Co-respondent—

Admission by wife of adultery with co-respondent—

Admissibility against co-respondent. *See* Adultery—Admission—Admission by wife of adultery with co-respondent, *ante*.Costs. *See* Costs—Co-respondent, *post*.Damages. *See* Damages—Co-respondent, *post*.Dismissal from suit. *See* Parties—Co-respondent—Dismissal from suit, *post*.Naming and making alleged adulterer co-respondent. *See* Parties—Co-respondent—Name and making alleged adulterer co-respondent, *post*.

Costs—

Allocatur—

Form—Expression of sums of money—Decimalisation—Decimal Currency Act 1969, Sch 1. **Practice Direction** [1970] 3 176, Prob and Div.

Ancillary proceedings—

Financial provision—Compromise offer—Offer by party before hearing—Offer rejected—Offer exceeding award made at hearing—Whether party making offer entitled to costs subsequent to offer. **Calderbank v Calderbank** [1975] 3 333, CA.Financial provision—Q 197530333 Compromise offer—Offer made without prejudice to issue at hearing—Whether in making offer party entitled to reserve right to refer to offer in relation to costs. **Calderbank v Calderbank** [1975] 3 333, CA.Appeal. *See* Appeal—Costs, *ante*.

Bill of costs—

Form—Expression of sums of money—Decimalisation. *See* Practice—Documents—Documents lodged in registry—Form—Expression of sums of money—Decimalisation, *post*.

Condonation—

Revival of condoned offence—Effect on liability of co-respondent or party cited. **Barnes v Barnes (Ayres cited)** [1947] 2 326, Div.

Co-respondent—

Costs of incidental proceedings after decree—Summons by respondent wife after decree absolute for leave to take infant son out of jurisdiction of court—Summons of petitioner for custody of son—Co-respondent not party to either summons—Jurisdiction of court to award costs against co-respondent in proceedings to which he is not a party—Matrimonial Causes Rules 1944 (S R & O 1944, No 389), r 33. **Fenston v Fenston** [1945] 2 700, CA.Costs of incidental proceedings after decree—Summons for custody of child—Co-respondent aware of and represented at hearing of summons—No notice of intention to apply for costs of summons against co-respondent given—Matrimonial Causes Rules 1968, (S 1 1968, No 219), r 49(5). **B v B and E (B intervening)** (No 2) [1970] 1 732, Div.Death of petitioner after decree nisi but before decree absolute—Whether his executors can enforce an order for taxation of costs against co-respondent—Attorneys' and Solicitors Act 1870, s 19—Law Reform (Miscellaneous Provisions) Act 1934, s 1(1). **Kelly v Kelly and Brown** [1960] 3 232, Div.Decree nisi—Costs against co-respondent—Reconciliation—Motion for rescission of decree—Service—Substituted order for costs against co-respondent—Service of fresh order. **Walker v Walker and Walker** [1937] 3 523, Div.Decree of judicial separation—Subsequent decree of divorce—Co-respondent the same in both petitions—Payment by co-respondent of costs of both petitions. **Robinson v Robinson and Pilborough** [1946] 2 589, Div.Discretion—No evidence that co-respondent knew at time of adultery that respondent was a married woman—Supreme Court of Judicature (Consolidation) Act 1925, s 50(1). **Lycett-Green v Lycett-Green and du Puy** [1956] 3 97, Div.Discretion—Petition by husband on ground of wife's adultery—Denial of adultery by wife and co-respondent—Separate petition by wife charging husband with cruelty and asking for court's discretion in her favour on account of her adultery with co-respondent—Suits consolidated—Decree for husband—Co-respondent to pay costs in both causes—Supreme Court of Judicature (Consolidation) Act 1925, s 50. **Norton v Norton and Smith, Same v Norton** [1945] 2 122, Div.Infant. **Alderman v Alderman and Dunn (by his Guardian)** [1958] 1 391, Div.Intervention by member of the public—Issue resulting in finding of no adultery—Whether order against co-respondent as to costs should stand. **Underwood v Underwood and Haigh (Pocock showing cause)** [1939] 3 1001, Div.Knowledge that respondent is married woman. **Jackson v Jackson and Pavan** [1960] 3 621, Div.No appearance—Proof of signature on acknowledgment of service—Matrimonial Causes Rules 1947 (S R & O 1947, No 523), r 8(2). **Gilbert v Gilbert and Brooks** [1948] 2 64, CA.Survival of cause of action against co-respondent's estate for costs ordered to be paid by him. *See* Damages—Costs—Death of co-respondent after order for payment of damages and costs made against him, *post*.

Counsel's fees—

Interlocutory work. **Notice** [1958] 1 869, Div.

Damages—

Legal aid. *See* Legal aid (Costs—Divorce—Damages).

Discretion case—

Husband's petition alleging desertion and seeking decree in discretion of court—Wife's answer containing cross-prayer for divorce and alleging adultery by husband with unknown woman in 1951—Reply by husband that wife had condoned the alleged adultery—No inquiry by wife whether any other adultery by husband—Husband's subsequent uncondoned adultery with another woman disclosed in discretion statement—Leave to amend answer granted—Wife granted decree—Whether wife entitled to full costs—Whether her solicitors under duty to inquire as to grounds on which court's discretion sought. **Long v Long** [1960] 2 120, Div.

DIVORCE (cont)**Costs (cont)—****Discretion of court—**

Order against unsuccessful wife—Court's practice not to award such costs—Inapplicability to present social conditions. *Gooday v Gooday* [1968] 3 611, CA.

Execution—

Interpleader—Appeal from registrar—Jurisdiction of judge in chambers—Pledge of chattel—Need for registration as bill of sale—Bills of Sale Act 1878, s 10. *Waight v Waight and Walker* [1952] 2 290, Div.

Sequestration—Sequestration of moneys credited to husband's account with bank—Practice—R S C Ord 43, r 6. *Guerrine (otherwise Roberts) v Guerrine* [1959] 2 594, Div.

Five year separation. *See* Separation—Five year separation—Costs, *post*.

Interest on costs—

Date from which interest payable—Order that husband pay wife her taxed costs—Whether interest payable from date of order for costs or from date of taxation certificate—Judgments Act 1838, s 17. *K v K* [1976] 2 774, FamD.

Order of Divorce Division—Costs to be paid by co-respondent—Further order for payment of costs by instalments—Judgments Act 1838, s 17—Matrimonial Causes Rules 1937 (S R & O 1937 No 1113), r 81. *Morse v Muir* [1939] 2 40, KBD.

Intervention—

King's Proctor. *See* Intervention—King's Proctor showing cause why a decree nisi should not be made absolute—Costs, *post*.

Legal aid certificate granted for suit. *Wallis v Wallis (Queen's Proctor showing cause)* [1952] 1 915, Div.

Queen's Proctor. *See* Intervention—Queen's Proctor showing cause why a decree nisi should not be made absolute—Costs, *post*.

Legal aid. *See* Legal aid (Costs—Divorce).

Matrimonial home—

Land charge—Registration. *See* Husband and wife (Matrimonial home—Land charge—Registration—Cost of registration allowed).

Party cited—

Adultery admitted—Liability of party cited for issues not connected with adultery. *Mearns v Mearns and Bullen* [1955] 1 684, CA.

Party named—

Judicial separation—Wife's petition alleging adultery with woman named—Respondent in cause—Jurisdiction—Matrimonial Causes Act 1950, s 3(2), s 14(1)—Matrimonial Causes Rules 1957 (S I 1957, No 619), r 5(1). *Leach v Leach and Harrower* [1958] 1 320, Div.

Wife's petition alleging husband's improper association with named woman—Copy of petition served on named woman—Appearance entered by named woman, and answer filed denying charges—No application for leave to intervene in suit—Charges against named woman dismissed—Whether order for payment of costs of party named can be made in absence of order giving leave to intervene. *Collins v Collins* [1960] 2 154, Assizes.

Poor person—

Discretion to order poor person to pay opponent's costs—Basis of payment—R S C Ord 16, r 28(1). *Olds v Olds, Brittan v Brittan* [1948] 2 61, CA.

Discretion to order poor person to pay opponent's costs—Order for payment of profit costs in 'special circumstances'—R S C Ord 16, r 28(1), r 31B(1), (2). *Huntingford v Huntingford* [1950] 1 785, CA.

Husband suing as poor person—Profit costs—Special circumstances—Ability of co-respondent to pay—R S C Ord 16, r 13B(2). *Jackson v Jackson and Barwell* [1936] 2 1588, Div.

Liability of poor person to pay or right to receive costs—Security for costs—Order against poor person—R S C Ord 16, r 28(1)—Matrimonial Causes Rules 1944 (S R & O 1944, No 389), r 74(2)(b), (4). *Collins v Collins and Dove, Reeves v Reeves* [1947] 1 793, Div.

Security for costs—Payment by wife respondent of deposit to Poor Persons Committee—Subsequent application for security for costs—Amount of order against husband—Deduction of deposit from amount of security—R S C Ord 16, rr 28(5), 28A. *Peters v Peters* [1949] 2 656, Div.

Prayer for costs—

Omission—Petitioner legally aided—Divorce by consent—Consent on terms that there be no order for costs. *See* Separation—Two year separation—Consent to decree by respondent—Petitioner legally aided—Omission of prayer for costs from petition, *post*.

Security for costs—

Poor person. *See* Costs—Poor person—Security for costs, *ante*.

Security for wife's costs—

Appeal—Jurisdiction. *See* Appeal—Costs—Security for wife's costs, *ante*.

Appeal by unsuccessful husband petitioner—Court's jurisdiction to grant wife security for costs of appeal. *King v King* [1943] 2 253, CA.

Appeal by wife against decree nisi granted to husband. *Roman v Roman* [1947] 1 434, CA.

Husband an 'assisted person'—Matrimonial Causes Rules 1950 (S I 1950, No 1940), r 65(3). *Vincent v Vincent, Evans v Evans* [1953] 1 70, CA.

Inherent jurisdiction of court—Application by husband to vary maintenance order after decree absolute—Application by wife for security for her costs in respect of husband's application—Wife's right to claim necessities forfeited by reason of her adultery—Wife financially able to instruct solicitors and present her case on application to vary maintenance order. *Clear v Clear* [1964] 2 15, Div.

Limited poor person's certificate—Husband in position to provide usual security—Amount of security—Matrimonial Causes Rules 1937 (S R & O 1937 No 1113), r 74(3)—R S C Ord 16, r 23(3)(b). *Halls v Halls and Lukover* [1938] 4 573, CA.

DIVORCE (cont)

Costs (cont)—

SecUrity for wife's costs (cont)—

Matters to be taken into consideration—Means of husband and wife—Reversionary interest of wife realisable for money—Conduct of parties in relation to the litigation—Undue prolongation of proceedings—Matrimonial Causes Rules 1950 (S I 1950, No 1940), r 65(3). **Maclean v Maclean** [1951] 1 967, CA.

Payment by wife of deposit to solicitors for prosecution of suit—Subsequent application for security for costs—Amount ordered against husband—Deduction of amount of deposit from amount of security. **Luff v Luff** [1949] 2 753, Div.

Trial of issue after decree absolute—Jurisdiction of court to order security—Matrimonial Causes Rules 1947 (S R & O 1947, No 523), r 74(2). **Gower v Gower** [1950] 1 27, Div.

Separation—

Five year separation. *See* Separation—Five year separation—Costs, *post*.

Taxation—

Appointment to tax—No appointment necessary where the amount of certain uncontested bills in matrimonial causes is under £400. **Practice Direction** [1963] 1 230, PDA.

Casting of bill—Certifying and agreeing—Practice to be discontinued. **Practice Direction** [1969] 1 867, Div.

Fixed costs—Increase—Fixed costs increased to average amounts allowable on taxation—Fixed costs not available in respect of undefended causes for nullity of marriage—Distinction between higher and lower rate cases abolished—Provision made for election for fixed costs in certain cases—Form of election prescribed. **Practice Direction** [1976] 2 476, FamD.

Instructions for brief—Respondent (co-respondent in suit) seeking inspection of petitioner's counsel's brief—Privilege. **Hobbs v Hobbs and Cousens** [1959] 3 827, Div.

Judgment or final order must include direction for taxation of costs of assisted person unless otherwise directed—Matrimonial causes—Legal Aid (General) Regulations 1962 (S I 1962, No 148), reg 19(3). **Practice Direction** [1968] 2 443, Div.

Notice of taxation—Party cited—No appearance by party cited—Whether he had 'taken any part in the proceedings' by orally assenting to amendment of respondent husband's answer and to waive service of amended answer—Costs awarded against party cited—Whether taxation should be set aside as no notice of taxation given to party cited—Supreme Court Costs Rules 1959, r 22(2), (3). **Roberts v Roberts and Cudlipp** [1965] 2 160, CA.

Objection to taxing officer's decision. **Practice Direction** [1955] 2 326, Div.

Party and party taxation—Counsel's brief fee—Solicitor's fee for attending the hearing—Undefended divorce suit brought by wife, legally aided with nil contribution—Suit heard at Chester—Petitioner's counsel a member of the circuit, travelled from London to Chester—Thirteen members of local bar—Two guineas taxed off counsel's fee as between party and party and added in legal aid column—Petitioner's solicitor's fee of £8 reduced by £3—Both fees restored to party and party column of bill. **Raybould v Raybould** [1968] 1 608, Div.

Review of taxation—Procedure—Rules of the Supreme Court (No 3) 1959 (S I 1959 No 1958), Sch 2, r 35. **Practice Direction** [1960] 3 414, PDA.

Translations. **Practice Note** [1956] 2 209, Div.

Value added tax—Divorce county court. *See* Costs (Taxation—Value added tax—Matrimonial proceedings—Divorce county court).

Witnesses—Irrelevant inquiry—Cross-examination as to adultery—Counsel's fees—Registrar's discretion—Supreme Court of Judicature (Consolidation) Act 1925, s 198. **Pelster v Pelster and Samuel** [1936] 3 783, Div.

Witnesses—Petitioner's expenses of attendance as a witness—Petitioner's evidence disbelieved—Whether expenses allowable—Legally assisted petitioner. **Bock v Bock** [1955] 2 793, Div.

Wife—

Discretion and duty of judge—Effect of Law Reform (Married Women and Tortfeasors) Act 1935, s 1. **Barker v Barker** [1950] 1 812, CA.

Whether ordered to pay costs. **Nowotnik v Nowotnik (Hyatt intervening)** [1965] 3 167, CA.

Counsel—

Negotiating settlement of claims to damages, etc. *See* Counsel (Duty—Divorce—Negotiating settlement of claims to damages, etc).

County court—

Findings of court—

Whether binding in proceedings as to property in High Court. *See* Estoppel (Issue estoppel—Matrimonial proceedings—County court proceedings—Subsequent proceedings in High Court for determination of property rights).

Jurisdiction—

Ancillary and alternative relief. *See* Ancillary and alternative relief—Jurisdiction—Competence of divorce county court, *ante*.

List. *See* Matrimonial causes list—County court list, *post*.

Court welfare officer—

Reference of case to—

Assessment of possibility of reconciliation. *See* Reconciliation—Practice—Machinery for exploring possibility of reconciliation with a view to determining whether there is reasonable probability of the parties being reconciled—Duty of court welfare officer, *post*.

Cross-petition—

Answer to cross-petition. *See* Practice—Answer—Answer to cross-petition, *post*.

Founded on adultery disclosed in discretion statement—

Availability to respondent—Matrimonial Causes Rules 1937 (S R & O 1937 No 1113), r 28(5). **Sifton v Sifton** [1939] 1 109, Div.

DIVORCE (cont)

Cruelty—

Child—

Ill-treatment of child—Unjustifiable acts—Beating—Proof of intent to injure health of other spouse—No need to aver or prove express intent. **Wright v Wright** [1960] 1 678, CA.
 Indecent assault by husband on child of marriage. **Cooper v Cooper** [1954] 3 415, Div.
 Indecent conduct of husband towards step-daughter—Wife's health affected—No proof of intention to injure wife—Husband's presumed knowledge of likely effect. **Ivens v Ivens** [1954] 3 446, CA.

Compromise of judicial separation suit—

Deed of separation—All charges withdrawn—Petition for divorce based on same charges—Absolute release—Frustration—Matrimonial Causes Act 1937, s 2. **H v H** [1938] 3 415, Div.

Condonation. *See* Condonation—Cruelty, *ante*.

Criminal conduct—

Consequent embarrassment and injury to health of other spouse. **Stanwick v Stanwick** [1970] 3 983, CA.

Husband's convictions for crime—Justifiable remonstrances by wife—Unjust resentment by husband—Injury to wife's health. **Woollard v Woollard** [1954] 3 351, Div.

Wife's conviction for espionage—Husband a regular serving airman—Conduct of wife tending to strike at roots of matrimonial relationship—Inference of intention to injure. **Ingram v Ingram** [1956] 1 785, Div.

Delay—

Petition by wife dismissed on ground of unreasonable delay—Discretion—Matrimonial Causes Act 1950, s 4(2), proviso (i). **Llewellyn v Llewellyn (Beynon and Price, parties cited)** [1955] 2 110, CA.

Desertion—

Neglect of wife and child by husband—Course of conduct amounting to cruelty causing spouse to leave matrimonial home—Whether conduct amounting to desertion can be cruelty. **Cade v Cade** [1957] 1 609, Div.

Drunkenness—

Other acts of ill-treatment—Knowledge of injury to other spouse's health. **Baker v Baker** [1955] 3 193, Assizes.

Elements of offence—

Intention—Concealment of conduct that might cause injury—Inference of absence of intention to injure—Husband's practice of dressing in women's clothing—Refusal of medical treatment—Treatment calculated to increase frigidity. **Bohnel v Bohnel** [1960] 2 442, CA.

Intention—Meanness of the husband in money matters—Shiftlessness of the husband—Conduct not directed against, or aimed at, the wife—Matrimonial Causes Act 1950, s 1(1)(c). **Eastland v Eastland** [1954] 3 159, Div.

Intention—Negative conduct—Natural consequence of respondent's acts—Rebuttable presumption—No act of violence—Callous indifference—Reasonable apprehension of danger to health. **Simpson v Simpson** [1951] 1 955, Div.

Intention—Negative conduct—Husband's failure to maintain his family—Debts—Wife obliged to support family—Wife's health affected—Whether intention to injure an essential element of matrimonial offence of cruelty—Whether husband had treated wife with cruelty—Matrimonial Causes Act 1950, s 1(1)(c). **Gollins v Gollins** [1963] 2 966, HL.

Need of deliberation, malignity and intent—Conduct arising from illness. **Squire v Squire** [1948] 2 51, CA.

Standard of proof. **Mulhouse (formerly Mulhausen) v Mulhouse (formerly Mulhausen)** [1964] 2 50, Div.

Evidence—

Mental cruelty—Effect of Matrimonial Causes Act 1937 on principles to be applied—Supreme Court of Judicature (Consolidation) Act 1925, s 176(c) (as substituted by Matrimonial Causes Act 1937, s 2). **Jamieson v Jamieson** [1952] 1 875, HL.

Order of court of summary jurisdiction on similar issue—Matrimonial Causes Act 1937, s 6(2). **Kara v Kara and Holman** [1948] 2 16, CA.

Findings—

Statement of finding on each issue involved cause of action. **Thoday v Thoday** [1964] 1 341, CA.

Husband's cruelty—

Association with another woman—Deception of wife—Desertion by husband—Discovery of true facts after husband's disappearance—Aggravation of shock to wife—Matrimonial Causes Act 1950, s 1(1)(c). **Carpenter v Carpenter (Holden intervening)** [1955] 2 449, Div.

Association with another woman—No allegation of sexual impropriety—Effect on sensitive and highly strung wife. **Windeatt v Windeatt** [1962] 1 776, CA.

Injury to health—

Nagging—Husband's health endangered. **Atkins v Atkins** [1942] 2 637, Div.

Nagging—Matters to be taken into consideration. **King v King** [1952] 2 584, HL.

Sterilisation operation on husband—Consent of wife—Effect on wife's health—Matrimonial Causes Act 1950, s 1(1)(c). **Bravery v Bravery** [1954] 3 59, CA.

Sulking by husband. **Lauder v Lauder** [1949] 1 76, CA.

Intercourse—

Coitus interruptus. **Cackett (otherwise Trice) v Cackett** [1950] 1 677, Div. **Walsham v Walsham** [1949] 1 774, Div.

Coitus interruptus—Frustration of maternal instinct. **Knott v Knott** [1955] 2 305, Assizes.
 Refusal by husband of intercourse—Injury to wife's health—Whether amounting to cruelty. **B (L) v B (R)** [1965] 3 263, CA.

Refusal by husband of intercourse—Injury to wife's health—Conduct not inexcusable, being due to husband's natural disinclination towards intercourse—Whether such conduct could in law constitute cruelty. **P v P** [1964] 3 919, District Registry.

DIVORCE (cont)

Cruelty (cont)—

Intercourse (cont)—

Refusal by husband of intercourse—Injury to wife's health—Absence of justification—Husband's conduct by such refusal amounting to cruelty. **Sheldon v Sheldon** [1966] 2 257, CA.

Refusal by wife to allow intercourse—Neglect by wife of husband and child—Desire to end marriage—No evidence of intention to wound husband or of injury to his health. **Kaslefsky v Kaslefsky** [1950] 2 398, CA.

Refusal by wife to allow intercourse—Persistent refusal to allow conception of child—Intentional acts of wife—Injury to husband's health. **Forbes v Forbes** [1955] 2 312, Div.

Refusal by wife to allow intercourse—Refusal due to psychological fear of conception over which wife had no control—Injury to husband's health. **P (D) v P (J)** [1965] 2 456, Div.

Refusal by wife to allow intercourse—Refusal of wife to bear children—Wife's loss of interest in husband—Injury to husband's health—Intentional acts of wife. **Ward v Ward** [1958] 2 217, District Registry.

Refusal by wife to allow intercourse—Unjustifiable conduct on wife's part amounting to grave and weighty matter—Adverse affect on husband's health. **Evans v Evans** [1965] 2 789, Assizes.

Interrogatories. *See* Practice—Interrogatories—Cruelty or desertion, *post*.

Legal responsibility—

Onus of proof. **Brittle v Brittle (by his Guardian)** [1947] 2 383, Div.

Test of legal responsibility. *See* Cruelty—Mental disorder—Test of legal responsibility, *post*.

Mental disorder. **Lissack v Lissack** [1950] 2 233, Div.

Mental disorder—

Insanity—Whether wife entitled to decree. **Lissack v Lissack** [1950] 2 233, PDA.

Husband unable to understand nature and quality of his acts. **Swan v Swan** [1953] 2 854, CA.

Knowledge by respondent of nature and quality of acts. **White v White** [1949] 2 339, CA.

Schizophrenia—Wife in state of schizophrenic passivity and isolation—Unable to care properly for home and family—Stress, strain and depression suffered by husband—Whether conduct of wife amounted to cruelty. **Priday v Priday** [1970] 3 554, Assizes.

Test of legal responsibility—Application of common law rule—Matrimonial Causes Act 1937, s 2. **Astle v Astle (by his Guardian)** [1939] 3 967, Div.

Test of legal responsibility—Delusions—Unjust accusations and physical violence based on belief in delusions—Unjust accusations not constituting ill-treatment—Responsibility for acts of physical violence. **Elphinstone v Elphinstone** [1962] 2 766, Div.

Test of legal responsibility—McNaghten rules—Mental disorder a factor in determining whether respondent treated petitioner with cruelty—Matrimonial Causes Act 1950, s 1(1). **Williams v Williams** [1963] 2 994, HL.

Test of legal responsibility—M'Naghten rules. **Palmer v Palmer** [1954] 3 494, CA.

Test of legal responsibility—Respondent suffering from paranoid schizophrenia—Expression of regret by respondent—Whether respondent knew that what she was doing was wrong—Meaning of 'wrong' in the M'Naghten rules when applied as a defence in divorce—Cogency of evidence of medical expert who saw respondent once only. **Sofaer v Sofaer (by her Guardian)** [1960] 3 468, Div.

Test of legal responsibility—Uncontrollable impulse—Matrimonial misconduct of wife due to psycho-neurosis—Wife knew what she was doing but could not control her acts—Whether conduct constituted cruelty. **Crump v Crump** [1965] 2 980, Assizes.

Unjust accusations firmly believed by respondent—Assault by respondent—Reasonable apprehension of future injury to petitioner. **Robins v Robins** [1960] 3 66, Div.

Pleading. *See* Practice—Pleading—Cruelty, *post*.

Provocation—

Provocation must bear direct relation to acts of retaliation alleged to constitute cruelty. **Stick v Stick** [1967] 1 323, Assizes.

Revival of condoned adultery by—

Conduct not amounting to legal cruelty. **Richardson v Richardson** [1949] 2 330, CA.

Schizophrenia. *See* Cruelty—Mental disorder—Schizophrenia, *ante*.

Sexual offences by husband against third parties—

Bullying and aggressive attitude towards wife—Mental cruelty—Different forms of mental ill-treatment taken together to found charge of persistent cruelty. **Crawford v Crawford** [1955] 3 592, Div.

Standard of proof—

'Beyond reasonable doubt'. **Bater v Bater** [1950] 2 458, CA.

Beyond reasonable doubt. **Bater v Bater** [1950] 2 458, CA.

Test of cruelty—

Conduct must be grave and weighty. **Saunders v Saunders** [1965] 1 838, Div.

'Cruelty' has in divorce law its ordinary meaning—Wife domineering, but husband by temperament not assertive and unduly retiring—Husband failing to show sufficient interest in wife or family—Wife's exasperation at husband's attitude causing her ill-health—Whether husband's conduct constituted cruelty. **Le Brocq v Le Brocq** [1964] 3 464, CA.

Two tests—Whether conduct sufficiently grave and weighty to be cruel and whether injury to health or reasonable apprehension thereof caused to petitioner. **Noble v Noble and Ellis (No 2)** [1964] 1 577, Div.

Wilful and unjustifiable acts—Matrimonial Causes Act 1937, s 2(c). **Horton v Horton** [1940] 3 380, Div.

Violence—

Assaults committed while parties living apart. **Britt v Britt** [1955] 3 769, CA.

Physical violence—Evidence of general injury to health not essential. **Hudson v Hudson** [1965] 2 82, Div.

DIVORCE (cont)

Cruelty (cont)—

Violence (cont)—

Refusal to obey unreasonable orders of husband—Violent assaults by husband—Supreme Court of Judicature (Consolidation) Act 1925, s 176—Matrimonial Causes Act 1937, ss 2, 6. **Meacher v Meacher** [1946] 2 307, CA.

Wife's cruelty—

Neglect by wife of husband and child—Leaving husband to look after three young children as well as earn living. **Stanwick v Stanwick** [1970] 3 983, CA.

Unnatural sexual relations with other women—Neglect of marital home and duties—Husband not willing party to sexual irregularities. **Gardner v Gardner** [1947] 1 630, Div.

Unnatural sexual relations with other women—Persistent friendship with other woman—Injury to husband's health. **Spicer v Spicer (Ryan intervening)** [1954] 3 208, Div.

Unnatural sexual relations with other women—Right of other woman to intervene—Matrimonial Causes Act 1950, s 31. **D v D** [1952] 2 854, CA.

Wilful neglect—

Wilful neglect to maintain as act of cruelty—Wilful neglect to maintain reviving condoned cruelty. **Dunn v Dunn** [1962] 3 587, PDA.

Custody—

Access—

Divorced mother refused access by commissioner—Not shown to be other than fit and proper person to see children. **S v S and P** [1962] 2 1, CA.

Illegitimate children—Husband discovered he was not father of children after children taken from home by wife—Whether husband had accepted children as children of the family—Whether he was entitled to access—Matrimonial Causes Act 1965, s 34(1), s 46(2)(b). **B v B and F (B and B intervening)** [1968] 3 232, Div.

Relevant child. *See* Infant—Relevant child, *post*.

Taking child out of jurisdiction—Leave—Application for leave by parent having custody—Mother having custody of child—Mother obtaining appointment at South African university—Father holding strong views hostile to policies of South African government—Whether grounds for refusing to grant mother leave to take child out of jurisdiction. **Nash v Nash** [1973] 2 704, CA.

Taking child out of jurisdiction—Leave—Child's welfare the primary consideration—Remarriage of wife having custody—New husband's good prospects in New Zealand—Interests of son fully provided for—Conditions for granting leave to remove son. **P (L M) (otherwise E) v P (G E)** [1970] 3 659, CA.

Welfare of child—Custody granted to mother on divorce—Access by father having possible detrimental effect on child—Child unwilling to have access—Father not shown to be other than fit and proper person to see child—Refusal of access. **B v B** [1971] 3 682, CA.

Adoption of child—

Effect on custody order—Adoption Act 1950, s 10(1), (2). **Crossley v Crossley** [1953] 1 891, Div.

Appeal—

Factors—Religious upbringing—Judge's discretion not interfered with where factors evenly balanced. **B (M) v B (R)** [1968] 3 170, CA.

Husband's appeal—Security for wife's costs—Guardianship of Infants Act 1925, s 7—R S C Ord 55A, r 6. **Re Thomsett (an infant)** [1936] 3 649, ChD.

Application—

Application by third party for custody—Death of parent obtaining order for custody—Supreme Court of Judicature (Consolidation) Act 1925, s 193(1). **Pryor v Pryor** [1947] 1 381, Div.

Application by third party for custody—Death of parent with whom child lived—Matrimonial Causes Act 1950, s 26(1). **B v B and H (L intervening)** [1962] 1 29, Div.

Procedure—Child—Private interview with judge—Undertaking by judge that what child says at interview will not be disclosed to anyone—Whether undertaking should be made. **H v H (child: judicial interview)** [1974] 1 1145, CA.

Whether application interlocutory for purposes of affidavit evidence of information and belief—R S C Ord 38, r 3, proviso. **Rossage v Rossage** [1960] 1 600, CA.

Child out of jurisdiction—

Child taken by deserting wife—Custody to husband without prejudice to question regarding care and control. **Wakeham v Wakeham** [1954] 1 434, CA.

Children taken from wife—Wife's application for custody—Order against husband to deliver child to wife within the jurisdiction—Matrimonial Causes Act 1950, s 26(1). **Harben v Harben** [1957] 1 379, Div.

Costs—

Co-respondent. *See* Costs—Co-respondent—Costs of incidental proceedings after decree—Summons for custody of child, *ante*.

Custody order—

Restriction on taking child out of jurisdiction—Exception conditional on respondent's consent. **Bilainkin v Bilainkin** [1959] 1 161, CA.

Restriction on taking child out of jurisdiction—Proviso. **Practice Direction** [1966] 3 1008, Div.

Custody pending suit—

Preservation of status quo until trial. **Boyt v Boyt** [1948] 2 436, CA.

Custody proceedings—

Discretion of court—Boy aged eight—General principle that he will be better with his father. **W v W and C** [1968] 3 408, CA.

Discretion of court—Children aged six and seven—Wife's misconduct—Husband's exemplary conduct—Both offering good homes—Postponement of order for three months—Children remaining meanwhile with wife—Husband's liberal access—Valid exercise of discretion—Custody to be awarded to husband but not care and control during the three months. **Laxton v Laxton and Eaglan** [1966] 2 977, CA.

DIVORCE (cont)

Custody (cont)—

Custody proceedings (cont)—

Discretion of court—Child aged three years and nine months—Wife's misconduct—Husband left to make arrangements to look after child—Wife did not see child for 20 months—Husband intending to remarry—Custody, care and control awarded to husband. **H v H and C** [1969] 1 262, CA.

Discretion of court—Welfare of child—Paramount consideration—Moral and physical welfare—Guardianship of Infants Act 1925, s 1. **Allen v Allen** [1948] 2 413, CA.

Evidence not given at hearing of divorce suit—Admissibility. **Corbett v Corbett** [1953] 2 69, CA.

Evidence not given at hearing of divorce suit—Estoppel—Adultery—Husband's allegation of adultery by wife with M rejected at trial of divorce suit—Decree granted to husband on other grounds—Trial judge favourably impressed by M's evidence, unfavourably impressed by other witnesses, including husband and wife—Wife intending to marry M—Subsequent custody proceedings concerning the child of the marriage—Husband adduced in this further evidence of wife's adultery with M—Whether this further evidence admissible. **F v F** [1968] 2 946, CA.

Evidence not given at hearing of divorce suit—Estoppel—Adultery—Desertion—Wife granted decree in undefended suit on ground of husband's desertion—Discretion statement by her disclosed adultery with two men—Whether husband estopped in subsequent custody proceedings from asserting wife had deserted him and from alleging adultery with men other than those referred to in the discretion statement. **Hull v Hull** [1960] 1 378, Div.

Declaration that divorced parent not fit to have custody—

Desirability of making declaration—Guardianship of Infants Act 1886, s 7—Guardianship of Infants Act 1925, s 4(1), (2). **S v S** [1949] 1 285, Div.

No jurisdiction to make in chambers—Guardianship of Infants Act 1886, s 7. **Cliff v Cliff** [1948] 2 760, CA.

Interim order—

Propriety—Parents living apart—Order transferring children from parent with whom living to other parent—Desirability before outcome of divorce suit known—No evidence that outcome of suit likely to have any impact on decision as to custody—Interim order not to be regarded as merely temporary measure. **Jones (E G) v Jones (E F)** [1974] 3 702, CA.

Jurisdiction—

Bigamous marriage and subsequent lawful marriage—Jurisdiction to grant custody of children of bigamous marriage—Matrimonial Causes Act 1950, s 26(1). **Bryant v Bryant** [1955] 2 116, CA.

Child committed to care of local authority—Exceptional circumstances—Matrimonial Proceedings (Children) Act 1958, s 5(1). **F v F** [1959] 3 180, Div.

Child committed to care of local authority—Father and mother subsequently divorced—Application to court by mother for direction that child should continue to live with foster parents found by her—Children and Young Persons Act 1933, ss 62(1)(b), 76(1)—Matrimonial Proceedings and Property Act 1970, s 18(1). **H v H (child in care: court's jurisdiction)** [1973] 1 801, FamD.

'Child the marriage of whose parents is the subject of the proceedings'—Child born before marriage—Not legitimated per subsequens matrimonium—Matrimonial Causes Act 1950, s 26(1). **Harrison v Harrison** [1951] 2 346, Div. **Packer v Packer** [1953] 2 127, CA. **Galloway v Galloway (ex parte)** [1955] 3 429, HL.

'Child the marriage of whose parents is the subject of the proceedings'—Child born before marriage—Husband obtaining divorce from wife—Husband entitled to custody of child—Decree of legitimacy no condition precedent to order for custody—Legitimacy Act 1926, s 1—Supreme Court of Judicature (Consolidation) Act 1925, s 193. **Millard v Millard and Addis** [1945] 2 525, Div.

'Child the marriage of whose parents is the subject of the proceedings'—Child born during marriage, but not child of husband—Husband registered as father—Matrimonial Causes Act 1950, s 26(1). **Webb v Webb** [1952] 1 527, Div.

'Child the marriage of whose parents is the subject of proceedings'—Child conceived after decree nisi but before decree absolute—Matrimonial Causes Act 1950, s 26(1). **Knowles v Knowles** [1962] 1 659, Div.

'Child the marriage of whose parents is the subject of the proceedings'—Remarriage of parties—Discretion not to make order—Matrimonial Causes Act 1950, s 26(1). **Grainger v Grainger and Clark** [1959] 3 51, CA.

Wards of court—Infants made wards of court in Chancery Division—No order of Chancery judge as to custody or access—Prior order of Divorce Division as to access—Jurisdiction of Divorce Court to vary order as to access—Matrimonial Causes Act 1950, s 26(1)—Law Reform (Miscellaneous Provisions) Act 1949, s 9(2). **Hall v Hall** [1963] 2 140, CA.

Practice. *See* Practice—Children—Custody, *post*.

Proceedings in private—

Transcripts. *See* Child (Practice—Court proceedings in relation to children—Proceedings in private—Publication of information—Transcripts).

Wardship proceedings—

Necessity for application to Chancery Division. *See* Ward of court (Application to make minor ward of court—Application to Chancery Division—Necessity for application).

Custody pending suit. *See* Custody—Custody pending suit, *ante*.

Damages—

Co-respondent—

Apportionment—Payment out of court—Application by petitioner husband for settlement of part of damages for benefit of children—Husband and co-respondent legally aided—Order on co-respondent for payment of costs by instalments—Legal aid fund having charge on fund in court—Application for settlement premature—Matrimonial Causes Act 1950, s 30(3). **Hodgkiss v Hodgkiss and Van Hoek** [1966] 1 998, CA.

DIVORCE (cont)

Damages (cont)—

Co-respondent (cont)—

Assessment in divorce proceedings—Prior action for enticement settled on payment of damages. **Menon v Menon and Warth** [1936] 1 900, Div.

Competence—Husband not domiciled in England. **Jacobs v Jacobs and Ceen (Ceen v Jacobs)** [1950] 1 96, Div.

Costs—Death of co-respondent after order for payment of damages and costs made against him—Whether cause of action that survived against his estate by virtue of Law Reform (Miscellaneous Provisions) Act 1934, s 1(1). **Rysak v Rysak and Bugajski** [1966] 2 1036, Div.

Factors to be taken into account—Loss of consortium—Injury to feelings and pride—Whether wealth of co-respondent a factor. **Pritchard v Pritchard and Sims** [1966] 3 601, CA.

Factors to be taken into account—Respondent's responsibility for liaison—Co-respondent's means. **Scott v Scott** [1957] 1 63, CA.

Instalments—Whether court has jurisdiction to order payment by instalments. **Pidduck v Pidduck and Limbrick** [1961] 3 481, Div.

Order for investment for benefit of child—

Death of child while an infant—Further order regarding application of fund—Form of original order—Supreme Court of Judicature (Consolidation) Act 1925, s 189(3). **Collins v Collins** [1952] 2 1133, CA.

Payment—

Order to pay part of damages to petitioner direct—Supreme Court of Judicature (Consolidation) Act 1925, s 189(3). **Re A Debtor (No 975 of 1937)** [1938] 2 530, CA.

Order to pay part of damages to petitioner direct—Supreme Court of Judicature (Consolidation) Act 1925, s 189(3). **Re A Debtor (No 975) of 1937** [1938] 2 530, CA.

Petition for damages only for adultery—

Second petition filed before decree nisi for divorce was made absolute—Whether suit for damages only was a 'matrimonial cause'—Whether second petition should be struck out as infringing Matrimonial Causes Rules 1957 (S I 1957, No 619), r 3(2)—Supreme Court of Judicature (Consolidation) Act 1925, s 225. **Jacks v Wilkie and Jacks** [1961] 1 251, Div.

Re-hearing—

Default of solicitor. *See* Re-hearing—Default of solicitor—Co-respondent instructing solicitor to contest issue of damages—Co-respondent not appearing and not represented at hearing through default of his solicitor, *post*.

Death of spouse—

Intestacy—

Grant of administration—Divorce proceedings pending. *See* Intestacy (Grant of administration)—Grant to widow—Divorce proceedings pending).

Deceased former spouse—

Maintenance for surviving spouse out of deceased's estate—

Failure of deceased to make reasonable provision—Moral claim of first wife, not guilty of misconduct—No provision made by deceased for her but all his estate bequeathed to second wife—Estate included half share with brother in greengrocery premises and business—Business continued by brother, but profits declining—Net estate £6,000—Proposed sale—Whether small maintenance order should be made in favour of first wife with a view to variation when estate realised—Matrimonial Causes (Property and Maintenance) Act 1958, s 3(1),(3),(5). **Roberts v Roberts (executrix)** [1964] 3 503, Div.

Declaration as to marital status. *See* Declaration (Jurisdiction—Declaration as to marital status).

Decree—

Correction—

Accidental slip or omission. *See* Judgment (Order—Correction—Accidental slip or omission—Divorce decree).

Decree absolute. *See* Decree absolute, *post*.

Decree nisi. *See* Decree nisi, *post*.

Foreign decree. *See* Foreign decree, *post*.

Form of decree—

Adultery. *See* Adultery—Decree—Form of decree, *ante*.

Mutual decrees—

Dissolution of marriage and judicial separation—Course not to be commended. **Lawry v Lawry** [1967] 2 1131, CA.

Order for transfer of property on grant of decree. *See* Husband and wife (Matrimonial home—Transfer—Order of court—Application for order on decree of divorce, nullity or judicial separation).

Decree absolute—

Amendment—

Marriage as pleaded and proved dissolved by decree—Decree made absolute—Two ceremonies of marriage—Petition referred only to second ceremony—Application to amend petition and decrees by substituting references to first ceremony—Matrimonial Causes Act 1950, s 4(1)—Matrimonial Causes Rules 1950 (S I 1950, No 1940), r 4(1)(a), r 6(1), r 80. **Thynne (Marchioness of Bath) v Thynne (Marquess of Bath)** [1955] 3 129, CA.

Appeal. *See* Appeal—Decree absolute, *ante*.

Appeal pending—

Discretion of trial judge—Supreme Court of Judicature (Consolidation) Act 1925, ss 31(1)(e), 183(1), 184(1). **Lloyd-Davies v Lloyd-Davies** [1947] 1 161, CA.

DIVORCE (cont)

Decree absolute (cont)—

Application for financial provision for respondent—

Court not to make absolute decree unless and until satisfied about financial arrangements after divorce—Husband filing petition—Wife on acknowledgment of service form intimating intention to apply for court to consider her financial position after divorce—Form giving name of her solicitor—Solicitor's name accidentally omitted from court file—Solicitor receiving no subsequent communications about divorce—Husband granted decree nisi—At his request decree absolute expedited—Solicitor only learning of course of proceedings after decree absolute—No formal application made by wife for consideration of her financial position after divorce—Whether decree void or voidable—Divorce Reform Act 1969, s 6. **Dryden v Dryden** [1973] 3 526, FamD.

Application for leave to apply for decree to be made absolute—

Application by respondent—Respondent in contempt—Non-payment of wife's costs—Application by respondent husband to make decree absolute—Contempt due to want of means—Discretion of the court—Matrimonial Causes Act 1937, s 9. **Gower v Gower** [1938] 2 283, Div.

Application by respondent—Respondent in contempt—Failure to obey order for alimony pendente lite made for benefit of children of marriage—Discretion of court—Matrimonial Causes Act 1937, s 9(3). **Chappell v Chappell** [1938] 4 814, Div.

Application by respondent—Suspicion of collusion—Representation of the King's Proctor—Hearing of evidence in open court. **Lowndes v Lowndes** [1950] 1 999, Div.

Condonation—Condonation after decree nisi—Whether bar to making decree absolute—Whether decree nisi set aside. **Ives v Ives (Queen's Proctor showing cause)** [1967] 3 79, Div.

Condonation—Decree nisi on grounds of husband's adultery—Resumption of cohabitation—Subsequent desertion and adultery by husband—Evidence in support of application. **Rose v Rose** [1957] 1 517, Div.

Condonation—Decree nisi on grounds of husband's adultery—Resumption of cohabitation—Subsequent desertion by husband—Wife's application for decree absolute after more than a year—Need to disclose full facts—Notice to parties affected by charges—Jurisdiction of court—Matrimonial Causes Rules 1947 (S R & O 1947, No 523), r 40. **Elwes v Elwes** [1950] 1 826, Div.

Condonation—Decree nisi on grounds of husband's cruelty—Resumption of cohabitation because of husband's mental illness—Condonation—Subsequent matrimonial misconduct by husband—Whether oral evidence in support of application necessary. **Chard v Chard** [1964] 3 99, Div.

Notice of application—Filing of notice by registrar on day of receipt—Death of respondent spouse on day when notice received by registrar but before its receipt—Whether decree could be made absolute—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 40(2). **Re Seaford (decd)** [1968] 1 482, CA.

Arrangements for care and upbringing of children—

Decree nisi made absolute before court satisfied as to arrangements—Child of the family born between decree nisi and decree absolute not brought to the notice of the court—Whether decree absolute void or voidable—Matrimonial Causes Act 1965, s 33(1). **P v P and J** [1971] 1 616, CA.

Decree nisi made absolute before court satisfied as to arrangements—Child of the family born between filing of petition and decree nisi not brought to the notice of the court—Whether decree absolute void or voidable—Matrimonial Causes Act 1965, s 33(1). **F v F** [1970] 1 200, Div.

Decree nisi made absolute before court satisfied as to arrangements—Decree void—Matrimonial Proceedings (Children) Act 1958, s 2(1). **B v B** [1961] 2 396, Div.

Proceedings begun before Jan 1, 1959, but amendment by way of cross-petition made thereafter—Matrimonial Proceedings (Children) Act 1958, s 2(2), inapplicable. **Swiszczowski v Swiszczowski and Jewasinski** [1959] 1 495, Div.

Collusive agreement—

Term of agreement not embodied in decree nisi—Enforcement—Interpretation. **Devas v Devas** [1969] 3 1543, Div.

Expediting—

Application to expedite—Medical certificate of expected date of birth of child—Early application to accelerate hearing preferable. **Practice Direction** [1962] 3 67, Div.

Application to expedite—Practice. **Practice Direction** [1964] 3 775, Div.

Application to expedite—Practice—No order made on first application. **Hays v Hays** [1943] 1 669, Div.

Circumstances in which decree absolute may be expedited—Justice to parties—Notice to respondent husband—Purpose of expedition to forestall foreign decree—Effect of foreign decree to deprive wife of rights to financial provision—Decree made absolute forthwith. **Torok v Torok** [1973] 3 101, FamD.

Special order reducing period fixed by general order—Circumstances in which special order may be made. **Practice Direction** [1972] 3 416, FamD.

Financial protection for respondent—

Separation cases—Court to be satisfied as to financial provision before making decree absolute—Failure to comply with provision—Effect—Decree made absolute before court having been satisfied as to financial provision for respondent—Whether decree absolute void or voidable—Divorce Reform Act 1969, s 6(2). **Wright v Wright** [1976] 1 796, FamD.

Irregularity—

Effect. *See* Decree absolute—Arrangements for care and upbringing of children—Decree nisi made absolute before court satisfied as to arrangements, *ante*.

Opposition—

Grave financial or other hardship. *See* Separation—Five year separation—Decree nisi—Opposition—Grave financial or other hardship—Opposition after grant of decree nisi, *post*.

DIVORCE (cont)

Decree absolute (cont)—

Pronouncement in court—

Intervention prior to filing of document recording decree—Finality of pronouncement. **Crossland v Crossland** [1946] 2 91, Div.

Remarriage—

Capacity of divorced person to remarry immediately after grant of decree absolute—Time for appeal against decree absolute—Effect of right of appeal on capacity to remarry—Effect of decree absolute—Decree absolute effectively terminating former marriage unless and until rescinded—Decree absolute giving divorced party capacity to remarry—Matrimonial Causes Act 1965, s 8(1)—Nullity of Marriage Act 1971, s 1. **Dryden v Dryden** [1973] 3 526, Fam.D.

Setting aside—

Decree nisi made absolute on premature application by guilty spouse—No summons to registrar—No notice to innocent spouse—Supreme Court of Judicature (Consolidation) Act 1925, s 183(3) (as amended by Matrimonial Causes Act 1937, s 9)—Matrimonial Causes Rules 1947 (S R & O 1947, No 523), r 40(3). **Woolfenden (otherwise Clegg) v Woolfenden (otherwise Clegg)** [1947] 2 653, Div.

Legitimacy of child of second marriage. *See* Legitimacy (Divorce—Decree absolute—Setting aside).

Order for substituted service—No 'sufficient or candid' disclosure by petitioner—No knowledge by respondent of hearing of petition—Appeal against decree absolute—Remarriage of petitioner—Birth of child—Effect on child's legitimacy of decree absolute being set aside—Supreme Court of Judicature (Consolidation) Act 1925, s 31(1)(e). **Wiseman v Wiseman** [1953] 1 601, CA.

Person under disability—Whether failure by petitioner to apply for appointment of guardian ad litem to respondent appearing to be under disability rendered proceedings a nullity—Matrimonial Causes Rules 1957 (S I 1957 No 619, as amended by S I 1960 No 1261), r 66(1), (6)—R S C Ord 70, r 1—Mental Health Act 1959, s 4(1). **Balloqui v Balloqui** [1963] 3 989, CA.

Re-marriage of petitioner—Birth of child—Effect on child's legitimacy of decree absolute being set aside. **Wiseman v Wiseman** [1953] 1 601, CA.

Restoration of appeal—Appeal against decree nisi dismissed on failure, by mistake, to deposit security for costs—Jurisdiction of court—Supreme Court of Judicature (Consolidation) Act 1925, s 31(1)(e). **Meier v Meier** [1948] 1 161, CA.

Showing cause against—

King's Proctor. *See* Intervention—King's Proctor showing cause why a decree nisi should not be made absolute, *post*.

Queen's Proctor. *See* Intervention—Queen's Proctor showing cause why a decree nisi should not be made absolute, *post*.

Stay—

Jurisdiction—Order that on payment of sum to the wife her prayer for maintenance be dismissed—Question whether sum was to be paid direct to wife or to be made subject of a trust. **Bromberg v Bromberg and Gross** [1962] 3 292, Div.

Termination of alimony pendente lite. *See* Alimony—Pendente lite—Termination with decree absolute, *ante*.

Decree nisi—

Agreement or arrangement—

Inclusion of terms in decree. *See* Practice—Agreement or arrangement between parties—Lodgment of copy of terms—Order approving terms—When terms may be incorporated in decree, *post*.

Application for leave to apply for decree to be made absolute. *See* Decree absolute—Application for leave to apply for decree to be made absolute, *ante*.

Condonation after decree nisi—

Effect. *See* Decree absolute—Application for leave to apply for decree to be made absolute—Condonation, *ante*.

Five year separation—

Opposition after grant of decree nisi. *See* Separation—Five year separation—Decree nisi—Opposition, *post*.

Form—

Specific finding of adultery—Name of co-respondent or second respondent to appear in decree. **Miller (formerly Kozubowski) v Kozubowski, Hekner (cited as Hepner), Denester (cited as Dennister) and Niekrasz cited** [1956] 1 177, Div.

Intervention by King's Proctor. *See* Intervention—King's Proctor showing cause why a decree nisi should not be made absolute, *post*.

Intervention by Queen's Proctor. *See* Intervention—Queen's Proctor showing cause why a decree nisi should not be made absolute, *post*.

Practice—

Form of decree. *See* Decree nisi—Form, *ante*.

Striking out allegations not proved. **Rule v Rule** [1971] 3 1368, Fam.D.

Refusal—

Grave financial or other hardship. *See* Separation—Five year separation—Decree nisi—Refusal—Grave financial or other hardship, *post*.

Rescission—

Co-respondent an infant at date of decree—No guardian appointed—Petition served on co-respondent personally—Undefended suit—Summons by petitioner for rescission of decree—Jurisdiction of judge to order rescission—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 66(3). **Roberts v Roberts and Peters** [1959] 2 209, Div.

Material facts not before court—Application by respondent—'Any person' may show cause—Matrimonial Causes Act 1950, s 12(2). **Squires v Squires** [1959] 2 85, Div.

Setting aside—

Re-hearing. *See* Re-hearing—Spouse lulled into false sense of security that proceedings have lapsed, *post*.

DIVORCE (cont)

Decree nisi (cont)—

Specifying valid marriage—

First marriage of Nigerian Christians in Nigeria according to local custom—Subsequent ceremony at register office in England—Which marriage would be dissolved—Whether religious beliefs of spouses justified first marriage being treated as monogamous. **Ohochuku v Ohochuku** [1960] 1 253, Div.

Substitution of decree of judicial separation—

Discretion—Factors to be considered—Respondent's right to apply in due course to make decree nisi absolute—Appropriate procedure—Matrimonial Causes Act 1950, s 12(3). **Dove v Dove** [1963] 2 10, CA.

Motive of financial advantage—Exercise of discretion of court—Supreme Court of Judicature (Consolidation) Act 1925, s 183(3) (added by Matrimonial Causes Act 1937, s 9). **Jeffrey v Jeffrey** [1950] 2 449, Div.

Motive to safeguard wife's occupancy of matrimonial home—Application unopposed—Discretion of court. **Davies v Davies** [1955] 3 588, Div.

Undefended causes. *See* Practice—Undefended causes—Decree nisi, *post*.

Defence—

Covenant not to take proceedings in respect of matrimonial offences committed before date of deed of separation—

Petition by husband on ground of wife's subsequent adultery—Allegations of husband's matrimonial offences before date of deed struck out of wife's and co-respondent's answers—Matrimonial Causes Rules 1950 (SI 1950, No 1940), r 16(1). **N v N and L** [1957] 1 914, Div.

Desertion—

Just cause. *See* Desertion—Defence—'Just cause', *post*.

Reasonable belief in deserted spouse's adultery. *See* Desertion—Defence—Reasonable belief in deserted spouse's adultery, *post*.

Defended causes—

Hearing—

Divorce towns. *See* Practice—Hearing—Divorce towns—Defended causes, *post*.

Desertion—

Act of desertion—

Determination of deserted spouse not to take back deserting spouse—Effect. **Beigan v Beigan** [1956] 2 630, CA.

Refusal by respondent to undergo ceremony validating marriage. **Wolfenden v Wolfenden** [1945] 2 539, Div.

Adultery—

Petitioner's adultery—Effect on deserting spouse's mind—Conduct of deserting spouse leading to inference of adultery—Exercise of discretion. **Parrock v Parrock** [1956] 1 555, Div.

Petitioner's adultery—Effect on deserting spouse's mind—Continuance of desertion—Onus of proof. **Williams v Williams** [1943] 2 746, CA.

Respondent's adultery—Offer by respondent to resume cohabitation—Petitioner's refusal—Reasonable belief in respondent's adultery. **Everitt v Everitt** [1949] 1 908, CA.

Agreement to live apart—

Agreement at time of marriage to live apart—Subsequent requests by petitioner to cohabit—Unreasonable refusal. **Shaw v Shaw** [1939] 2 381, Div.

Alleged agreement to live apart—Effect of letters written by husband to wife—Conduct of parties. **Tickler v Tickler** [1943] 1 57, CA.

Conduct conducting. *See* Conduct conducting—Desertion, *ante*.

Consensual separation—

Acts of husband not amounting to legal cruelty—Departure of wife from matrimonial home—Tacit consent of husband. **Spence v Spence** [1939] 1 52, Div.

Deed providing for maintenance signed—Wife's request to return rejected—Maintenance agreement subsequently dated and copies exchanged—Whether husband in desertion. **Bosley v Bosley** [1958] 2 167, CA.

Period of separation indefinite—Maintenance agreement signed reciting agreement to live separately—Husband's request to wife to return rejected—Whether wife in desertion. **Hall v Hall** [1960] 1 91, Assizes.

Wife to look after ailing parents—Decision not to return to husband—No communication to husband—Death of parents years later—Absence by virtue of agreement—Not against husband's will before deaths. **Nutley v Nutley** [1970] 1 410, CA.

Withdrawal of consent—Essentials of effective offer—Offer comparable to offer by petitioner previously in desertion. **Fraser v Fraser** [1969] 3 654, Div.

Withdrawal of consent—Offer to return must be genuine in order to constitute withdrawal of consent—Spouse to whom offer made must consider offer and show willingness to resume cohabitation, unless she or he is to come into a state of desertion. **Gallagher v Gallagher** [1965] 2 967, CA.

Constructive desertion—

Adultery—Alleged belief by one spouse in other spouse's adultery—Duty of spouse is possession of evidence leading to reasonable belief to afford other spouse opportunity to give explanation—Whether, if opportunity not given within reasonable time, defence of such reasonable belief can be maintained. **Marsden v Marsden** [1967] 1 967, Div.

Adultery—Alleged belief in wife's adultery—Husband leaving matrimonial home after wife's request for his help—Desertion by husband. **Forbes v Forbes** [1954] 3 461, Div.

Adultery—Association by husband with woman not resulting in adultery—Revival of condoned adultery. **Kemp v Kemp** [1953] 2 553, Div.

Adultery—Condoned adultery revived and justifying aggrieved spouse in leaving matrimonial home. **Roe v Roe** [1956] 3 478, Div.

Adultery—Discovery of past adultery—Adultery not continuing or persisted in—Whether innocent party justified in leaving matrimonial home. **Kemp v Kemp** [1961] 2 764, Div.

DIVORCE (cont)

Desertion (cont)—

Constructive desertion (cont)—

Conduct equivalent to expulsion of other spouse—Conduct amounting to cruelty. **Cade v Cade** [1957] 1 609, Div.

Conduct equivalent to expulsion of other spouse—Conduct falling short of cruelty. **Edwards v Edwards** [1949] 2 145, CA, **Pike v Pike** [1953] 1 232, CA, **Foster v Foster** [1953] 2 518, Div.

Conduct equivalent to expulsion of other spouse—Dismissal of charge of persistent cruelty—Whether finding of constructive desertion compatible. **Ogden v Ogden** [1969] 3 1055, CA.

Conduct equivalent to expulsion of other spouse—Drunkenness. **Hall v Hall** [1962] 3 518, CA.

Conduct equivalent to expulsion of other spouse—Inference of intention to end consortium—Husband's persistent cruelty to wife—Persistence despite wife's threats to leave matrimonial home—Marriage Act 1928, (Victoria), s 75(b), (d). **Lang v Lang** [1954] 3 571, PC.

Conduct equivalent to expulsion of other spouse—Need to prove both factum and animus on part of respondent—Inference of intention to end consortium—Husband's association with male servant—Persistence despite wife's threat to leave matrimonial home. **Buchler v Buchler** [1947] 1 319, CA.

Conduct equivalent to expulsion of other spouse—Neurosis. **Leng v Leng** [1946] 2 590, Div.

Conduct equivalent to expulsion of other spouse—Pregnancy of wife by another man at time of marriage—Concealment from husband—Physiological condition not conduct constituting a matrimonial offence—Going to validity of marriage only. **Sullivan v Sullivan** [1970] 2 168, CA.

Conduct equivalent to expulsion of other spouse—Sluttishness of wife—No inference of intention to drive husband away. **Bartholomew v Bartholomew** [1952] 2 1035, CA.

Conduct equivalent to expulsion of other spouse—Sluttishness of wife—Whether justification for husband leaving matrimonial home. **Marjoram v Marjoram** [1955] 2 1, Div.

Criminal conduct—Husband convicted of indecent assault—Wife leaving matrimonial home—Isolated offence—Husband's desire for reconciliation with wife—Whether just cause for wife leaving. **Lewis v Lewis** [1955] 3 598, Div.

Criminal conduct—Incest. **W v W (No 2)** [1961] 2 626, Div.

Criminal conduct—Wife's conviction for espionage—Husband a regular serving airman—Inference of intention to end cohabitation. **Ingram v Ingram** [1956] 1 785, Div.

Desire of offending spouse to continue cohabitation. **Boyd v Boyd** [1938] 4 181, Div.

Estoppel. *See* Estoppel—Desertion—Constructive desertion, *post*.

Expulsion of wife from matrimonial home—Reasonable belief in husband's adultery induced by his conduct. **Baker v Baker** [1953] 2 1199, Div.

Intention to terminate cohabitation—Presumption. **Edwards v Edwards** [1948] 1 157, Div.

Refusal of sexual intercourse—Refusal unjustified—Wife's refusal to live with husband on this condition—Husband's insistence on condition knowing that result would be that wife would refuse to live with him—Desertion by husband, but no separation order. **Hutchinson v Hutchinson** [1963] 1 1, Div.

Refusal of sexual intercourse—Refusal unjustified—No consequential injury to other spouse's health—Whether amounting to constructive desertion. **Slon v Slon** [1969] 1 759, CA.

Test. **Griffiths v Griffiths** [1964] 3 929, Div.

Test—Conduct so grave and weighty as to make matrimonial cohabitation virtually impossible—Wife overburdened with work—Husband's callousness and lack of consideration for wife's feelings. **Saunders v Saunders** [1965] 1 838, Div.

Continuance of desertion—

Animus deserendi—Feeble-minded person committed to institution for mental defectives—Release on licence—Matrimonial Causes Act 1937, s 2(b). **Brown v Brown (otherwise Grayson)** [1947] 2 160, Div.

Condonation—Resumption of co-habitation—Interruption of statutory period—Matrimonial Causes Act 1937, s 2. **Mummery v Mummery** [1942] 1 553, Div.

Confession of adultery by deserted spouse—Effect on deserting spouse's mind—Burden of proof—Petitioner's need to prove desire for return of deserting spouse. **Church v Church** [1952] 2 441, Div.

Determination of deserted spouse not to take back deserting spouse. **Bevan v Bevan** [1955] 3 332, Div.

Determination of deserted spouse not to take back deserting spouse—Deserting spouse deprived of locus poenitentiae and prevented from attempting reconciliation. **Fishburn v Fishburn** [1955] 1 230, Div.

Determination of deserted spouse not to take back deserting spouse—Effect. **Barnett v Barnett** [1954] 3 689, Div.

Determination of deserted spouse not to take back deserting spouse—Previous condoned adultery of deserting spouse revived by desertion. **Beigan v Beigan** [1956] 2 630, CA.

Insanity—Certification of deserting spouse—Presumption against rationality on subject of cohabitation—Whether statutory period interrupted. **Bennett v Bennett (by her Guardian)** [1939] 2 387, Div.

Insanity—Certification of deserting spouse—Statutory period interrupted—Matrimonial Causes Act 1937, s 2. **Williams v Williams (by his guardian)** [1939] 3 825, CA.

Insanity—Deserting respondent received as temporary patient—Whether statutory period interrupted—Matrimonial Causes Act 1937, s 2. **Monckton v Monckton** [1941] 3 133, Div.

Insanity—Intention to continue desertion—No irrebuttable presumption of inability to form or retain animus deserendi. **Crowther v Crowther** [1951] 1 1131, HL.

DIVORCE (cont)

Desertion (cont)—

Continuance of desertion (cont)—

Insanity—Supervening insanity of deserting respondent—Animus deserendi of certified lunatic—Presumption—Matrimonial Causes Act 1937, s 2. **Rushbrook v Rushbrook (by her Guardian)** [1939] 4 73, Div.

Letter by deserting spouse asking for meeting to discuss resumption of cohabitation—No reply by other spouse—Whether period of desertion interrupted—Matrimonial Causes Act 1937, s 2, s 4. **Pratt v Pratt** [1939] 3 437, HL.

Letter by deserting spouse suggesting reconsideration of position—No reply by other spouse—Whether period of desertion interrupted. **Ware v Ware** [1942] 1 50, Div.

Maintenance agreement—Whether new consensual separation. **Bosley v Bosley** [1958] 2 167, CA.

Maintenance order—Non-cohabitation clause—Subsequent deletion of clause—Previous period of desertion added to period subsequent to deletion of clause—Matrimonial Causes Act 1937, s 6(3). **Green v Green** [1946] 1 308, Div.

Maintenance order—Non-cohabitation clause—Clause inserted through inadvertence. **Cooper v Cooper (King's Proctor showing cause)** [1940] 3 579, Div.

Maintenance order—Non-cohabitation clause—Clause inserted through inadvertence—Effect of subsequent striking out. **Cohen v Cohen** [1947] 2 69, CA.

Original desertion followed by imprisonment—No return after release. **Williams v Williams** [1938] 4 445, Assizes.

Petitioner's adultery—Effect on deserting spouse's mind—Matrimonial Causes Act 1937, s 2. **Earnshaw v Earnshaw** [1939] 2 698, CA.

Petitioner's adultery—Effect on deserting spouse's mind—Discretion—Matrimonial Causes Act 1937, s 2(b), s 4. **Herod v Herod** [1938] 3 722, Div.

Previous proceedings—Collusive petition by wife within statutory period dismissed—Whether collusive petition interrupts period of desertion. **Milbank v Milbank** [1939] 3 946, Div.

Previous proceedings—Divorce petition abandoned—Matrimonial Causes Act 1937, s 6. **Bush v Bush** [1938] 4 598, Div.

Previous proceedings—Divorce petition abandoned—Matrimonial Causes Act 1937, s 2, s 6(3). **Cohen v Cohen** [1940] 2 331, HL.

Previous proceedings—Earlier petition by husband dismissed more than 3 years before present petition—No resumption of cohabitation—Earlier proceedings operating as suspension only of desertion—Matrimonial Causes Act 1937, s 6. **Jordan v Jordan** [1939] 2 29, Div.

Previous proceedings—Husband's petition prior to 1938—Further answer after 1937 alleging desertion—Leave to file new petition given to wife during hearing—Whether interrupted by filing of petition by husband—Whether desertion interrupted by cross-prayer of wife—Supreme Court of Judicature (Consolidation) Act 1925, s 180—Matrimonial Causes Act 1937, s 2(b). **Chapman v Chapman and Thomas (Taylor intervening)** [1938] 1 635, Div.

Previous proceedings—Judicial separation petition abandoned—Whether petition barred—Matrimonial Causes Act 1937, s 6. **Johnson v Johnson** [1938] 3 765, Div.

Previous proceedings—Judicial separation petition abandoned—Whether period of desertion continues to run—Matrimonial Causes Act 1937, s 6. **Marthews v Marthews** [1938] 4 377, Div.

Previous proceedings—Previous nullity suit abandoned and believed to be dismissed—Petition inadvertently left on file—Subsequent cohabitation—Whether desertion continuing. **Lynch v Lynch** [1939] 2 593, Div.

Previous proceedings—Previous petition on ground of adultery not served—No effect on currency of desertion. **Gibbs-Smith v Gibbs-Smith** [1939] 1 332, Div.

Previous proceedings—Proceedings for justices' order—Date of institution—Issue of summons—Matrimonial Causes Act 1937, s 6(3). **Terry v Terry** [1939] 3 546, Div.

Previous proceedings—Within 3 years of petition—Whether petition barred—Staying petition by refusal to grant certificate that pleadings in order. **Walton v Walton** [1938] 4 382, Div.

Separation agreement—Agreement five years after commencement of desertion—Husband's failure to pay thereunder—Whether continuing desertion—Matrimonial Causes Act 1937, s 2(b). **Watson v Watson** [1938] 3 770, Div.

Separation agreement—Agreement for temporary separation—Wife's refusal to return—Husband continuing payment of separation allowance—Materiality of attitude of deserted spouse towards resumption of cohabitation. **Sifton v Sifton** [1939] 1 109, Div.

Separation agreement—Husband's failure to perform covenant to pay—Covenant enforced to judgment—No repudiation of deed. **Clark v Clark** [1939] 2 392, Div.

Separation agreement—Husband's failure to perform covenant to pay—Repudiation of deed—Acceptance of repudiation by wife. **Pardy v Pardy** [1939] 3 779, CA.

Separation agreement—Husband's failure to perform covenant to pay—Repudiation of deed—Special circumstances—Matrimonial Causes Act 1937, s 2(b). **Ratcliffe v Ratcliffe** [1938] 3 41, Div.

Separation agreement—Marital intercourse subsequent to deed—Abandonment of deed. **Eaves v Eaves** [1939] 2 789, Div.

Separation agreement—Provisions for access to child not fulfilled—Repudiation of agreement. **Stockley v Stockley** [1939] 2 707, Div.

Separation agreement—Treated as nullity—Matrimonial Causes Act 1937, s 2(d). **Starkey v Starkey** [1938] 3 773, Div.

Cross-prayer—

Amending answer to allege. *See* Practice—Answer—Amendment—Amending answer by adding cross-petition alleging desertion, *post*.

Cruelty. *See* Cruelty—Desertion, *ante*.

Date relevant for jurisdiction—

Recognition of foreign decree. **Arnold v Arnold** [1957] 1 570, Div.

DIVORCE (cont)

Desertion (cont)—

Deed of separation entered into subsequently—

Clear case of initial desertion—Repudiation of deed. *Tate v Tate* [1938] 4 264, Div.

Deed reciting respondent's desertion but including agreement to live separate and apart—Deed executed by petitioner under misapprehension—Deed bar to dissolution. *Long of Wraxall (Lord) v Long of Wraxall (Lady)* [1940] 4 230, CA.

Husband attempting to induce wife to sign usual separation agreement—Wife refusing to sign—Agreement amended—Agreement in final form reciting inter alia desire of husband only to live separate and apart—Agreement signed by wife—No implied consent by wife to husband's continuing to live separate and apart—Desertion over 3 years—Agreement no bar to wife's petition for dissolution. *Smith v Smith* [1945] 2 452, Div.

Separation agreement made before 1938—Wife then in desertion—Subsequent offers by wife to return to husband—Petition by husband—Cross-prayer for divorce by wife—Divorce (Insanity and Desertion) Act 1958, s 3. *Pearce v Pearce* [1960] 3 21, CA.

Defence—

Just cause—Adultery by deserted spouse prior to date of desertion—Effect on deserting spouse's mind—Onus on petitioner—Continuance of separation without cause—Matrimonial Causes Act 1950, s 1(1)(b). *Day v Day* [1957] 1 848, Div.

Just cause—Conduct not amounting to cruelty but of a grave and weighty character—Whether any difference between measure of gravity of conduct for purposes of charge of cruelty and charge of desertion. *Young v Young* [1962] 3 120, Div.

Just cause—Countercharge of constructive desertion—Pleading based on substantially the same items as relied on to support charges of cruelty in former unsuccessful suit—Summons to strike out pleading. *Dixon v Dixon* [1953] 1 910, Div.

Just cause—Estoppel—Pleading based on substantially same matters as relied on to support charges of cruelty in former unsuccessful suit alleging cruelty. *Hill v Hill* [1954] 1 491, Div.

'Just cause'—Estoppel. *See* Estoppel—Desertion—Defence of 'just cause', *post*.

Just cause—Health—Child's health—Husband suffering from emotional disturbance—Husband's conduct frightening children—Wife refusing to live with husband—Wife's refusal due to desire to protect children—Wife not refusing for all time to live with husband—No desertion by wife. *G v G* [1964] 1 129, Div.

Just cause—Misconduct conducting. *Postlethwaite v Postlethwaite* [1957] 1 909, Div.

Just cause—Wife a voluntary patient in mental home—No home offered by husband—Wife in need of attention. *Clark v Clark (by her Guardian)* [1956] 1 823, Div.

Reasonable belief in deserted spouse's adultery—Belief induced by conduct—Reasonableness of belief. *Cox v Cox* [1958] 1 569, Div.

Reasonable belief in deserted spouse's adultery—Belief induced by conduct or extraneous circumstances—Evidence—Burden of proof of sufficiency of belief. *Beer v Beer (Neilson cited)* [1947] 2 711, Div.

Delay in presenting petition—

Discretionary bar. *See* Discretionary bars—Delay—Desertion, *post*.

Desertion for three years immediately preceding presentation of petition—

Failure to establish statutory period—Whether curable by supplemental petition—Supreme Court of Judicature (Consolidation) Act 1925, s 176—Matrimonial Causes Act 1937, s 2(b). *Spawforth v Spawforth* [1946] 1 379, Div.

Respondent setting up case of desertion in answer—Three-year period calculated from date of answer—Supreme Court of Judicature (Consolidation) Act 1925, s 180—Matrimonial Causes Act 1937, s 2. *Faulkner v Faulkner* [1941] 2 748, Div.

Ending an existing state of cohabitation—

Wife in mental hospital at date of alleged desertion. *Sotherden v Sotherden* [1940] 1 252, CA.

Evidence—

Undefended suit—Corroborative evidence—Desirability of evidence corroborating terms on which separation took place. *Barron v Barron* [1963] 1 215, Div.

House occupied by both parties—

Desertion by wife—Return to matrimonial home—No resumption of cohabitation. *Bull v Bull* [1953] 2 601, CA.

Discontinuance of common home. *Wilkes v Wilkes* [1943] 1 433, Div.

Need to prove de facto separation—Interruption of period of desertion—Husband returning to matrimonial home—Parties living in three-roomed flat. *Everitt v Everitt* [1949] 1 908, CA.

Need to prove de facto separation—Parties sharing household. *Hopes v Hopes* [1948] 2 920, CA.

No allowance paid to wife—Provision of meals separately—Occupation of separate rooms—Other parts of house shared. *Baker v Baker* [1952] 2 248, CA.

Occupation of separate parts of same house—Husband refusing suggestion of reconciliation—Matrimonial Causes Act 1937, s 2. *Smith v Smith* [1939] 4 533, Div.

Occupation of separate rooms—Wife performing no household duties for husband—No verbal communication. *Walker v Walker* [1952] 2 138, CA.

Wife continuing to perform some household duties—One household. *Littlewood v Littlewood* [1942] 2 515, Div.

Wife refusing to allow marital intercourse or to perform any wifely duty. *Wanbon v Wanbon* [1946] 2 366, Div.

Intention—

Capability of respondent spouse to have animus deserendi—Delusions—Wife believing, erroneously, that husband intended to murder her and was associating with other women—Wife leaving home as fugitive from apprehended danger. *Perry v Perry* [1963] 3 766, Div.

DIVORCE (cont)

Desertion (cont)—

Intention (cont)—

Capability of respondent spouse to have animus deserendi—Delusions—Wife suffering from chronic schizophrenia—Continuance of intention—Matrimonial Causes Act 1965, s 1(2). **Kaczmarz v Kaczmarz (by her guardian)** [1967] 1 416, Div.

Capability of respondent spouse to have animus deserendi—Wife suffering from neurosis—Danger to wife's mental health if she returned to husband. **Lilley v Lilley** [1959] 3 283, CA.

Need to prove both factum and animus—Wife forming intention to leave husband—Continuing residence in matrimonial home—Husband forming intention to leave wife—Departure from matrimonial home—No desertion by wife. **Price v Price** [1970] 2 497, CA.

Interrogatories. *See* Practice—Interrogatories—Cruelty or desertion, *post*.

Just cause. *See* Desertion—Defence—Just cause, *ante*.

Matrimonial home—

Agreement before marriage as to matrimonial home—Husband's attempt to change matrimonial home without justification. **King v King** [1941] 2 103, Div.

Both spouses alleging desertion—Husband's right to choose locus of matrimonial home—Reasonable accommodation offered—Wife deserting spouse on refusing such accommodation. **Mansey v Mansey** [1940] 2 424, Div.

Burden of proof—Rebuttal of charge by respondent—Right to decide where matrimonial home shall be. **Dunn v Dunn** [1948] 2 822, CA.

Non-cohabitation clause in magistrates' order—

Deletion of non-cohabitation clause on application of wife—Application made for purpose of obtaining divorce—Whether desertion reconstituted. **Gatward v Gatward** [1942] 1 477, Div.

No evidence that order regarded as ineffective—Impossibility of desertion. **Mackenzie v Mackenzie** [1940] 1 256, CA.

Reasonable cause for withdrawal from cohabitation—

Refusal by wife of marital intercourse. **Rice v Raynold—Spring—Rice** [1948] 1 188, Div.

Refusal by wife of marital intercourse—Husband leaving wife—Husband petitioning on ground of desertion—Cross-prayer by wife for desertion—Husband's departure desertion. **Beevor v Beevor** [1945] 2 200, Div.

Removal of matrimonial home to religious movement with refusal of sexual intercourse—Offer to resume cohabitation in a 'community'—Unreasonable in the circumstances. **Fletcher v Fletcher** [1945] 1 582, Div.

Wilful and unjustifiable refusal to continue sexual relations—Parties continuing to reside in matrimonial home—Whether amounting to desertion—Supreme Court of Judicature (Consolidation) Act 1925, s 176—Matrimonial Causes Act 1937, s 2. **Weatherley v Weatherley** [1947] 1 563, HL.

Res judicata—

Order obtained by wife for wilful neglect to maintain—Allegation of desertion by husband—Subsequent petition for divorce by husband on ground of desertion based on same facts. **Winnan v Winnan** [1948] 2 862, CA.

Scots law—

Adultery of pursuer before requisite statutory period of desertion elapsed—Whether bar to relief—Divorce (Scotland) Act 1938, s 1(1)(a). **Marshall (or Wilkinson) v Wilkinson** [1943] 2 175, HL.

Termination—

Adultery by deserted spouse—Effect on deserting spouse's mind. **Richards v Richards** [1952] 1 1384, CA.

Adultery by deserted spouse—Onus on deserted spouse to show that adultery did not affect desertion. **Dryden v Dryden** [1953] 2 533, CA.

Agreement to pay maintenance—'If [the spouses] shall so long live separate and apart from each other'. **Crabtree v Crabtree** [1953] 2 56, CA.

Basis of constructive desertion removed by agreement—Return for only four days—Whether there was subsequent constructive desertion to be determined as a fresh question. **Harvey v Harvey** [1955] 3 772, CA.

Condonation—Desertion by wife founded on her confession of adultery—Subsequent visits by husband—Acts of sexual intercourse—Course of conduct sufficiently continued to end state of desertion and render separation consensual—No subsequent desertion by wife. **Pizey v Pizey** [1961] 2 658, CA.

Condonation—Desertion completed by continuing up to date of petition—Whether condonation possible after decree nisi. **Ives v Ives (Queen's Proctor showing cause)** [1967] 3 79, Div.

Condonation—Sexual intercourse during the statutory period—No intention by deserting wife to return—Matrimonial Causes Act 1950, s 1(1)(b). **Perry v Perry** [1952] 1 1076, CA.

Condonation—Sexual intercourse on number of occasions with deserting spouse during attempts at reconciliation—Deserting spouse's refusal to resume cohabitation—Revival of original desertion. **Whitney v Whitney** [1951] 1 301, Assizes.

Conduct of deserted spouse causing deserting spouse to desist from attempting reconciliation—Impact on mind of deserting spouse—Question of fact—Communication of refusal of reconciliation having no effect on mind of deserting spouse. **Brewer v Brewer** [1961] 3 957, CA.

Decree nisi of nullity—Effect on deserting spouse's mind—Termination a question of fact not law—Matrimonial Causes Act 1950, s 1(1)(b). **W v W (No 2)** [1954] 2 829, CA.

Force majeure intervening—Continuing intention to remain in desertion—Polish wife in desertion in Poland—Subsequent occupation of country by foreign powers—Impracticable to rejoin husband in England—Whether desertion continued. **Czepak v Czepak** [1962] 3 990, District Registry.

Jewish bill of divorcement—Effect in English law—Consent of wife to be determined in the light of all the circumstances. **Corbett v Corbett** [1957] 1 621, Div.

DIVORCE (cont)

Desertion (cont)—

Termination (cont)—

Judicial separation—Decree of foreign court of domicile—Recognition of decree by English court—Three years' desertion prior to foreign decree—Matrimonial Causes Act 1950, s 7(3), s 18(1)(b). **Tursi v Tursi** [1957] 2 828, Div.

No intention by deserting spouse to resume matrimonial home—Wife living as fellow lodger in same house as husband. **Bartram v Bartram** [1949] 2 270, CA.

Offer by deserting husband to resume cohabitation—Wife asked to return to look after children. **Casey v Casey** [1952] 1 453, Div.

Offer by wife to return as housekeeper—Unreasonable condition—No reason for refusal to resume marital intercourse. **Slawson v Slawson** [1942] 2 527, Div.

Offer of reconciliation by deserting spouse—Desertion simpliciter or coupled with another matrimonial offence. **W v W (No 2)** [1954] 2 829, CA.

Offer to resume cohabitation—Genuineness—Test of genuineness—Acceptance of offer—Independent evidence throwing doubt on the bona fides of the offer—Whether test by acceptance necessary. **Dunn v Dunn** [1965] 1 1043, Div.

Offer to resume cohabitation—Unconditional offer by deserting wife—195120580 Offer refused by husband—Liability of husband to pay maintenance—Matrimonial Causes Act 1950, s 23(1). **Price v Price** [1951] 2 580, CA.

Disclosure—

Adultery by petitioner—

Duty of solicitor. **Shiers v Shiers** [1942] 2 417, Div.

Duty of solicitor—Renewal of enquiry at or before hearing of petition. **Pearson v Pearson** (Queen's Proctor showing cause) [1969] 3 323, Div.

Negotiations which may affect conduct of suit. *See* Collusion—Disclosure—Negotiations which may affect conduct of suit, *ante*.

Discovery—

Application for monetary provision. *See* Practice—Ancillary relief—Application for monetary provision—Discovery, *post*.

Conduct conducing—

Documents relating to association of husband with named women—Supreme Court of Judicature (Consolidation) Act 1925, s 198. **Campbell v Campbell** [1939] 4 529, CA.

Interrogatories—

Documents lost or destroyed—Interrogatories as to contents—Facts to be elicited not necessary to prove interrogator's case—Whether interrogatories allowable—R S C, Ord 31, r 2. **Ramsey v Ramsey** [1956] 2 165, Div.

Discretion—

Adultery—

Proof—Standard of proof for discretion same as for establishing offence. **Joyce v Joyce** [1966] 1 905, CA.

Appeal—

Exercise of discretion on appeal—Discretion statement—Matters in discretion statement not fully explored—Matrimonial Causes Act 1950, s 4(2), proviso. **Levett v Levett** [1957] 1 720, CA.

Candour and truthfulness of party seeking decree—

Court not satisfied that full and frank disclosure of adultery made by petitioner—No finding of undisclosed adultery—Factors in exercise of discretion—Petitioner's promiscuity—Deception and attitude towards adultery and marriage—Matrimonial Causes Act 1950, s 4(2). **Williams v Williams and Harris** [1966] 2 614, CA.

Court not satisfied that full and frank disclosure of adultery made—Whether discretion should be exercised in favour of party seeking decree. **Goldsmith v Goldsmith** [1964] 3 321, Div.

Denial on oath of adultery—Decree granted—Subsequent confession by petitioner of adultery—Suspicion of undisclosed adultery prior to petition—Exercise of discretion. **Rudman v Rudman and Lee** (Queen's Proctor showing cause) [1964] 2 102, Div.

Husband and wife both asking for exercise of discretion in respect of admitted adultery—Husband, guilty of cruelty and collusion, failing to satisfy court that he had made full disclosure of adultery—Wife found guilty of adultery far beyond what she had admitted—Discretion not exercised in favour of either party. **Rowley v Rowley and Austin and French (Cooper intervening)** [1964] 3 314, Div.

Lack of frankness—Incomplete disclosure in first statement—Complete confession in second statement and in court. **Gillooly v Gillooly** [1950] 2 1118, CA.

Decree nisi granted on ground of desertion—

Failure by petitioner to disclose adultery—Application by petitioner after decree nisi for leave to amend petition by including prayer for discretion—Jurisdiction. **Gill v Gill** [1956] 3 240, Div.

Denial of adultery—

Adultery found by trial judge—Refusal of trial judge to exercise discretion in petitioner's favour solely because he disbelieved her evidence denying adultery—Discretion exercised by Court of Appeal. **Howarth v Howarth (Oldfield intervener) (Watkinson cited)** [1963] 3 164, CA.

Adultery found in earlier suit—Petitioner continuing in subsequent suit to refuse to admit adultery—Petition to include prayer for discretion in respect of adultery found—Discretion statement unnecessary—All relevant material to be put before court—Discretion exercised as denial of adultery not in circumstances dishonest—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 4(4), r 28. **Chetwynd-Talbot (Countess of Shrewsbury) v Chetwynd-Talbot (Earl of Shrewsbury)** [1963] 2 561, Div.

Decree nisi granted—Intervention by Queen's Proctor—Adultery subsequently admitted—Factors to be taken into account in regard to the exercise of discretion—Untruthfulness of petitioner—Interest of community in administration of justice—Interests of children—Decree absolute refused. **Bull v Bull (Queen's Proctor showing cause)** [1965] 1 1057, Div.

DIVORCE (cont)

Discretion (cont)—

Denial of adultery (cont)—

No direction statement filed by husband petitioner, who denied adultery with intervener—Adultery with intervener found—Intervener subsequently married to another man—Petitioner's denial due to mistaken sense of loyalty—Association of petitioner with intervener attributable to petitioner's intention to provide for care of his children on break-up of his marriage—Break-up due to respondent wife's fault—Discretion exercised in favour of petitioner. **Cronin v Cronin and Jones** [1964] 3 766, Div.

Prayer for discretion and discretion statement—Whether required where party maintains belief that he or she has not committed adultery—Matrimonial Causes Rules 1944 (S R & O 1944 No 389), r 4(3), (eS), r 28(1). **North v North** [1963] 2 570, CA.

Discretion statement—

Amendment of petition at trial by adding charge of adultery based on facts disclosed in discretion statement—Desertion alleged originally in petition and answer not proved at trial. **Clueit v Clueit** [1958] 1 417, Assizes.

Amendment of petition at trial by adding charge of adultery based on facts disclosed in discretion statement—Wife previously divorced by same husband—Decision on amendment deferred until merits of case apparent from evidence at trial. **Abbott v Abbott** [1966] 3 367, Div.

Application by other spouse at trial to add charge of adultery based on facts disclosed in discretion statement—Principles for exercise of discretion to grant leave to amend. **Tunney v Tunney** [1963] 1 303, Div.

Disclosure of name and address of man with whom wife admits adultery—Procedure at trial if name omitted from discretion statement but a material fact—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 28(1). **Joyce v Joyce** [1966] 1 905, CA.

Dispensing with discretion statement—Mental disability—Wife's cross-prayer for decree in exercise of court's discretion—Wife so mentally ill as to be unable to make discretion statement—Decree granted to wife—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 28. **Webster v Webster** (by her guardian) [1967] 3 560, Div.

Exercise—

Discretion to be exercised on the case as a whole—Decree granted on charge of husband's cruelty—Husband's petition on ground of wife's adultery—Cross-charge by wife of husband's adultery and of his cruelty—Adultery admitted by each spouse—Discretion exercised by refusing decree to husband and to wife on ground of adultery—Matrimonial Causes Act 1950, s 4(2), proviso. **Anstey v Anstey and Hartford** [1962] 1 741, CA.

In favour of guilty party—Suspicion of undisclosed adultery during marriage—Court of first instance influenced by consideration of adultery before marriage—No grounds for refusal—Exercise of discretion by Court of Appeal—Matrimonial Causes Act 1950, s 4(2), proviso. **Coleman v Coleman** [1955] 3 617, CA.

In favour of guilty party—Marriage broken down—Sanctity of marriage—Exercise of discretion by Court of Appeal—Matrimonial Causes Act 1950, s 4(2). **Moor v Moor** [1954] 2 458, CA.

On evidence in existing suit—Previous suit between same parties—Subsequent undefended suit—Suspicion of petitioner's evidence—Suspicion due to view formed of petitioner by judge in previous defended suit—Duty of court. **Sharma v Sharma and Davis** [1959] 3 321, CA.

Petition alleging adultery after the date of a deed of separation containing a covenant not to sue for prior matrimonial offences—Petitioner asking for exercise of court's discretion—Duty to disclose prior matrimonial offences—Matrimonial Causes Act 1950, s 4—Matrimonial Causes Rules 1950 (S I 1950 No 1940), r 28. **N v N and L** [1957] 1 914, Div.

Relevant considerations. **Bull v Bull** (Queen's Proctor showing cause) [1965] 1 1057, Div.

Relevant considerations—Adultery by both parties—No prospective remarriage—Broken down marriage—Undesirable maintenance of wedlock of adulterous spouses—Daughter aged 15 living with wife—Petitioner's frankness—Respondent's treatment contributing to petitioner's adultery. **Masarati v Masarati** [1969] 2 658, CA.

Relevant considerations—Desire of respondent to re-marry—Bigamy of petitioner. **Redman v Redman** [1948] 1 333, CA.

Relevant considerations—Interests of children of illicit union of party to marriage—Possibility of legitimation of such children by subsequent marriage of their parents if decree granted—Matrimonial Causes Act 1950, s 4(2), proviso. **Devenport v Devenport and Charnley** [1965] 1 1, CA.

Grant of decree to guilty party—

Principles on which appellate court should act—Cross-petitions—Adultery admitted by both parties at late stage of proceedings. **Blunt v Blunt** [1943] 2 76, HL.

Inquiries by solicitor—

Whether necessary where one act of adultery admitted on pleadings and condonation alleged. **Long v Long** [1960] 2 120, Div.

Refusal to exercise—

Refusal without finding on petitioner's charge of desertion—Respondent refused leave to amend answer so as to cross-charge adultery disclosed by petitioner in evidence—New trial—Matrimonial Causes Act 1950, s 4(2). **Burford v Burford** [1955] 3 664, CA.

Suspicion of adultery no ground for refusal—Standard of proof the same as for establishing offence and in regard to exercise of discretion—Matrimonial Causes Act 1950, s 4(2). **Joyce v Joyce** [1966] 1 905, CA.

Discretionary bars—

Delay—

Charge of adultery—Parties separated for sixteen years before petition presented—Wife living in adultery for nine years—Husband ignorant of, and having no reason to suspect, wife's adultery—Matrimonial Causes Act 1950, s 4(2), proviso (i). **Brown v Lloyd** (formerly **Brown**) and **Lloyd** [1957] 2 212, Div.

DIVORCE (cont)

Discretionary bars (cont)—

Delay (cont)—

Charge of adultery—Parties separated for thirty-three years—Wife living in adultery for twenty-nine years—Husband still living in adultery—Wife ignorant of husband's adultery—No inquiries about husband by wife for thirty-three years—Matrimonial Causes Act 1950, s 4(2), proviso (i). **Chalmers (otherwise Gunning) v Chalmers** [1963] 3 266, CA.

Charge of adultery—Petition by husband based on wife's recent adultery with co-respondent—Husband's acquiescence in wife's previous adultery with another man during a previous period of six years—Matrimonial Causes Act 1950, s 4(2), proviso (i). **England v England and Easter** [1961] 2 4, Div.

Culpable delay—Acquiescence. **Binney v Binney and Hill** [1936] 2 409, Div.

Culpable delay—Discretion exercised—Matrimonial Causes Act 1950, s 4(2), proviso (i). **Purton v Purton and George** [1956] 3 952, Div.

Delay caused by petitioner's desire to save up for costs of proceedings—Delay not culpable—Matrimonial Causes Act 1950, s 4(2), proviso (i). **Key v Key and Staples** [1956] 3 955, Div.

Desertion—Not *Drima facie* a bar—Matrimonial Causes Act 1950, s 4(2), proviso (i). **Becker v Becker** [1966] 1 894, CA.

Principles to be applied—Matrimonial Causes Act 1950, s 4(2)(i). **Lowe v Lowe** [1952] 2 671, Div.

Unreasonable delay—Knowledge of guilty association for 30 years—Separation deed—Agreement not to take legal proceedings in respect of previous matrimonial offences—Whether bar to defence of unreasonable delay—Connivance. **Greenwood v Greenwood** [1937] 3 63, Div.

Disposition to defeat wife's claim for financial relief—

Avoidance—

Purchaser for value without notice—Deserted wife living in matrimonial home—Husband conveyed house to company which mortgaged it to bank—Bank had no notice, at time of mortgage, of potential invalidity of conveyance—Wife subsequently obtained order setting aside conveyance of house by husband to company—Bank's rights as mortgagees not affected—Matrimonial Causes (Property and Maintenance) Act 1958, s 2. **National Provincial Bank Ltd v Ainsworth** [1965] 2 472, HL.

Divorce registry—

Postal facilities. *See* Practice—Postal facilities in divorce registry, *post*.

Procedure—

Consent applications. *See* Consent applications—Divorce registry—Procedure, *ante*.

Divorce towns—

List. *See* Practice—Hearing—Divorce towns, *post*.

Documents—

Practice. *See* Practice—Documents, *post*.

Domicile—

Decree of divorce by Massachusetts court not the court of the domicile—

Order for maintenance added to decree—Whether order for maintenance enforceable in England. **Simons v Simons** [1938] 4 436, KBD.

Desertion by husband—

Foreign domicile acquired by husband—Petition for divorce by wife in England—Jurisdiction of court to grant decree. **Herd v Herd (King's Proctor intervening)** [1936] 2 1516, Div.

Domicile of choice—

Abandonment—Revival of domicile of origin—Necessity of showing that domiciliary had not only formed intention to abandon domicile of choice but had in fact done so—Intention to return to country of origin—Domiciliary leaving domicile of choice for third country—Domiciliary forming intention to return to domicile of origin at a future date—Whether formation of intention to return sufficient to bring about abandonment of domicile of choice and automatic revival of domicile of origin. **Tee v Tee** [1973] 2 101, CA.

Serving soldier—American married in England—Posted abroad, but spending all periods of leave in England—Intention to settle in England permanently. **Stone v Stone** [1959] 1 194, Div.

Serving soldier—Scotsman posted to England—Evidence as to voluntary residence—Factum and animus. **Cruickshanks v Cruickshanks** [1957] 1 889, Div.

Whether acquisition of domicile of choice prevented by sentimental feeling of attachment to land of origin coupled with wish to be buried there. **Henderson v Henderson** [1965] 1 179, Div.

Domicile of origin—

Abandonment—Acquiring fresh domicile—Purchase of house and temporary residence in England—Whether English domicile of choice acquired—Wife's petition for nullity. **Ramsay-Fairfax (otherwise Scott-Gibson) v Ramsay-Fairfax** [1955] 2 709, Div.

Abandonment—Acquiring fresh domicile—Intention of permanent or indefinite residence—Onus of proof—Evidence—Declaration of parent for obtaining naturalisation—Admissibility. **Gulbenkian v Gulbenkian** [1937] 4 618, Div.

Whether domicile of origin or of dependance at birth or at time of attaining majority. **Henderson v Henderson** [1965] 1 179, Div.

Jurisdiction—

Domicile of choice conferring jurisdiction at commencement proceedings abandoned before hearing—Husband acquired domicile of choice in England and instituted divorce proceedings—Answer by wife cross-praying on ground of desertion—Husband reverting to domicile of origin after institution of proceedings—Finding by trial judge that husband in desertion—Matrimonial Causes Act 1965, s 40. **Leon v Leon** [1966] 3 820, Div.

Husband domiciled in Eire—Petition by wife based on her residence in England—Husband not entitled to relief in cross-prayer or cross-petition—Matrimonial Causes Act 1950, s 6, s 18(1). **Russell v Russell and Roebuck** [1957] 1 929, Div.

DIVORCE (cont)

Domicile (cont)—

Jurisdiction (cont)—

Marriage already declared void ab initio by decree of court in Malta in 1944—Legal effect of decree—Petitioner husband domiciled in Malta until 1945—Marriage in England in 1931—Wife domiciled in England until marriage—Domicile of wife after purported marriage—Wife's claim to Maltese domicile founded on marriage. *Chapelle v Chapelle* [1950] 1 236, Assizes.

Petitioner alien by domicile of origin—

Petitioner deciding to live in England—Marriage of petitioner in England—Petitioner convicted of criminal offence and recommended for deportation—Order for deportation to be carried out as soon as practicable—Jurisdiction of court to hear petition pending execution of deportation order. *Cruh v Cruh* [1945] 2 545, Div.

Recognition of foreign decree. *See* Foreign decree—Recognition by English court—Basis of recognition—Domicile, *post*.

Wife petitioner—

Both parties domiciled in Scotland—Wife resident in Scotland—Husband resident in England—Jurisdiction. *Sim v Sim* [1944] 2 344, Div.

Extent of onus on wife to prove husband's domicile in England—Husband domiciled in Canada at date of presentation of petition—Wife resident in England for thirty-one months, and in Canada for five months, of three years immediately preceding commencement of proceedings—'Ordinarily resident'—Law Reform (Miscellaneous Provisions) Act 1949, s 1(1)(a). *Hopkins v Hopkins* [1950] 2 1035, Div.

Estoppel—

Adultery—

Desertion—Repetition of admitted charge of adultery—Repetition of charge of desertion—No finding on issue of desertion in earlier proceedings. *Bernard v Bernard* (Sutton cited), *Bernard v Bernard* [1958] 3 475, Div.

Desertion—

Constructive desertion—Particulars of desertion substantially same as particulars of charge of cruelty previously dismissed—Particulars of desertion struck out. *Warren v Warren* [1962] 3 1031, Div.

Constructive desertion—Previous cruelty charge against husband dismissed—Cross-prayer by husband in previous suit for restitution of conjugal rights—Answer by wife alleging 'just cause' not expressly rejected—Subsequent suit by husband charging desertion against wife—Cross-prayer by wife charging constructive desertion against husband—Same allegations as in previous suit raised by wife as particulars of 'just cause' and constructive desertion. *Holland v Holland* [1961] 1 226, CA.

Constructive desertion—Previous suit charging adultery and cruelty dismissed—Allegations in petition alleging desertion same as those raised, or capable of being raised, by earlier petition. *Bright v Bright* [1953] 2 939, Div.

Constructive desertion—Previous suit charging cruelty against husband dismissed—Wife's evidence accepted but husband's conduct held not to amount to cruelty—Evidence of same matters tendered by wife in second suit—Evidence of other expulsive conduct also tendered by wife in second suit—Admissibility. *Fisher v Fisher* [1959] 3 131, CA.

Cruelty—Estoppel per rem judicatam—Cause of action estoppel—Issue estoppel—Fact estoppel. *Thoday v Thoday* [1964] 1 341, CA.

Defence of 'just cause'—Previous cruelty charge dismissed—Facts relied on as giving just cause for leaving substantially same as those relied on to support charge of cruelty—Issues not the same—No estoppel. *Bohnel v Bohnel* (No 2) [1963] 2 325, Div.

Defence of 'just cause'—Previous suit charging cruelty dismissed—Allegations in defence substantially the same as those raised by earlier petition. *Hill v Hill* [1954] 1 491, Div.

Summary jurisdiction—Complaint—Withdrawal of previous summons based on same facts—Right to make subsequent complaint within statutory time limit. *Land v Land* [1949] 2 218, Div.

Finding of justices affirmed by Divisional Court—

Subsequent petition based on same matrimonial offence—Denial by respondent—Competence—Supreme Court of Judicature (Consolidation) Act 1925, s 178(1) (as substituted by Matrimonial Causes Act 1937, s 4). *Hudson v Hudson* (Exelby cited) [1948] 1 773, Assizes.

Paternity of child. *See* Paternity (Estoppel).

Same allegations raised in wife's answer to petition for divorce as previously raised by wife in unsuccessful application to High Court for maintenance—

Husband's allegation in petition that wife had made untrue charges—Whether wife estopped from repeating charges in answer. *Thompson v Thompson* [1957] 1 161, CA.

Same charges of cruelty in previous petition—

Previous petition dismissed by consent—Separation deed—'Will forthwith withdraw the said petition'. *Goldblum v Goldblum* [1938] 4 477, CA.

Separation agreement—

Agreement that neither party should institute any proceedings for restitution of conjugal rights 'or otherwise'—Petition by husband for divorce. *Keeble v Keeble* [1956] 1 100, Div.

Wife's petition for judicial separation on ground of non-compliance with previous order for restitution of conjugal rights—

Whether husband estopped from alleging wife's cruelty at a time prior to petition for restitution of conjugal rights and cross-praying for dissolution—Matrimonial Causes Act 1950, s 4(1)(2) proviso (ii). *Laws v Laws* [1963] 3 398, CA.

Evidence—

Admissibility—

Admission by wife of adultery with co-respondent—Admissibility against co-respondent. *Spring v Spring and Jiggins* [1947] 1 886, Div.

DIVORCE (cont)

Evidence (cont)—

Admissibility (cont)—

Finding of adultery—Subsisting finding in matrimonial proceedings—Admissibility in matrimonial proceedings to prove commission of adultery—Transcript required at subsequent hearing—Procedure for obtaining transcript—Civil Evidence Act 1968, s 12(1). **Practice Direction** [1969] 2 873, Div.

Statements made by alleged adulteress to third party tending to show innocence. **Corke v Corke and Cooke** [1958] 1 224, CA.

Statement made by party cited—Death of party cited after service of proceedings but before hearing of suit. **Delahunty v Delahunty (Nobes cited)** [1961] 1 923, Div.

Affidavit—

Application for order for witness's affidavit to be read at trial—Procedure—Matrimonial Causes Rules 1971 (S I 1971 No 953), r 38. **Practice Direction** [1972] 3 910, FamD.

Medical evidence as to incurable unsoundness of mind—Application for leave to read affidavit. **Practice Note** [1956] 2 833, Div.

Medical evidence as to incurable unsoundness of mind—Care and treatment for five years—Delegation by medical superintendent of clinical treatment—Evidence of consultants in addition to that of medical superintendent. **Usher v Usher (by her Guardian), Abley v Abley (by her Guardian)** [1956] 2 762, Div.

Medical evidence in undefended suit—Applications for leave to give evidence by affidavit. **Practice Direction** [1965] 3 80, Div.

Petitioner tendering evidence by affidavit must exhibit petition and depose to truth of its contents. **Practice Direction** [1967] 2 184, Div.

Confession—

Infant co-respondent—Confession of adultery made before proceedings commenced—Admissibility in evidence of confession—Costs against co-respondent. **Alderman v Alderman and Dunn (by his Guardian)** [1958] 1 391, Div.

Conviction—

Inference to be drawn from indictment and conviction. **Ingram v Ingram** [1956] 1 785, Div.

Corroboration—

Need for corroboration—When corroboration necessary before finding matrimonial offence proved. **Alli v Alli** [1965] 3 480, Div.

What can constitute corroboration—Address book of witness, admitted under Evidence Act 1938, s 1(1) not corroboration—Evidence Act 1938, s 2(2). **Senat v Senat (K, H and B intervening)** [1965] 2 505, Div.

Cross-examination—

Adultery—Alleged adultery of respondent wife not put to her in chief—No denial of adultery—Evidence given by wife explaining as innocent certain circumstances of alleged association with co-respondent—Whether such explanation amounted to evidence in disproof of the alleged adultery—Whether wife had lost the protection of s 32(3) of the Matrimonial Causes Act 1950. **Boothroyd v Boothroyd and Slater** [1963] 3 625, Assizes.

Adultery—Denial by respondent limited to charge of adultery with one co-respondent—Cross-examination restricted to charge specifically denied—Evidence Further Amendment Act 1869, s 30—Supreme Court of Judicature (Consolidation) Act 1925, s 198. **Morton v Morton, Daly and McNaught** [1937] 2 470, Div.

Adultery—Petition on ground of cruelty—Cross-prayer on ground of desertion—No allegation of adultery in pleadings—Admissibility of cross-examination as to adultery—Matrimonial Causes Act 1950, s 32(3). **Clifford v Clifford** [1961] 3 231, Div.

Adultery—Petition on ground of cruelty—Petitioner asked whether he had committed adultery—Admissibility—Matrimonial Causes Act 1950, s 32(3). **Lewis v Lewis** [1958] 1 859, CA.

Adultery—Questions tending to show guilt of adultery—Answer denying adultery—Denial sworn to in affidavit verifying answer—No denial in respondent's oral evidence-in-chief—Whether respondent liable to be cross-examined as to adultery—Matrimonial Causes Act 1950, s 32(3). **Corfe v Corfe** [1960] 1 593, CA.

Adultery—Questions tending to show guilt of adultery—General charge of adultery pleaded—Particulars of specific acts—Denial in evidence of specific acts—Supreme Court of Judicature (Consolidation) Act 1925, s 198. **Barber v Barber** [1948] 2 856, Div.

Adultery—Questions tending to show guilt of adultery—Witnesses protected—Denial of adultery in pleadings—Other adultery admitted in examination-in-chief—Questions on the other adultery—Matrimonial Causes Act 1950, s 32(3). **Dobbs v Dobbs and Savage** [1962] 2 900, CA.

Documents—Document in possession of witness called for and read by cross-examining counsel—Document thus made evidence by cross-examining counsel as part of his client's case. **Stroud v Stroud** [1963] 3 539, Div.

Husband's petition—Cross-prayer by wife in answer alleging cruelty—Husband asked question in cross-examination tending to show that he had committed adultery—Whether cross-prayer alleging cruelty a different proceeding from petition alleging adultery—Whether husband obliged to answer—Matrimonial Causes Act 1950, s 32(3). **Haynes v Haynes and Sawkill** [1960] 2 401, Div.

Husband's petition—Prayer for discretion inserted erroneously—Application to amend petition—Affidavit sworn by husband denying adultery—Wife's petition alleging different adultery without reference to adultery denied in affidavit—Husband's evidence confined only to matters in affidavit—Cross-examination restricted to charge specifically denied—Supreme Court of Judicature (Consolidation) Act 1925, s 198. **Macintyre v Macintyre and Moppett** [1946] 1 121, Div.

Refreshing memory of witness—Whether document bound to be put in evidence. **Senat v Senat (K, H, and B intervening)** [1965] 2 505, Div.

Discretion statement as evidence of adultery—

Statement not on oath—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 28(5). **Filmer v Filmer** [1959] 2 219, Div.

DIVORCE (cont)

Evidence (cont)—

Document—

Wife alleging as just cause for desertion that husband guilty of misconduct with another woman—Statement by other woman in document—'Person interested'—Evidence Act 1938, s 1(3). **Galler v Galler** [1955] 1 92, Div.

Evidential effect of other proceedings—

Magistrates' order for maintenance on ground of desertion—No appearance by husband—Subsequent divorce petition based on wife's desertion—Husband's uncontradicted evidence refuting his desertion found by magistrates—Matrimonial Causes Act 1950, s 7(2). **Ellis v Ellis and Wilby** [1962] 1 797, CA.

Magistrates' order on similar issue—Corroboration—Weight to be given thereto at subsequent trial of divorce petition for cruelty—Matrimonial Causes Act 1950, s 7(2). **Turner v Turner** [1961] 3 944, CA.

Expert evidence—

Pediatrician. *See* **Evidence** (Expert witness—Pediatrician—Divorce proceedings).

Psychiatrist. *See* **Evidence** (Expert witness—Psychiatrist—Divorce proceedings).

Foreign marriage—

Marriage in Republic of Ireland—Proof of marriage—Ireland Act 1949, s 2. **Todd v Todd** [1961] 2 881, Div.

Proof by certificate—Evidence (Foreign, Dominion and Colonial Documents) Act 1933, s 1.

Practice Direction [1955] 2 465, Div.

Proof by certificate—Certificate issued more than twelve months before date on which it was sought to be used as evidence—*Livre de famille*—Evidence (Foreign, Dominion and Colonial Documents) Act 1933, s 1—Evidence (France) Order in Council 1937 (S R & O 1937 No 515), art 3, Sch 1. **Motture v Motture** [1955] 3 242, Div.

Proof by certificate—Marriage in Pakistan—Indian Christian Marriage Act 1872—Pakistan (Consequential Provision) Act 1956, s 1—Evidence (Colonial Statutes) Act 1907, s 1. **Jasiewicz v Jasiewicz** [1962] 3 1017, Div.

Validity of marriage not in issue—Proof by affidavit. **Practice Direction** [1958] 1 364, Div.

Judgment in previous suit—

Discretion. **Sharma v Sharma and Davis** [1959] 3 321, CA

Marriage—

Validity of marriage—Declarations against interest—Hearsay—Bequest by will of husband to another woman described as his wife—Solicitor's letter to him referring to his children—Counsel's opinion—Inadmissible as evidence of truth of matters stated. **Taylor v Taylor** [1965] 1 872, Div.

Validity of marriage—Existence of a doubtful earlier marriage—Whether sufficient to displace the presumption in favour of validity of wife's later marriage, the solemnisation of which and subsequent cohabitation were established. **Taylor v Taylor** [1965] 1 872, Div.

Non-access—

Bastardization of issue—Evidence directed solely to issue of condonation. **Morris v Morris, Morris and Manning (King's Proctor showing cause)** [1947] 2 377, Div. **Goss v Goss** [1947] 2 617, Div.

Regimental record of husband. **Andrews v Cordiner** [1947] 1 777, KBD.

Paternity—

Blood tests. *See* **Paternity** (Blood tests).

Petitioner not tendering evidence in person or on commission—

Jurisdiction of court to hear and determine petition. **Black v Black (May intervening)** [1960] 1 251, Div.

Privilege—

Negotiations with view to reconciliation—Conversation privileged—Evidence of third party overhearing conversation inadmissible. **Theodoropoulos v Theodoropoulos** [1963] 2 772, Assizes.

Negotiations with view to reconciliation—Discussions in counsel's chambers—Words 'without prejudice' not specifically used. **Pool v Pool** [1951] 2 563, Div.

Negotiations with view to reconciliation—Letter by husband to probation officer—Probation officer consulted by wife, but not accepted as conciliator by husband. **Mole v Mole** [1950] 2 328, CA.

Negotiations with view to reconciliation—Meeting between parties and their solicitors—Admissibility of evidence of proceedings at meeting. **Bostock v Bostock** [1950] 1 25, Div.

Negotiations with view to reconciliation—Negotiations before probation officer—Admissibility of evidence of probation officer. **McTaggart v McTaggart** [1948] 2 754, CA.

Negotiations with view to reconciliation—Statements made to conciliator—Vicar acting as conciliator. **Henley v Henley (Bligh cited)** [1955] 1 590, Div.

Proof—

Burden of proof of matrimonial offence—Preponderance of probability varying with gravity of offence. **Blyth v Blyth** [1966] 1 524, HL.

Proof against co-respondent—

Petition alleging adultery with named co-respondent—Confession by wife—Request by husband for decree against wife and for co-respondent to be dismissed from suit on ground of insufficient evidence against him—Duty of court—Whether questions of costs affected by fact that petitioner is legally aided. **Woodard v Woodard and Curd** [1959] 1 641, Div.

Refreshing memory—

Notes of conversations overheard on tapped telephone. **Jacobs v Jacobs and Solomon** [1936] 1 67, Div.

Register of births—

Photographs of register. **Note** [1956] 3 745, Div.

DIVORCE (cont)

Evidence (cont)—

Undefended suit—

Leading questions—Function of judge. **Moor v Moor** [1954] 2 458, CA.

Leading questions—Undesirability. **Perry v Perry** [1952] 1 1076, CA.

Witness—

Proceedings instituted in consequence of adultery—Plea of condonation by co-respondent—Respondent a compellable witness—Supreme Court of Judicature (Consolidation) Act 1925, s 198. **Tilley v Tilley** [1948] 2 1113, CA.

Fees—

Court fees—

Impressed stamps. **Practice Note** [1957] 3 298, Div.

Medical inspection—

Fees of inspectors on London rates. **Practice Direction** [1964] 2 34, Div. **Practice Direction** [1968] 3 708, Div.

Financial arrangements—

Arrangement approved by court that wife would not apply for maintenance unless unforeseen circumstances rendered it impossible for her to work at all or otherwise maintain herself—

Subsequent application by wife for maintenance, despite lack of such circumstances—Whether wife entitled to apply for maintenance—Matrimonial Causes Act 1965, s 5(2). **Wright v Wright** [1970] 3 209, CA.

Financial provision—

Agreement between parties. *See* **Husband and wife** (Maintenance—Agreement).

Application—

Application subsequent to petition or answer—Estoppel—Duty of party to disclose to other party intention to make application for financial relief—Failure to disclose causing other party to act to his prejudice—Party estopped from making application. **Marsden (J L) v Marsden (A M)** [1973] 2 851, FamD.

Application subsequent to petition or answer—Leave of court—Circumstances in which leave to make application will be refused—Need to show reason or explanation why leave should be given—Need to show reasonable prospect that application will be successful—Application made after decree absolute and remarriage of other party—Application by husband for leave to apply for transfer order or variation of settlement order in relation to matrimonial home—Wife having entered into commitments on basis that no such application would be made—Remarriage of wife precluding her from seeking financial relief—Matrimonial Causes Rules 1971 (S I 1971 No 953), r 68(1),(2). **Marsden (J L) v Marsden (A M)** [1973] 2 851, FamD.

Application subsequent to petition or answer—Leave of court—Principles on which leave should be granted—Protection of parties from unjust harassment or claims long after divorce—Leave to be granted in cases where applicant appears to have reasonable chance of success—Matrimonial Causes Rules 1973 (S I 1973 No 2016), r 68(2). **Chaterjee v Chaterjee** [1976] 1 719, CA.

Locus standi—Child—Application by child for financial provision from divorced parents—Child over 18—Child receiving instruction at educational establishment—Child given leave to intervene in parents' divorce proceedings—Whether application by child properly constituted—Jurisdiction of court to make order on child's application—Matrimonial Causes Act 1973, ss 23(1)(d), 29(1) (3)—Matrimonial Causes Rules 1973 (S I 1973 No 2016), r 72(2). **Downing v Downing (Downing intervening)** [1976] 3 474, FamD.

Nature of relief claimed—Duty of party to particularise relief—Claim for periodical payments only—No leave obtained to apply for lump sum payment—Whether court having power to award a lump sum—Matrimonial Causes Act 1973, s 23—Matrimonial Causes Rules 1973 (S I 1973 No 2016), r 68(2). **Wilson v Wilson** [1975] 3 464, CA.

Nature of relief claimed—Duty of party to particularise relief—Financial provision or property adjustment—Wife serving notice of intention to claim property adjustment order with respect to matrimonial home—Second notice of intention to claim 'maintenance'—Husband selling matrimonial home and buying another property—Whether court having power to award wife lump sum—Matrimonial Causes Act 1973, ss 23, 24—Matrimonial Causes Rules 1973 (S I 1973 No 2016), r 68(3), Appendix, Form 11. **Doherty v Doherty** [1975] 2 635, CA.

Need for court to be satisfied about financial arrangements before decree absolute. *See* Decree absolute—Application for financial provision for respondent—Court not to make absolute decree unless and until satisfied about financial arrangements after divorce, *ante*.

Practice and procedure—Death of applicant—Death before hearing of application—Whether application abating on death—Whether application a 'cause of action' surviving for benefit of applicant's estate—Law Reform (Miscellaneous Provisions) Act 1934, s 1. **D (J) v D (S)** [1973] 1 349, FamD. **Doherty v Doherty** [1975] 2 635, CA.

Remarriage of party—Amendment of application—Amendment so as to claim different form of relief—Jurisdiction of court to allow amendment after remarriage of applicant—Application by wife for property adjustment order—Wife remarrying before hearing of application—Whether court having jurisdiction to allow wife to amend application after remarriage so as to claim lump sum order—Matrimonial Causes Act 1973, s 28(3)—R S C Ord 20, r 5(2)(5). **Doherty v Doherty** [1975] 2 635, CA.

Remarriage of party—Party not entitled to apply for order after remarriage—Apply—Meaning—Initiation of application—Party remarrying after application initiated but before hearing—Whether court having power to hear application after remarriage—Matrimonial Proceedings and Property Act 1970, s 7(4). **Jackson (S M) v Jackson (E L)** [1973] 2 395, FamD.

Remarriage of party—Party not entitled to apply for order after remarriage—Statutory provision—Retrospective operation—Provision coming into force on 1st January 1971—Party remarrying before that date—Whether party entitled to apply for an order after that date—Matrimonial Proceedings and Property Act 1970, s 7(4). **Madden v Madden** [1974] 1 673, FamD.

DIVORCE (cont)

Financial provision (cont)—

Child—

Maintenance—Jurisdiction—Divorce suit dismissed after declaration that previous Virginian decree valid according to English law—Power of court to order maintenance—Whether 'proceedings...for divorce...after the beginning of the trial'—Matrimonial Proceedings (Children) Act 1958, s 3(1)—Matrimonial Proceedings and Property Act 1970, s 3(1)(b). **P (J M) v P (L E)** [1971] 2 728, Div.

Conduct of parties—

Duty of court to have regard to conduct—Circumstances in which regard should be had to conduct—Conduct obvious and gross—Misconduct of an obvious and gross nature in comparison with conduct of other party—Matrimonial Proceedings and Property Act 1970, s 5. **Harnett v Harnett** [1974] 1 764, CA.

Duty of court to have regard to conduct—Circumstances in which regard should be had to conduct—Conduct obvious and gross—Party wholly responsible for breakdown of marriage—Matrimonial home conveyed in joint names—House entirely paid for by husband—Wife accepting half share in house while unknown to husband having adulterous relationship—Wife solely to blame for breakdown of marriage—Husband entitled to transfer of wife's share in house. **Cuzner (formerly Underdown) v Underdown** [1974] 2 351, CA.

Duty of court to have regard to conduct—Circumstances in which regard to be had to conduct—Conduct obvious and gross—Conduct only affecting award of financial provision where obvious and gross—Court not required to conduct a lengthy post mortem in order to establish respective guilt of parties—Matrimonial Proceedings and Property Act 1970, s 5(1). **Wachtel v Wachtel** [1973] 1 829, CA.

Duty of court to have regard to conduct—Conduct after decree of divorce granted—Conduct in relation to financial matters—Husband dissipating joint assets after breakdown of marriage—Wife retaining matrimonial home—Wife granted order for payment of lump sum assessed on basis of assets from which husband had benefited—Whether husband's conduct relevant to assessment of lump sum—Matrimonial Causes Act 1973, s 25(1). **Martin v Martin** [1976] 3 625, CA.

Duty of court to have regard to conduct—Conduct after decree of divorce granted—Whether conduct after breakdown of marriage or after decree relevant in determining award to be made—Matrimonial Proceedings and Property Act 1970, s 5(1). **Jones v Jones** [1975] 2 12, CA.

Duty of court to have regard to conduct—Maintenance of wife—Reduction in view of wife's responsibility for breakdown of marriage—Conduct of wife justifying reduction—Conduct of really serious nature—Conduct a contributory but not necessarily a primary cause of breakdown of marriage—Matrimonial Proceedings and Property Act 1970, s 5(1). **Ackerman v Ackerman** [1971] 3 721, Div.

Duty of court to have regard to conduct—Maintenance of wife—Nominal order—Agreement between parties—Agreement that however favourable to wife enquiry into conduct might be only nominal order possible in circumstances—Registrar's refusal to give direction for oral evidence on issue of conduct—Nominal order for maintenance—Issue of conduct postponed—Correct form of order. **O'Brien v O'Brien and Smith** [1971] 3 254, Div.

Duty of court to have regard to conduct—Maintenance of wife—Wife's share of responsibility for breakdown of marriage—Method of taking wife's share of responsibility into account—Declaratory judgment designed to settle finally the question of past conduct—Power of court to make declaratory judgment—Discount—Maximum discount fixed on full award of maintenance—Actual discount within maximum at any particular time to be fixed in light of existing circumstances—No actual discount made in existing circumstances of parties—Court having no power to make declaratory judgment determining wife's responsibility which would be binding in future proceedings. **Ackerman v Ackerman** [1972] 2 420, CA.

Duty of court to have regard to conduct—Weight to be given to conduct—Divorce based on husband's conduct—Short periods of bad conduct during long period of married life—Matrimonial Proceedings and Property Act 1970, s 5(1). **Griffiths v Griffiths** [1973] 3 1155, FamD.

Deceased former spouse—

Maintenance for surviving spouse out of deceased's estate—Agreement for business partnership and free accommodation, in satisfaction of former's wife's claims to maintenance—Order by consent dismissing application for maintenance—Order not providing that agreed terms should be in satisfaction of claims to maintenance—Whether existence of right to claim maintenance under Matrimonial Causes Act 1950, s 19, was necessary for a claim to be maintainable under Matrimonial Causes (Property and Maintenance) Act 1958, s 3. **Re S (decd)** [1965] 1 1018, Div.

Maintenance for surviving spouse out of deceased's estate—Application—Interim order—Extension of time for applying—Matrimonial Causes Act 1965, s 26—Family Provision Act 1966, s 6. **Practice Direction** [1967] 1 832, Div.

Maintenance for surviving spouse out of deceased's estate—Failure of deceased to make reasonable provision—Bar to claim—Lump sum payment made by deceased's former husband during lifetime—Undertaking by former wife in consent order to make no further claim against former husband or his estate—Application by former wife after death of former husband despite undertaking—Alleged fraudulent concealment of assets by former husband at time of compromise on maintenance—Whether former wife's application barred—Matrimonial Causes Act 1965, s 26. **Re Minter (decd)** [1967] 3 412, Div.

Maintenance for surviving spouse out of deceased's estate—Failure of deceased to make reasonable provision—Former wife granted secured provision in deceased husband's lifetime—Former wife given nothing by deceased's will—Substantial estate—Whether failure to make reasonable provision for former wife's maintenance—Matrimonial Causes Act 1965, s 26. **Eyre v Eyre** [1968] 1 968, Div.

DIVORCE (cont)

Financial provision (cont)—

Deceased former spouse (cont)—

Maintenance for surviving spouse out of deceased's estate—Failure of deceased to make reasonable provision—Interim order for preservation of property—Jurisdiction to make order prior to wife establishing entitlement—Former wife living in mortgaged house of deceased—Entitlement of wife not yet decided—Whether jurisdiction to order payment of arrears of mortgage instalments out of deceased's estate—Matrimonial Causes Act 1965, s 26(2)(3)—RSC Ord 50, r 3. **Re Ferrar (decd)** [1966] 3 78, CA.

Maintenance for surviving spouse out of deceased's estate—Failure of deceased to make reasonable provision—Reasonable provision—Subjective or objective test—Date for ascertaining value of deceased's estate—Date of death or date of hearing of application—Objective test appropriate—Reasonableness to be judged from point of view of court—Value of deceased's estate to be ascertained at date of hearing—Matrimonial Causes Act 1965, s 26. **Re Shanahan (decd)** [1971] 3 873, Div.

Maintenance for surviving spouse out of deceased's estate—Failure of deceased to make reasonable provision—Value of estate at death and at date of award—Relevance of change in value in assessing award—Backdating of award—Proceedings extending over four years—Not necessary that award should be backdated to date of applicant's summons—Avoidance of backdating to such an extent that effect to add substantial lump sum order to award—Matrimonial Causes Act 1965, s 26. **Lusternik v Lusternik** [1972] 1 592, CA.

Maintenance for surviving spouse out of deceased's estate—Failure of deceased to make reasonable provision—Onus of proof—Deceased husband remarried some thirty years before his death—Made will some years before his death leaving everything to his second wife—Second wife pre-deceased him by about a month and his estate passed as on intestacy—First wife became better off than deceased at some time before his death—Deceased paid her maintenance until his death—Next-of-kin were deceased's sister, a niece and two nephews—No contact with deceased prior to his death, but more needy than first wife—Whether unreasonable not to have made provision for first wife's maintenance—Matrimonial Causes Act 1965, s 26. **Re Harker-Thomas's Application** [1968] 3 17, Div.

Maintenance for surviving spouse out of deceased's estate—Interim order—No jurisdiction to make. **Re Ferrar (decd)** [1966] 3 78, CA.

Maintenance for surviving spouse out of deceased's estate—Reasonable provision for her maintenance after his death—Commencing date of payments—Whether national assistance taken into account—Matrimonial Causes (Property and Maintenance) Act 1958, s 3. **Askew v Askew** [1961] 2 60, Div.

Maintenance of surviving spouse out of deceased's estate—Application—Adjournment to 'judge' in London—Hearing in chambers—Infant sons by deceased's second marriage—Amount of provision—Costs of successful applicant paid out of estate on party and party basis—Matrimonial Causes (Property and Maintenance) Act 1958, s 3(2)—Matrimonial Causes Rules 1957 (S I 1957 No 619, r 58A(9A), r 58B(4) (as added by S I 1958 No 2082, r 21, 4. 22)). **Re Bellman (decd)** [1963] 1 513, Div.

Order made against him in his lifetime to pay maintenance for children—Whether maintenance payable out of his estate after his death—Proper method of securing that maintenance should continue after husband's death—Meaning of 'cause of action' in Law Reform (Miscellaneous Provisions) Act 1934, s 1(1). **Sugden v Sugden** [1957] 1 300, CA.

Proceedings against administrator for secured maintenance—Supreme Court of Judicature (Consolidation) Act 1925, s 190—Law Reform Miscellaneous Provisions) Act 1934, s 1. **Dipple v Dipple** [1942] 1 234, Div.

Estoppel in maintenance proceedings—

Husband petitioning for divorce on ground of wife's desertion—Wife in her answer alleging cruelty—Parties agreed that suit should proceed undefended on husband's petition—Wife's answer rejected—Husband granted decree on ground of desertion—Wife seeking to raise cruelty allegations in subsequent maintenance proceedings—Estoppel per rem judicatam operating to prevent wife giving evidence of allegations to establish cruelty or first cause for desertion—Wife entitled to give evidence of cruelty allegations as evidence of conduct of the parties—Matrimonial Proceedings and Property Act 1970, s 5. **Porter v Porter** [1971] 2 1037, Div.

Husband—

Order in favour of husband—Circumstances in which order should be made in favour of husband—Wife under no duty to maintain husband—Wife possessing substantial capital assets—Husband having no capital assets—Husband having adopted style of life made possible by wife's capital resources—Lump sum order in favour of husband—Whether spouses should be treated on equal basis for purpose of applications for financial provision—Whether order should be made in husband's favour only in exceptional circumstances—Matrimonial Causes Act 1973, ss 23, 25. **Calderbank v Calderbank** [1975] 3 333, CA.

Lump sum order—

Additional to annual sum—Factors to be regarded—Commutation of part of husband's pension as retired naval officer, thereby decreasing his income and increasing his capital—Wife's house in need of repair—Generous order for annual maintenance—Judicial separation—Matrimonial Causes Act 1965, s 20(1). **Hakluyt v Hakluyt** [1968] 2 868, CA.

DIVORCE (cont)

Financial provision (cont)—

Lump sum order (cont)—

Additional to annual sum—Only small sum available—Wife purchasing new home out of her share of proceeds of sale of matrimonial home and mortgage loan—Approximately £300 outstanding on mortgage—Husband having approximately £300 out of his share of proceeds of sale of matrimonial home after payment of debts and disregarding mortgage liabilities on own home—Application by wife for lump sum payment to pay off her mortgage—Mortgage payments to be regarded primarily as income disbursements—Factor in assessing amount of maintenance—Lump sum order not appropriate. **Millward v Millward** [1971] 3 526, CA.

Additional to annual sum—Relatively rare cases—Husband's modest fortune (£8,000)—Pension and earnings £2,200—House for wife and children—Provision out of husband's and wife's contributions—Lump sum £4,000 towards cost—Trust deed to be entered into—Reversion of house to husband if surviving wife and children—Matrimonial Causes Act 1965, s 16(1). **Von Mehren v Von Mehren** [1970] 1 153, CA.

Alternative or additional to annual sum—Factors to be regarded—Wife's fortune, husband's ability to pay, parties' conduct—Wealthy husband—Wife had no assets nor income—Judge's discretion—Principle on which Court of Appeal may interfere with exercise of discretion—Matrimonial Causes Act 1965, s 16(1). **Davis v Davis** [1967] 1 123, CA.

Alternative or additional to annual sum—Factors to be regarded—Securing payment—Husband in defiance of orders of court—Danger of evading annual payment—Capital sum enforceable as bankruptcy debt—Matrimonial Causes Act 1965, s 16(1). **Curtis v Curtis** [1969] 2 207, CA.

Circumstances in which payment of lump sum should be ordered—Contribution to marriage deserving compensation—Short marriage—Separation after 18 months—Divorce by consent—Husband sole owner of house—Part played by wife in marriage deserving compensation—Award of lump sum amounting to approximately one-third of net proceeds of sale of matrimonial home. **Cumbers v Cumbers** [1975] 1 1, CA.

Circumstances in which payment of lump sum should be ordered—Marriage of short duration—Wife driven out by husband—Jewish marriage—Husband refusing to grant a Get—Husband's large capital assets—Comparatively small income—Advantages of arranging affairs on that basis—Matrimonial Causes Act 1965, s 16(1). **Brett v Brett** [1969] 1 1007, CA.

Circumstances in which payment of lump sum should be ordered—Parties acquiring joint assets—Husband dissipating assets after breakdown of marriage—Wife maintaining matrimonial home—Matrimonial home charged with substantial overdraft by husband—Husband having small interest in hotel but no other assets—Wife awarded lump sum amounting to husband's interest in hotel—Whether husband should be required to make lump sum payment—Matrimonial Causes Act 1973, s 23(1). **Martin v Martin** [1976] 3 625, CA.

Jurisdiction of court—Power to order that party pay such lump sum or sums as may be specified—Application by wife for second lump sum order—Whether court having power to make more than one order—Matrimonial Proceedings and Property Act 1970, s 2(1)(c). **Coleman v Coleman** [1972] 3 886, FamD.

Lump sum provision to be considered in every case—No order for lump sum where insufficient assets—Lump sum payment should be ordered where sufficient assets—Payment to be outright except where there are children and a settlement may be desirable—Transfer of matrimonial home—Effect on lump sum payment—Matrimonial Proceedings and Property Act 1970, s 5(1)(c). **Wachtel v Wachtel** [1973] 1 829, CA.

Property adjustment order—Statutory powers—Retrospective operation—Decree granted before provision conferring power enacted—Power to order payment of lump sum or make property adjustment order 'on granting a decree of divorce or at any time thereafter'—Whether court having power to make orders when decree granted before enactment of statutory powers—Matrimonial Proceedings and Property Act 1970, ss 2, 4—Matrimonial Causes Act 1973, ss 23, 24. **Chatterjee v Chatterjee** [1976] 1 719, CA.

Transfer of property—Power of court to make order—'On granting decree...or at any time thereafter'—Power retrospective—Power to make order in cases when decree granted before coming into force of statute introducing power—Matrimonial Causes Act 1965, s 16(1)(c)—Matrimonial Proceedings and Property Act 1970, s 2(1)(c), s 4(a). **Powys v Powys** [1971] 3 116, Div.

Matters to be considered by court when making order—

Contribution by each of the parties to welfare of family—Contribution by wife in bringing up children—Application of concept of earning to domestic situation—Wife leaving husband and children—Wife's contribution to family welfare in bringing up children incomplete—Effect on wife's entitlement to share in family assets—Matrimonial Causes Act 1973, s 25(1)(f). **H v H (financial provision: remarriage)** [1975] 1 367, FamD.

Contributions by each of parties to welfare of family—Contribution by wife—Wife looking after home and family but not going out to work—Wife contributing to family assets—Wife entitled to share of assets on breakdown of marriage—Matrimonial Proceedings and Property Act 1970, s 5(1)(f). **Wachtel v Wachtel** [1973] 1 829, CA.

Contributions by each of parties to welfare of the family—Improvements to matrimonial home—Lump sum order—Matrimonial home only capital asset—Home owned by wife—Husband having purchased and paid for home—Home transferred to wife for nominal sum during marriage—Expenditure by husband on improvements to home after transfer—Husband having worked hard to provide for family during marriage—Assessment of lump sum payment by wife to husband—Matrimonial Proceedings and Property Act 1970, ss 2(1)(c), 5(1)(f). **Griffiths v Griffiths** [1974] 1 932, CA.

Duty to place parties in financial position in which they would have been in absence of breakdown—Allocation of family assets—Matrimonial home only asset—Home owned by husband—Ascertainment of wife's beneficial interest in asset—Estimate of value of beneficial interest—Matrimonial Proceedings and Property Act 1970, s 5(1). **Harnett v Harnett** [1973] 2 593, FamD.

DIVORCE (cont)

Financial provision (cont)—

Matters to be considered by court when making order (cont)—

Duty to place parties in financial position in which they would have been in absence of breakdown—Allocation of family assets—Matrimonial home only asset—Home owned by husband—Ascertainment of wife's beneficial interest in asset—Circumstances in which allocation of half share appropriate—Maintenance for wife and children—Effect of award of capital asset to wife on amount of periodical payments—Matrimonial Proceedings and Property Act 1970, s 5. *Hunter v Hunter* [1973] 3 362, CA.

Duty to place parties in financial position in which they would have been in absence of breakdown—Allocation of family assets—Matrimonial home only asset—Matrimonial home owned by parties jointly—Wife having made no contribution to purchase—Wife having left husband—Husband remaining in matrimonial home with children from previous association—Husband unable to obtain other accommodation—Wife living in council house—Wife claiming payment of value of half share in house—Whether wife entitled to half share—Whether immediate sale of matrimonial home should be ordered—Matrimonial Causes Act 1973, s 25. *Browne (formerly Pritchard) v Pritchard* [1975] 3 721, CA.

Duty to place parties in financial position in which they would have been in absence of breakdown—Equal income enjoyment—Distribution of family assets having regard to respective earning power of parties—Position where by earnings, value of accommodation and return on investments parties have approximately equal income enjoyment—Matrimonial home only substantial asset—Home owned by wife—Proceeds of sale of home—Lump sum payment out of proceeds to husband—Matrimonial Proceedings and Property Act 1970, s 5(1). *Griffiths v Griffiths* [1973] 3 1155, FamD.

Duty to place parties in financial position in which they would have been in absence of breakdown—Length of period of separation—Husband's prosperity having accrued since separation—Husband's mistress having made positive contribution to financial prosperity—Impossibility of determining what financial position of parties would have been if marriage had not broken down—Matrimonial Proceedings and Property Act 1970, s 5(1). *Lombardi v Lombardi* [1973] 3 625, CA.

Duty to place parties in financial position in which they would have been in absence of breakdown—Transfer of property—Variation of settlement—Matrimonial home—Transfer of husband's interest in home to wife—Charge in favour of husband—Deferred charge—Husband leaving wife—Wife remaining in home and bringing up children—Wife meeting mortgage repayments and other outgoings after husband's departure—Husband and wife each beneficially entitled to half shares in home—Equity valued at £4,000—Husband's share transferred to wife—Husband given charge of £1,000—Payment of charge deferred until happening of certain events—Matrimonial Proceedings and Property Act 1970, ss 4(a)(c)(d), 5(1). *Hector v Hector* [1973] 3 1070, CA.

Family assets—Assets comprising capital assets and parties' earning power—Reallocation of family assets so as to do broad justice between parties—Starting point of reallocation one-third of capital assets and one-third of earnings—Circumstances in which 'one-third rule' not applicable—Prospect of remarriage—Relevance—Matrimonial Proceedings and Property Act 1970, ss 2–5. *Wachtel v Wachtel* [1973] 1 829, CA.

Family assets—Damages for personal injuries—Wife's flat acquired with damages awarded for injuries suffered in motor accident—Husband injured in same accident—Husband's damages invested in business which failed—Whether wife's flat should be taken into account when considering parties' resources—Whether family assets confined to those acquired by parties as spouses—Matrimonial Causes Act 1973, s 25(1)(a). *Daubney v Daubney* [1976] 2 453, CA.

Family assets—Interest of children—Settlement of matrimonial home for benefit of children—Circumstances in which settlement appropriate—Wife left in former home with children—Children having no special circumstances entitling them to claim on parents after completion of full-time education—Settlement on wife for life with remainder to children inappropriate—Home to be sold after children's education completed and proceeds divided between husband and wife according to beneficial interests. *Chamberlain v Chamberlain* [1974] 1 33, CA.

Financial needs, obligations and responsibilities of parties—Husband having remarried—Account to be taken of husband's legal responsibility to maintain new wife—Matrimonial Proceedings and Property Act 1970, s 5(1)(b). *Barnes v Barnes* [1972] 3 872, CA.

Financial needs, obligations and responsibilities of parties—Husband's needs—Husband's health not good and liable to deteriorate—Parties likely to be in similar position when husband's youngest child 18—Matrimonial home in joint names—Wife owning leasehold flat—Husband living in matrimonial home with another woman and children—Husband and wife earning approximately same amount—Assessment of wife's interest in home—Matrimonial Causes Act 1973, s 25(1)(a). *Daubney v Daubney* [1976] 2 453, CA.

Financial protection for respondent—Divorce based on period of separation—Petition by husband—Effect of wife's right to financial protection on test to be applied in determining amount of periodical payments for which husband liable—Divorce Reform Act 1969, s 6(2)—Matrimonial Proceedings and Property Act 1970, s 5(1). *Lombardi v Lombardi* [1973] 3 625, CA.

Loss of chance of acquiring benefit—Lump sum payment—Compensation to wife for loss of benefit which she might have received if marriage had not been dissolved—Husband having share in family business—Husband and wife separating after 27 years of marriage—Wife going to live with another man—Husband going to live with another woman—Sale of family business after separation and before divorce—Husband receiving substantial capital sum—Reasonable prospect that he would have settled share of proceeds of sale of business on wife—Matrimonial Proceedings and Property Act 1970, ss 2(1)(c), 5(1)(g). *Trippas v Trippas* [1973] 2 1, CA.

DIVORCE (cont)

Financial provision (cont)—

Matters to be considered by court when making order (cont)—

Loss of chance of acquiring benefit—Lump sum payment—Compensation to wife for loss of benefit which she might have receiving if marriage had not been dissolved—Husband having share in family business—Wife contributing substantially to husband's business—Husband leaving wife after 12 years of marriage—No substantial assets belonging to husband and wife jointly—Husband's assets consisting of shares in family companies—Valuation of husband's assets notional—Husband unwilling to force purchase of his shares on his family—Whether payment of lump sum to wife 'practicable' for husband—Whether periodical payments in addition to purchase of house sufficient order for wife—Matrimonial Causes Act 1973, ss 23, 25. **O'Donnell v O'Donnell** [1975] 2 993, CA.

Policy—Shift of emphasis from maintenance to redistribution of assets—Re-allocation of property rights so as to do broad justice between parties—Relevance of contributions to welfare of the family—Matrimonial Proceedings and Property Act 1970, ss 4(a), 5(1). **Wachtel v Wachtel** [1973] 1 113, FamD.

Property and other financial resources party has or is likely to have in foreseeable future—Interest of wife in house shared with another man—Wife cohabiting with man as his mistress—House in joint names of wife and man—Wife having made no contribution to cost of purchase—Wife and man living in house as family with their illegitimate child and wife's children—Whether wife's interest in house to be regarded as property or other financial resources which she had or was likely to have in the foreseeable future—Matrimonial Causes Act 1973, s 25(1)(a). **W v W** (financial provision : lump sum) [1975] 3 97, FamD.

Remarriage of parties—Lump sum payment—Financial needs, obligations and responsibilities of parties—Wife have remarried man of substantial means—Wife entitled to lump sum by reason of contribution to welfare of family—Whether amount affected by financial circumstances of wife following remarriage—Matrimonial Causes Act 1973, s 25(1)(b). **H v H** (financial provision : remarriage) [1975] 1 367, FamD.

Social security benefits—Relevance—Court to fix a fair figure without regard to benefits—Parties having modest means and resources—Effect of order to preclude husband from meeting own financial commitments—Account to be taken of social security benefits payable to wife. **Barnes v Barnes** [1972] 3 872, CA.

Order—

Lump sum payment. *See* Financial provision—Lump sum order, *ante*.

Matters to be considered by court when making order. *See* Financial provision—Matters to be considered by court when making order, *ante*.

Order following decree—Jurisdiction—Foreign decree—Foreign decree entitled to recognition by English court—Jurisdiction of English court to make orders for financial provision—Wife and children domiciled and resident in England—Matrimonial home in England—Jurisdiction to determine ancillary matters limited to court granting decree. **Torok v Torok** [1973] 3 101, FamD.

Variation of order. *See* Financial provision—Variation of order, *post*.

Periodical payments—

Calculation—Amount payable to wife—Expenses to be deducted from husband's income—Application of 'one-third rule'. **Ackerman v Ackerman** [1972] 2 420, CA.

Variation of order. *See* Financial provision—Variation of order—Existing order for periodical payments or secured provision, *post*.

Practice and procedure—

Application by respondent after decree nisi—Decree granted to petitioner relying on fact parties having lived apart for requisite period—Withdrawal of application by respondent—Notice—Effect—Divorce Reform Act 1969, s 6. **Practice Direction** [1972] 2 623, FamD.

Separation cases—

Application by respondent—Decree not to be made absolute. *See* Decree absolute—Financial protection for respondent—Separation cases, *ante*.

Variation of order—

Change of circumstances—Order embodying arrangement between parties—Circumstances not contemplated by parties at time arrangement made—Provision of house for wife—Undertaking by husband to make house available rent free for wife's use—Meaning of 'use'—Wife ceasing to live in house—Wife letting house to third party—Application by husband to be released from undertaking—Whether wife continuing to use house consistently with the terms of the order. **Morss v Morss** [1972] 1 1121, CA.

Existing order for periodical payments or secured provision—Application for lump sum order—Application in substance an application to vary existing order—Application by wife many years after original decree—Circumstances in which application may be entertained—Change in financial circumstances of husband since date of decree. **Jones v Jones** [1971] 3 1201, CA.

Existing order for periodical payments or secured provision—Express prohibition on making lump sum or transfer of property order on application to vary existing order—Policy of Act—Duty of court when original application in substance on application to vary existing order—Matrimonial Proceedings and Property Act 1970, s 9(5), Sch 1, para 3(3). **Powys v Powys** [1971] 3 116, Div.

DIVORCE (cont)

Financial provision (cont)—

Variation of order (cont)—

Regard to all the circumstances of the case—Factors to be considered—Conduct of parties—Parties to be placed as nearly as possible in same financial position as if marriage had not broken down—Matrimonial Proceedings and Property Act 1970, ss 5(1), 9(7). **Jones v Jones** [1971] 3 1201, CA.

Five year separation. *See* Separation—Five year separation, *post*.

Foreign decree—

Alimony payments—

Deduction in computing total income for tax purposes. *See* **Income tax** (Total income—Deduction of annual payments—Foreign decree—Alimony paid to foreign wife under foreign decree).

English maintenance order—

Effect of foreign decree on maintenance order. **Wood v Wood** [1957] 2 14, CA.

Financial provision—

Jurisdiction of English court. *See* Financial provision—Order following decree—Jurisdiction—Foreign decree, *ante*.

Fraud—

Recognition of decree. *See* Foreign decree—Recognition by English court—Basis of recognition—Domicile—Recognition of decree by court of domicile—Fraud going to point of jurisdiction of court granting decree, *post*.

In favour of husband—

Parties domiciled abroad at time of decree—Collusion—Fraud not touching the jurisdiction—Wife's petition to test validity of decree. **Crowe v Crowe** [1937] 2 723, Div.

Invalidity—

Basis of invalidity—Lack of consent to divorce proceedings—Duress—Decree granted in Nazi Germany in 1939—Proceedings instituted by Aryan wife of escaped Jewish husband—Will of wife overborne by fear—Fear of persecution and danger to life, limb and liberty of herself and child—Jurisdiction of English court to declare divorce invalid—Doctrines of comity and natural justice inapplicable. **Meyer v Meyer** [1971] 1 378, Div.

Basis of invalidity—Notice of foreign proceedings not given to respondent spouse—Petitioner's fraud procuring absence of notice—Decree treated as nullity by English courts. **Macalpine v Macalpine** [1957] 3 134, Div.

Judicial separation—

Recognition by English court—Petition in England for divorce on ground of desertion—Three years' desertion prior to foreign decree—Matrimonial Causes Act 1950, s 7(3), s 18(1)(b). **Tursi v Tursi** [1957] 2 828, Div.

Recognition by English court—

Basis of recognition—Domicile—Domicile at date divorce proceedings instituted—Husband domiciled in Denmark at date of wife's application for divorce—Husband resuming domicile of origin before date of Danish royal decree of dissolution. **Mansell v Mansell** [1966] 2 391, Div.

Basis of recognition—Domicile—Decree granted to wife in Finland on ground of husband's desertion—Husband domiciled in Finland at date of desertion—Subsequent acquisition by husband of English domicile—Recognition of decree by English court—Matrimonial Causes Act 1950, s 18(1)(a). **Arnold v Arnold** [1957] 1 570, Div.

Basis of recognition—Domicile—Recognition of decree by court of domicile—Fraud going to point of jurisdiction of court granting decree—Decree granted to husband in state of Illinois on ground of wife's desertion—Decree obtained by fraud—Decree recognised in state of Indiana where husband domiciled. **Middleton v Middleton** [1966] 1 168, Div.

Basis of recognition—Domicile—Relaxation of rule that domicile only test of jurisdiction. **Indyka v Indyka** [1967] 2 689, HL.

Basis of recognition—Nationality and habitual residence—Decree granted to wife in Germany—Wife German national then habitually residing in Germany—Husband domiciled in England. **Angelo v Angelo** [1967] 3 314, Div.

Basis of recognition—Real and substantial connection between parties and court granting decree—Decree granted to husband in Germany—Husband of British nationality and English domicile and residence—Wife of German nationality and residence. **Mayfield v Mayfield** [1969] 2 219, Div.

Basis of recognition—Real and substantial connection between parties and court granting decree—Decree granted to wife in Czechoslovakia—Residence of wife in territory of foreign court for more than three years preceding application for divorce there—Husband domiciled in England—Avoidance of limping marriages—Public policy—Recognition of foreign decree pronounced before the commencement of s 1 of the Law Reform (Miscellaneous Provisions) Act 1949. **Indyka v Indyka** [1967] 2 689, HL.

Basis of recognition—Real and substantial connection between parties and court granting decree—Decree recognisable in State where petitioner had spent most of her life—Decree granted to wife in State of Nevada—Wife United States national then habitually resident in State of Pennsylvania—Decree valid in Nevada and would be recognised in Pennsylvania—Husband domiciled in England. **Mather v Mahoney** (formerly **Mather**) [1968] 3 223, Div.

Basis of recognition—Real and substantial connection between parties and court granting decree—Decree recognisable in State where petitioner normally resident—Decree granted to wife in Mexico after one day's residence there—Husband domiciled in England at time of decree—Wife resident normally in New York—Decree recognised by New York court—Whether decree recognised by English court. **Mountbatten (Marquess of Milford Haven) v Mountbatten (Marchioness of Milford Haven)** [1959] 1 99, Div.

Basis of recognition—Real and substantial connection between parties and court granting decree—Decree recognisable in State where petitioner resident for six years—Genuine or bogus divorce—Whether petitioner resorting to jurisdiction for purposes of evading laws under which living—Decree granted to wife in State of Nevada—Wife resident in United States six years—Husband domiciled in England. **Messina v Smith** [1971] 2 1046, Div.

DIVORCE (cont)

Foreign decree (cont)—

Recognition by English court (cont)—

Basis of recognition—Real and substantial connection between parties and court granting decree—Petitioner formerly domiciled and resident in jurisdiction of court—Appropriate and just to recognise decree—Decree granted to husband in Norway—Domicile of choice in Norway acquired by husband on marriage—Parties living in Norway after marriage—Abandonment of domicile of choice by husband shortly before institution of proceedings for divorce by him in Norway. **Blair v Blair and Barlie** [1968] 3 639, Assizes.

Basis of recognition—Real and substantial connection between parties and court granting decree—Petitioner resident for more than one year in jurisdiction of court—Petitioner intending permanent residence in jurisdiction—Decree granted to husband, an Englishman by origin, in State of Virginia—Failure by husband to prove acquisition of domicile of choice in Virginia—Husband resident in Virginia for more than one year at time of petition—Expressed intention of husband to stay in Virginia. **Munt v Munt** [1970] 2 516, Div.

Basis of recognition—Real and substantial connection between parties and court granting decree—Place of celebration of marriage not sufficient connection—Decree granted to wife in Yugoslavia—Yugoslav court assuming jurisdiction on ground that marriage celebrated in Yugoslavia—Parties nationals of and domiciled in Yugoslavia at date of marriage. **Peters (otherwise Petrovic) v Peters** [1967] 3 318, Div.

Basis of recognition—Real and substantial connection between parties and court granting decree—Decree granted in France—Respondent having no notice of proceedings—Subsequent affirmation of marriage by parties. **Hornett v Hornett** [1971] 1 98, Div.

Basis of recognition—Residence—Nationality and habitual residence. *See* Foreign decree—Recognition by English court—Basis of recognition—Nationality and habitual residence, *ante*.

Basis of recognition—Residence—Petition by wife ordinarily resident in Germany—Decree granted to husband on cross-petition—Husband domiciled in England—No recognition of foreign decree—Matrimonial Causes Act 1950, s 6, s 18(1)(b). **Levett v Levett** [1957] 1 720, CA.

Basis of recognition—Residence—Decree granted to wife by foreign court—Residence of wife in territory of foreign court for more than three years preceding application for divorce there—Irrelevance of ground of foreign decree if not contrary to natural justice—Decree recognised by English court. **Manning v Manning** [1958] 1 291, Div.

Basis of recognition—Residence—Decree granted to wife by foreign court—Residence of wife in territory of foreign court for less than three years preceding application for divorce there—Jurisdiction of foreign court founded on lesser residential period—Substantial period of actual residence—Residence likely to be permanent—Avoidance of limping marriages—Recognition of foreign decree. **Welsby v Welsby** [1970] 2 467, Div.

Basis of recognition—Residence—Spouse habitually resident in country in which decree obtained—Requisites of habitual residence—Elements of intention and quality rather than period of residence—‘Habitually’ denoting physical presence enduring for some time—Finding by foreign court that spouse actual bona fide resident of that country for more than one year—Whether equivalent to finding that spouse habitually resident there—Recognition of Divorces and Legal Separations Act 1971, s 3(1)(a). **Cruse v Chittum (formerly Cruse)** [1974] 2 940, FamD.

Basis of recognition—Residence—Petitioner having spent whole life in jurisdiction of court granting decree—Ground on which decree granted not recognised as ground for divorce in England—Decree granted to husband and wife in Yugoslavia—Husband domiciled in England at time of decree. **Tijanic v Tijanic** [1967] 3 976, Div.

Basis of recognition—Residence—Jurisdiction of foreign court based on separate domicile of wife—Wife resident in territory of foreign court for three years preceding commencement of proceedings there—Decree recognised by English court. **Robinson-Scott v Robinson-Scott** [1957] 3 473, Div.

Basis of recognition—Residence—Petitioner resident for three years in jurisdiction of court granting decree—Decree granted to wife in Sweden—Ground of divorce that parties had lived apart for a year and had not resumed cohabitation after grant of decree of judicial separation to wife in Sweden—Wife Swedish national resident in Sweden for past three years. **Brown v Brown** [1968] 2 11, Div.

Competence of court granting decree—Competence according to municipal law—Court irregularly constituted—Judge not fulfilling conditions precedent to entry on office—Decree of divorce pronounced in Southern Rhodesia—Judge pronouncing decree not fulfilling requirements of valid Constitution—UK Secretary of State failing to exercise statutory powers to restrain or prohibit and failing to make alternative appointment—Southern Rhodesia (Constitution) Order in Council 1961 (S I 1961 No 2314), s 54(3) (as amended by Constitution Amendment Act 1964, (Southern Rhodesia No 13 of 1964)—Southern Rhodesia Constitution Order 1965 (S I 1965 No 1952), s 4(1)(e). **Adams v Adams (Attorney-General intervening)** [1970] 3 572, Div.

Contract of divorce—Contract authenticated by seal and recognised as valid by courts of domicile—Jurisdiction of English court notwithstanding marriage potentially polygamous. **Lee v Lau** [1964] 2 248, Div.

Discretion to refuse to recognise divorce—Divorce offensive to conscience of English court—Factors affecting exercise of discretion. **Qureshi v Qureshi** [1971] 1 325, Div.

Divorce obtained in country outside British Isles—Foreign territory outside British Isles—Diplomatic premises—Husband domiciled in England—Husband a national of United Arab Republic—Talaq divorce in accordance with Egyptian law on premises of Consulate General of United Arab Republic in London—Whether premises of Consulate General foreign territory—Whether divorce obtained outside British Isles—Recognition of Divorces and Legal Separations Act 1971, s 2(a). **Radwan v Radwan** [1972] 3 967, FamD.

Foreign divorce not judicial act—Marriage celebrated and divorce occurring in England—Divorce by talaq. **Qureshi v Qureshi** [1971] 1 325, Div.

DIVORCE (cont)

Foreign decree (cont)—

Recognition by English court (cont)—

Judicial process recognised and recorded in courts of the domicile—Mohammedan declaration of divorce—Talaq divorce. **Russ (otherwise Geffers) v Russ** (**Russ (otherwise De Waele) intervening**) [1962] 3 193, CA.

Jurisdiction of foreign court based on separate domicile of wife—Ninety days' residence by her—Decree not recognised by English court. **Dunne v Saban** (formerly **Dunne**) [1954] 3 586, Div.

Overseas divorce—Proceedings in country outside British Isles—Proceedings—Talaq divorce—Talaq pronounced by husband in United Kingdom—Husband a national of Pakistan—Wife a national of Pakistan resident in Pakistan—Notice of talaq served on Pakistani authorities and wife in accordance with Pakistani law—Talaq effective if not revoked within 90 days of service of notice on Pakistani authorities—Whether divorce 'obtained by means of proceedings' in Pakistan—Recognition of Divorces and Legal Separations Act 1971, s 2. **R v Registrar General of Births, Deaths and Marriages, ex parte Minhas** [1976] 2 246, QBD.

Practice—Oath as to domicile or full statement of facts to be submitted. **Practice Direction** [1968] 1 400, Prob.

Respondent having no notice of proceedings. **Hornett v Hornett** [1971] 1 98, Div.

Subsequent affirmation of marriage by parties. **Hornett v Hornett** [1971] 1 98, Div.

Unilateral divorce by Mohammedan—Marriage in England of Christian woman and Mohammedan domiciled in Egypt—Divorce in Egypt. **Maher v Maher** [1951] 2 37, Div.

Wife's decree on ground of desertion—Acquisition by husband of another domicile after date of desertion—Matrimonial Causes Act (Northern Ireland) 1939, (N I), s 26—Matrimonial Causes Act 1950, s 18(1)(6). **Carr v Carr** [1955] 2 61, Div.

Wife's decree on ground of desertion—Acquisition by husband of foreign domicile after commencement of desertion—New South Wales Matrimonial Causes Act 1899, (No 14), s 16(a)—Matrimonial Causes Act 1937, s 13. **Travers v Holley and Holley** [1953] 2 794, CA.

Venue—

Whether a matrimonial cause. **Practice Direction** [1965] 3 916, Div.

Foreign proceedings—

Injunction. *See* Injunction (Foreign proceedings—Divorce petition by wife).

Gift of money by wife's father in contemplation of marriage—

Joint account in names of husband and wife—

Marriage taking place and subsequently dissolved—Whether gift made to parties jointly—Married Women's Property Act 1882, s 17. **Kelner v Kelner** [1939] 3 957, Div.

Grave financial or other hardship—

Opposition to grant of decree. *See* Separation—Five year separation—Decree nisi—Opposition—Grave financial and other hardship, *post*.

Refusal to grant decree. *See* Separation—Five year separation—Decree nisi—Refusal—Grave financial hardship, *post*.

Hearing—

Practice. *See* Practice—Hearing, *post*.

Infant—

Child of the family—

Acceptance of child as one of the family—Acceptance by both spouses—Illegitimate children of wife born before coverture—Different fathers—Wife denied husband authority over children—Whether children accepted as children of the family—Matrimonial Causes Act 1965, s 46(2)(6). **P (R) v P (P)** [1969] 3 777, Assizes.

Acceptance of child as one of the family—Illegitimate child of the wife born during coverture. *See* Infant—Child of the family—Illegitimate child of the family born during coverture, *post*.

Acceptance of child as one of the family—Knowledge of material facts necessary for acceptance—Child disowned as soon as husband knew of facts showing that child was not his—Whether child had been accepted as one of the family—Matrimonial Causes Act 1965, s 46(2)(b). **R v R** [1968] 2 608, Div.

Arrangements for care and upbringing—Arrangements approved by court—Alterations in arrangements before decree absolute of divorce or nullity—Matrimonial Causes Act 1965, s 33. **Practice Direction** [1969] 1 377, Div.

Arrangements for care and upbringing—Practice—Petitions filed before 1st January 1971—Divorce or nullity proceedings or proceedings for judicial separation—Matrimonial Causes Rules 1968 (S I 1968 No 219), Form 2 (as substituted by S I 1970 No 1349)—Matrimonial Causes Act 1965, s 33—Matrimonial Proceedings and Property Act 1970, s 17. **Practice Direction** [1970] 3 1023, Div.

Illegitimate child of the wife born during coverture—Whether evidence established acceptance of child as one of family by husband—Matrimonial Proceedings (Children) Act 1958, s 1(1)—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 1(3), as amended by the Matrimonial Causes (Amendment) Rules 1958 (S I 1958 No 2082), r 2. **H v H (H, by his guardian, intervening)** [1966] 1 356, Div.

Pronouncement included in decree nisi that not child of family—Provision in rules for child to be represented—Jurisdiction to be exercised with great caution—Pronouncement erroneous and struck out—Matrimonial Proceedings (Children) Act 1958, s 2—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 56. **Bickley v Bickley** [1964] 3 917, CA.

Treatment as child of the family—Husband not father of wife's child—Husband treating child as child of family in belief that he was father—Whether lack of knowledge as to paternity material—Matrimonial Proceedings and Property Act 1970, s 27(1). **W (R J) v W (S J)** [1971] 3 303, Assizes.

DIVORCE (cont)

Infant (cont)—

Child of the family (cont)—

Treatment as child of the family—Treatment—Meaning—Unborn child—Husband marrying wife in mistaken belief that he was responsible for her pregnancy—Wife subsequently cohabiting with third party—Skin colour of child at birth showing that husband could not have been father—Husband not treating child as child of family following birth—Whether possible to 'treat' unborn child as child of family—Whether husband treating child as child of family by marrying mother—Matrimonial Proceedings and Property Act 1970, s 27(1). **A v A (family: unborn child)** [1974] 1 755, FamD.

Education—

Choice of school—Means available to court to obtain information thereon. **C v C** [1966] 3 51, Div.

Maintenance. *See* Financial provision—Child, *post*.

Paternity—

Amendment of petition—Re-service—Leave given at hearing to amend petition so as to allege that child was not a child of family—No re-service of petition—Particulars not included in amendment—Undefended cause—Husband's petition—Decree nisi included declaration that child not child of family—Declaration struck out—Matrimonial Causes Rules 1957 (S I 1957 No 619), as amended by Matrimonial Causes (Amendment) Rules 1958, (S I 1958 No 2082), r 4(1)(cc). **S v S** [1964] 3 915, CA.

Child of the family—Husband's petition stated that three children of the family were living—Petition undefended except as to custody and maintenance of one child born before marriage—Evidence of husband at hearing equivocal on whether child was accepted by him—No real trial of that issue but finding that there were no children of the family—No amendment of petition—Trial of issue ordered whether child was child of family—Matrimonial Proceedings (Children) Act 1958, s 2. **Hodgkins v Hodgkins** [1965] 3 164, CA.

Paternity or status as child of the family in issue—

Representation of infant by Official Solicitor where directed—Practice where such separate representation not directed—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 56. **Practice Direction** [1965] 1 905, Div.

Relevant child—

Meaning not restricted to infant—Matrimonial Causes Act 1965, s 34(1). **D v D** [1970] 3 893, Div.

Protection of court—Procedure—Matrimonial Causes Rules 1968 (S I 1968 No 219), rr 95(1) and 108(1)—Matrimonial Causes Act 1965, s 34(1). **D v D** [1970] 3 893, Div.

Protection of court—Proper proceedings—Matrimonial Causes Act 1965, s 34(1). **D v D** [1970] 3 893, Div.

Whether child can be relevant child in second divorce suit to which only one parent a party—Matrimonial Causes Act 1965, s 46(2). **Newman v Newman** [1970] 3 529, Div.

Service—

No guardian ad litem appointed—Service of petition on infant co-respondent—Decree nisi granted in undefended suit—Whether decree void or voidable—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 66(6), as substituted by Matrimonial Causes (Amendment) (No 2) Rules 1960, (S I 1960 No 1261). **John v John and Goff** [1965] 2 222, Div.

No guardian ad litem appointed—Service of petition on infant—Validity of decree—Matrimonial Causes Rules 1950 (S I 1950 No 1940), r 64(3), (9). **Stanga v Stanga** [1954] 2 16, Div.

Notice of motion of appeal to Divisional Court against magistrates' court order—Service on infant respondent personally instead of on guardian ad litem—Infant legally aided—Whether good service—Matrimonial Causes Rules 1950 (S I 1950 No 1940), r 64(3). **Levy (by her next friend) v Levy** [1957] 1 478, Div.

Service of petition on father of infant woman named—Application to court for appointment of guardian ad litem—Whether court had discretion, after proof of infancy, to dispense with appointment—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 66(6), as substituted by the Matrimonial Causes (Amendment) (No 2) Rules 1960, (S I 1960 No 1261). **M (S E) v M (S V)** [1965] 3 656, Div.

Service of petition on infant woman named personally—Guardian ad litem appointed who sought to waive irregularity—Whether service deemed good service—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 66(3). **Watts v Watts** [1959] 2 687, Div.

Injunction—

Application—

High Court. *See* Injunction (High Court—Applications in matrimonial proceedings).

Exclusion of spouse from matrimonial home. *See* Injunction (Exclusion of spouse from matrimonial home).

Jurisdiction—

Grant of injunction after decree of restitution of conjugal rights—Supreme Court of Judicature (Consolidation) Act 1925, ss 43, 45(1). **Nanda v Nanda** [1967] 3 401, Div.

Grant of injunction after decree absolute. **Devas v Devas** [1969] 3 1543, Div.

Grant of injunction extending beyond decree absolute—Supreme Court of Judicature (Consolidation) Act 1925, ss 43, 45—Matrimonial Causes Act 1950, s 26. **Robinson v Robinson** [1963] 3 813, Div.

Insanity—

Alimony pendente lite and maintenance—

Agreement under seal by petitioner to pay for respondent's maintenance—Undesirable as court has power to make and vary order according to circumstances. **Jesson v Jesson** [1944] 2 124, Div.

Condonation. *See* Condonation—Insanity, *ante*.

Detention as incurable patient for five years preceding presentation of petition—

Necessity for continuation certificates—Lunacy Act 1890, ss 25, 37(2), 341—Lunacy Act 1891, s 7—Matrimonial Causes Act 1937, s 3. **Murray v Murray (by her guardian)** [1940] 4 250, CA.

DIVORCE (cont)

Insanity (cont)—

Detention as incurable patient for five years preceding presentation of petition (cont)—

Special report and certificate—Words of declaration instead of certification—Matrimonial Causes Act 1950, s 1(1)(d)—Lunacy Act 1890, s 38(4) (as substituted by Lunacy Act 1891, s 7)—Mental Treatment Rules 1948 (S I 1948 No 1071), r 2(2), schedule. **Warren v Warren** [1953] 2 995, Div.

Discretion statement—

Dispensing with on ground of mental illness. *See* Discretion—Discretion statement—Dispensing with discretion statement—Mental disability, *ante*.

Distinction between recovery and cure—

Certification as evidence—Conduct conducing—Decree nisi—Matrimonial Causes Act 1937, ss 2(d), 3. **Swettenham v Swettenham** [1938] 3 183, Div.

Guardian ad litem—

Extension of duties to ancillary matters—Maintenance. **Bone v Bone** [1953] 2 879, Div.

Official Solicitor—Duties—Costs. **Timins v Timins (by her Guardian)** [1938] 4 180, Div.

Official Solicitor—'Person of unsound mind'—Voluntary patient in mental hospital—Power of Official Solicitor to act—Matrimonial Causes Rules 1950 (S I 1950 No 1940), r 64(4). **Wickens v Wickens** [1952] 2 98, CA.

Official Solicitor—Suits based on incurable unsoundness of mind—Matrimonial Causes Act 1950, s 1—Divorce (Insanity and Desertion) Act 1958—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 66(8),(9). **Practice Direction** [1958] 3 240, Div.

'Person of unsound mind'—Need to apply for appointment of guardian—No appearance by person of unsound mind after service of petition—Matrimonial Causes Rules 1950 (S I 1950 No 1940), r 64(9). **Gore-Booth v Gore-Booth** [1953] 2 1000, Div.

Person under disability—Failure to appoint guardian—Whether proceedings rendered a nullity—Matrimonial Causes Rules 1957 (S I 1957 No 619 as amended by S I 1960 No 1261), r 66(6). **Balloqui v Balloqui** [1963] 3 989, CA.

Receiver acting as such—Independent medical witness called by court—Test of unsoundness of mind—Matrimonial Causes Act 1937, s 3. **Randall v Randall** [1938] 4 696, Div.

Resolution of visiting committee appointing clerk as guardian ad litem in all cases. **Bailey v Bailey** [1942] 2 89, Div.

Incurable unsoundness of mind—

Board of Control file—Disclosure—Admission of copies—Matrimonial Causes Rules 1937 (S R & O 1937 No 1113), r 25(1)(c). **Re Board of Control** [1938] 4 176, Div.

Care and treatment for five years immediately preceding presentation of petition—Absence from institution to undergo treatment for fractured leg—Matrimonial Causes Act 1950, s 1(1)(d), s 1(2)(d). **Swymer v Swymer** [1954] 3 502, CA.

Care and treatment for five years immediately preceding presentation of petition—Absence from mental hospital for more than twenty-eight days—Staying with, and under care of, a relative—Temporary absence from hospital as part of treatment—Informal patient under Mental Health Act 1959—Receiving treatment for mental illness as 'resident' in hospital—Divorce (Insanity and Desertion) Act 1958, s 1(1)(a),(3)—Matrimonial Causes Act 1950, s 1(1)(d), s 1(2), as amended by Mental Health Act 1959, s 149(1),(2), Sch 7, Part 1, Sch 8. **Dunn v Dunn (by her Guardian)** [1963] 1 440, Div.

Care and treatment for five years immediately preceding presentation of petition—Absence from mental hospital for more than twenty-eight days—Undergoing treatment for tuberculosis in sanatorium—Matrimonial Causes Act 1950, s 1(1)(d)—Divorce (Insanity and Desertion) Act 1958, s 1(1)(a). **Mesure v Mesure (by her Guardian)** [1960] 2 233, Div.

Care and treatment for five years immediately preceding presentation of petition—Absence from mental hospital on trial leave—Whether 'resident' in hospital notwithstanding temporary absence—Divorce (Insanity and Desertion) Act 1958, s 1(1)(a). **Head v Head** [1963] 3 640, Assizes.

Care and treatment for five years immediately preceding presentation of petition—Admission of wife as temporary patient on application of husband—Detention 'in pursuance of order'—No statement by visiting committee as to propriety of continuance of detention—Mental Treatment Act 1930, s 5(9),(10),(11)—Matrimonial Causes Act 1937, ss 2(d), 3(a),(b). **Whitley v Whitley (by her Guardian)** [1947] 1 667, CA.

Care and treatment for five years immediately preceding presentation of petition—Alcoholism—Voluntary patient without certification—Specialist's report—Matrimonial Causes Act 1950, s 1(1)(d)—Divorce (Insanity and Desertion) Act 1958, s 1(1). **Lock v Lock (by her Guardian)** [1958] 3 472, Div.

Care and treatment for five years immediately preceding presentation of petition—'Continuously'—Detention in hospitals in England and Scotland—No order in force during period of removal—Supreme Court of Judicature (Consolidation) Act 1925, s 176(d) (as substituted by Matrimonial Causes Act 1937, s 2)—Matrimonial Causes Act 1937, s 3(a) (as amended by Law Reform (Miscellaneous Provisions) Act 1949, s 3(a)). **Frank v Frank** [1951] 2 503, CA.

Care and treatment for five years immediately preceding presentation of petition—Delegation by medical superintendent of clinical treatment—Evidence of consultants—Evidence by affidavit. **Usher v Usher (by her Guardian)**, **Abley v Abley (by her Guardian)** [1956] 2 762, Div.

Care and treatment for five years immediately preceding presentation of petition—Detention in institution as a defective for more than five years, including, after Nov 1, 1960, detention as suffering from subnormality—Respondent not mentally ill but incapable of managing himself and his affairs—Respondent's condition congenital and permanent—Whether respondent of unsound mind—Whether respondent under care and treatment for requisite period—Matrimonial Causes Act 1950, s 1(1)(d)(2)—Divorce (Insanity and Desertion) Act 1958, s 1(1). **Robinson v Robinson (by his Guardian)** [1964] 3 232, Div.

Care and treatment for five years immediately preceding presentation of petition—Evidence—Status of hospital—Continuity of care and treatment—Affidavit—Matrimonial Causes Act 1950, s 1(1)(d)—Divorce (Insanity and Desertion) Act 1958, s 1(1)(a),(3). **Practice Direction** [1959] 2 361, Div.

DIVORCE (cont)

Insanity (cont)—

Incurable unsoundness of mind (cont)—

Care and treatment for five years immediately preceding presentation of petition—Removal by relieving officer to mental home for two days—Subsequent admission to another mental institution as a voluntary patient—Whether detention pursuant to order—Lunacy Act 1890, s 20—Matrimonial Causes Act 1937, ss 2(d),(a),(b). **Crutchfield v Crutchfield (by her Guardian)** [1946] 2 730, Div.

Care and treatment for five years immediately preceding presentation of petition—Respondent husband left hospital on discharge less than twenty-eight days before presentation of the petition—Care and treatment ended—Interval before presentation of a petition not an 'interruption' in care and treatment—Matrimonial Causes Act 1950, s 1(1)(d)—Divorce (Insanity and Desertion) Act 1958, s 1(3). **Chapman v Chapman (by his Guardian)** [1961] 3 1105, Div.

Care and treatment for five years immediately preceding presentation of petition—Statement signed by visitors to the effect that it was proper that patient should continue to be detained—Detention under an order—Matrimonial Causes Act 1950, s 1(1)(d), s 1(2)(a), (d)—Mental Treatment Act 1930, s 5(10). **Bithell v Bithell** [1954] 3 171, Div.

Care and treatment for five years immediately preceding presentation of petition—Subnormality—Person who, prior to the Mental Health Act 1959, would have been classified as a mental defective—Whether 'incurably of unsound mind'—Matrimonial Causes Act 1965, s 1(1)(a)(iv),(3)(a). **Woolley v Woolley (by her Guardian)** [1966] 3 855, Assizes.

Care and treatment for five years immediately preceding presentation of petition—Urgency order—Matrimonial Causes Act 1950, s 1(1)(d), s 1(2)(a), (d)—Lunacy Act 1890, s 11(1). **Chapman v Chapman** [1954] 3 116, Div.

Evidence. **Practice Note** [1956] 2 833, Div.

Incurability—Some prospect of partial recovery by paranoid schizophrenic—Matrimonial Causes Act 1950, s 1(1)(d). **Whysall v Whysall (by his Guardian)** [1959] 3 389, Div.

Period of care and treatment—Detention in approved hospital in pursuance of order made under Lunacy Act 1890—Quarterly returns by medical officer not made within prescribed time—Returns not sent to Board of Control within prescribed time—Effect on detention order—Supreme Court of Judicature (Consolidation) Act 1925, s 176(d) (as amended by Matrimonial Causes Act 1937, s 2)—Matrimonial Causes Act 1937, s 3(a)—Mental Treatment Rules 1930, (S R & O 1930 No 1083), r 126(1), (3) (as amended by Mental Treatment (Emergency Provisions) Rules 1940 (S R & O 1940 No 1095)). **Hamblin v Hamblin (by her Guardian)** [1950] 1 35, Div.

Period of care and treatment—Detention under order followed by treatment as voluntary patient—Mental Treatment Act 1930, s 5—Matrimonial Causes Act 1937, s 3. **Benson v Benson (by her Guardian)** [1941] 2 335, Div.

Period of care and treatment—Pauper lunatic 'discharged not recovered' to workhouse—Necessary certificates—Lunacy Act 1890, s 25—Matrimonial Causes Act 1937, s 2(d). **Hall v Hall (by his Guardian)** [1940] 1 192, Div.

Temporary patient—Absence on trial—Purported discharge by superintendent of hospital—Subsequent treatment as voluntary patient—Matrimonial Causes Act 1950, s 1(1)(d), s 1(2)(a),(d). **Wyatt v Wyatt (by her Guardian)** [1953] 1 1185, Div.

Temporary patient—Detention as temporary patient—Discharge—Absence of twelve days—Thereafter treatment as voluntary patient for a period of over five years—Whether treatment followed detention 'without any interval'—Matrimonial Causes Act 1950, s 1(1)(d), s 1(2)(d). **Charlton v Charlton** [1955] 2 525, CA.

Temporary patient—Respondent absent on trial—Whether detention discontinued—Detention a status rather than a physical fact—Lunacy Act 1890, ss 55, 275—Matrimonial Causes Act 1937, s 2. **Safford v Safford** [1944] 1 704, CA.

Temporary patient—Respondent absent on trial—House maintained by Mental After-Care Association—Whether period of detention interrupted—Lunacy Act 1890, s 55—Matrimonial Causes Act 1937, ss 2(d), 3. **Green v Green (by his Guardian)** [1939] 3 89, Div.

Temporary patient—Respondent at large 'on trial' during 346 days—Reception order in abeyance—Detention in fact must be proved—Lunacy Act 1890, s 55—Matrimonial Causes Act 1937, ss 2(d), 3. **Shipman v Shipman** [1938] 4 732, Div.

Patient respondent to petition—

Information provided to petitioner without authority. **Re W** [1970] 2 502, Ct of Protection.

Petition for divorce—

Application to present—Considerations—Mental Health Act 1959, s 103(1)(h). **Re W** [1970] 2 502, Ct of Protection.

Subnormality—

Mental defective. *See* Insanity—Incurable unsoundness of mind—Care and treatment for five years immediately preceding presentation of petition—Subnormality, *ante*.

Intercourse—

Refusal of sexual intercourse as ground of divorce. *See* Cruelty—Intercourse, *ante*.

Intervention—

By intervener—

After decree nisi—Woman named—No application to intervene in suit—Member of the public—'Person'—Supreme Court of Judicature (Consolidation) Act 1925, s 183(2)—Matrimonial Causes Rules 1924 (S R & O 1924 No 126), rr 17, 18, 19. **W- v W-** [1936] 2 1112, Div.

Charge of cruelty—Wife's unnatural sexual relations with another woman—Right of other woman to intervene—Matrimonial Causes Act 1950, s 31. **D v D** [1952] 2 854, CA.

Discretion to allow intervener to become party to suit—Woman named—No allegation of sexual impropriety—No sufficient charge against woman named to warrant her being made a party—Matrimonial Causes Act 1950, s 31. **Windeatt v Windeatt** [1962] 1 776, CA.

DIVORCE (cont)

Intervention (cont)—

King's Proctor showing cause why a decree nisi should not be made absolute—

Costs—Costs of intervention where decree allowed to stand—Supreme Court of Judicature (Consolidation) Act 1925, ss 178(1), 181(1), 183(2). **Thompson (otherwise Hulton) v Thompson (Causton intervening)** [1938] 4 1, CA.

Decree granted on ground of presumption of respondent's death—Respondent still alive—Whether a material fact—Supreme Court of Judicature (Consolidation) Act 1925, s 183(2)—Matrimonial Causes Act 1937, s 8. **Manser v Manser (King's Proctor showing cause)** [1940] 4 238, Div.

Discretion of court—Petitioner living in adultery prior to presentation of petition—No rule of universal application requiring petitioner to separate from illicit partner pending suit—Adulterous association not disclosed—Public policy. **Andrews v Andrews (King's Proctor intervening)** [1940] 3 87, Div.

Duties on investigation—Interviewing party—Whether solicitor ought to be approached first. **Pakenham v Pakenham (Turner intervening)** [1937] 3 549, Div.

Wife's petition—Decree nisi—Subsequent adultery—Conduct of petitioner—Principles to be applied. **Reeves v Reeves** [1939] 4 378, Div.

Queen's Proctor showing cause why a decree nisi should not be made absolute—

Adultery of petitioner alleged—Standard of proof—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 37. **Rudman v Rudman and Lee (Queen's Proctor showing cause)** [1964] 2 102, Div.

Costs—Fault by solicitors—Procedure. **Pearson v Pearson (Queen's Proctor showing cause)** [1969] 3 323, Div.

Discretion of court—Adultery deliberately concealed by petitioner—Exercise of discretion in petitioner's favour. **Pearson v Pearson (Queen's Proctor showing cause)** [1969] 3 323, Div.

Irretrievable breakdown of marriage—

Adultery—

Cohabitation after adultery becoming known to petitioner a bar to decree—Petitioner living with respondent for periods exceeding six months after discovery of adultery—Petitioner precluded from relying on that adultery—Wife continuing to live with husband for more than six months after discovering his adultery—Husband continuing adulterous association—Husband subsequently leaving wife and continuing to commit adultery with same woman—Whether subsequent adultery after leaving wife a continuation of original adultery—Whether wife precluded from relying on subsequent adultery—Divorce Reform Act 1969, ss 2(1)(a), 3(3)(b). **Carr v Carr** [1974] 1 1193, CA.

Petitioner finding it intolerable to live with the respondent—Proof that petitioner finds it intolerable—Whether court bound to accept assertion by the petitioner that he finds it intolerable—Divorce Reform Act 1969, s 2(1)(a). **Roper v Roper, Cleary v Cleary** [1974] 1 498, CA.

Whether necessary that petitioner should find it intolerable to live with respondent in consequence of adultery—Adultery of respondent and finding of petitioner that it is intolerable to live with respondent separate and unrelated facts—Husband taking back wife after she had committed adultery—Subsequent conduct of wife, not including the adultery, making it intolerable for husband to live with her—Husband entitled to decree—Divorce Reform Act 1969, s 2(1)(a). **Cleary v Cleary** [1974] 1 498, CA. **Goodrich v Goodrich** [1971] 2 1340, Div. **Roper v Roper** [1972] 3 668, FamD. **Carr v Carr** [1974] 1 1193, CA.

Behaviour of respondent. *See* Behaviour of respondent, *ante*.

Evidence that marriage has broken down irretrievably—

Assertion by petitioner that no possibility of contemplating living with respondent as his wife—Whether court bound to conclude marriage has irretrievably broken down—Divorce Reform Act 1969, s 2(3). **Ash v Ash** [1972] 1 582, FamD.

Facts alleged in support of petition—

Duty of court to enquire into facts—Two or more facts alleged—Jurisdiction of court to decline to investigate unadmitted facts—Cross-petitions—One party admitting one of facts alleged by other party—Jurisdiction to grant decree on basis of admitted fact without investigating other facts alleged by parties—Circumstances in which jurisdiction will be exercised—Ancillary proceedings relating to children and property—All facts alleged requiring investigation for purpose of ancillary proceedings. **Mustafa v Mustafa** [1975] 3 355, FamD.

Five year separation. *See* Separation—Five year separation, *post*.

Petitioner finding it intolerable to live with respondent—

Adultery. *See* Irretrievable breakdown of marriage—Adultery, *ante*.

Proof—

Date by which marriage had irretrievably broken down—Date of petition or date of hearing. **Pheasant v Pheasant** [1972] 1 58, FamD.

Separation. *See* Separation, *post*.

Two year separation. *See* Separation—Two year separation, *post*.

Issue—

Trial. *See* Practice (Matrimonial causes—Trial—Issue).

Judicial separation—

Alimony—

Subsequent dissolution of marriage—Whether order for alimony brought to end automatically. *See* Alimony—Judicial separation—Subsequent dissolution of marriage, *ante*.

Alimony pendente lite. *See* Alimony—Pendente lite—Judicial separation, *ante*.

Children—

Arrangements for care and upbringing—Practice. *See* Infant—Child of family—Arrangements for care and upbringing—Practice—Petitions filed before 1st January 1971—Divorce or nullity proceedings or proceedings for judicial separation, *ante*.

DIVORCE (cont)

Judicial separation (cont)—

Decree—

Undefended causes. *See* Practice—Undefended causes—Decree nisi—Decree of judicial separation, *post*.

Foreign decree—

Recognition by English courts. *See* Foreign decree—Judicial separation—Recognition by English court, *ante*.

Mutual decrees of divorce and judicial separation.

See Decree—Mutual decrees, *ante*.

Reconciliation procedure. *See* Reconciliation, *post*.

Substitution of decree of judicial separation for decree nisi of divorce. *See* Decree nisi—

Substitution of decree of judicial separation, *ante*.

Jurisdiction—

Application for rehearing. *See* Re-hearing—Application for—Jurisdiction, *post*.

Custody proceedings. *See* Custody—Jurisdiction, *ante*.

Domicile. *See* Domicile—Jurisdiction, *ante*.

Financial provision—

Remarriage of party. *See* Financial provision—Application—Remarriage of party, *ante*.

Garnishee order. *See* Execution (Garnishee order—Jurisdiction—Divorce court).

Maintenance. *See* Maintenance—Jurisdiction, *post*.

Re-marriage—

Whether jurisdiction to grant ancillary relief after re-marriage after decree absolute. **Grainger v Grainger and Clark** [1959] 3 51, CA.

Residence by wife—

'Ordinarily resident'—Matrimonial Causes Act 1950, s 18(1)(b). **Stransky v Stransky** [1954] 2 536, Div.

'Ordinarily resident'—Temporary absence—Resumption of ordinary residence—Matrimonial Causes Act 1950, s 18(1)(b). **Lewis v Lewis** [1956] 1 375, Div.

Petition by husband—Prayer in answer and cross-petition by wife—Husband domiciled in Eire—Wife resident in England for appropriate time—Wife entitled to relief—Matrimonial Causes Act 1950, s 6, s 18(1). **Russell v Russell and Roebuck** [1957] 1 929, Div.

Residence of wife—

Residence qua wife—Matrimonial Causes Act 1965, s 40(1)(b)(i). **Navas v Navas** [1969] 3 677, Div.

Stay of decree absolute. *See* Decree absolute—Stay—Jurisdiction, *ante*.

Waiver of objection to jurisdiction—

Whether jurisdiction can be founded on consent. **Cammell v Cammell** [1964] 3 255, Div.
Leave to petition within three years. *See* Petition—Petition within three years of marriage—Leave to present, *post*.

Legal aid—

Area committee and advisers to assisted persons—

Functions in contested cases—Legal Aid and Advice Act 1949, s 1(6)—Legal Aid (General) Regulations 1962 (S I 1962 No 148), regs 12(3)(b) 15(8) (9). **Iverson v Iverson** [1966] 1 258, Div.

Living apart—

Meaning. *See* Separation—Living apart, *post*.

Lump sum payment. *See* Financial provision—Lump sum order, *ante*.

Maintenance—

Agreement. *See* Husband and wife (Maintenance—Agreement).

Ancillary relief—

Application out of time—Delay—'On any decree for divorce'—Matrimonial Causes Act 1950, s 19(2), (3)—Matrimonial Causes Rules 1950 (S I 1950 No 1940), r 44(1). **Simmonds v Simmonds** [1955] 2 481, Div.

Application out of time—Matrimonial Causes Rules 1950 (S I 1950 No 1940), r 44. **Practice Direction** [1954] 2 349, Div.

Application—

Conduct of parties—Adultery during the marriage—Wife petitioning for divorce—Deliberate failure to disclose adultery—Duty to court—Matrimonial Causes Act 1950, s 19(3). **M v M** [1962] 2 895, Div.

Conduct of parties—Adultery during the marriage—Whether wife disqualified from obtaining maintenance after divorce—Matrimonial Causes Act 1950, s 19(2). **Iverson v Iverson** [1966] 1 258, Div.

Conduct of parties—Application after decree absolute—Decree nisi for cruelty made on wife's undefended petition—Child born to wife shortly before decree made absolute—Husband applying for revocation of prior magistrates' maintenance order in respect of wife, on ground that child was not his and that wife must have committed adultery—Wife answering that child was their child—Whether public policy precluded husband from alleging over a year after decree absolute that wife had committed adultery before decree nisi. **Baker v Baker** [1963] 3 901, Div.

Conduct of parties—Charge of cruelty and of adultery against wife—Failure of charges—Offer by husband to resume cohabitation—Refusal of wife—Matrimonial Causes Act 1950, s 23(1). **Dyson v Dyson** [1953] 2 1511, Div.

Conduct of parties—Desertion by wife—Wife having left husband to depend on her own efforts for support—Wife twice divorced by same husband—Maintenance prayer dismissed. **Abbott v Abbott** [1966] 3 367, Div.

Conduct of parties—Discretion. **Clear v Clear** [1958] 2 353, CA.

Conduct of parties—Discretion. **Courtney v Courtney** [1966] 1 53, Div.

Discovery. *See* Practice—Ancillary relief—Application for monetary provision—Discovery, *post*.

Leave of judge—Application for order and application by husband to vary settlement—Desirability of both applications being heard together. **Jeffrey v Jeffrey** [1952] 1 790, CA.

DIVORCE (cont)**Maintenance (cont)—****Application (cont)—**

- Leave of judge—Application for order eighteen years after decree absolute—No default in payment and deed not impeached—Discretion of court—Supreme Court of Judicature (Consolidation) Act 1925, s 190(1). **Shott v Shott** [1952] 1 735, CA.
- Leave of judge—Application for order over seven years after decree absolute—Reasonable time—Supreme Court of Judicature (Consolidation) Act 1925, s 190—Matrimonial Causes Rules 1937 (S R & O 1937 No 1113), r 44. **Fisher v Fisher** [1942] 1 438, CA.
- Leave of judge—Application later than one month after final decree—Matters for consideration of judge dealing with merits of application—Supreme Court of Judicature (Consolidation) Act 1925, s 190(2)—Matrimonial Causes Rules 1944 (S R & O 1944 No 389), r 44(1). **Hasting v Hasting** [1947] 2 744, CA.
- Leave of judge—Applications under Matrimonial Causes Rules 1950 (S I 1950 No 1940), r 44(1). **Practice Direction** [1955] 2 465, Div.
- Leave of judge—Claim not included in petition but made nine and a half years after decree—Leave requisite under rules current at date of decree if application delayed for two months—Whether procedural rules applicable those at date of petition or of application—No obligation at date of petition to include claim for maintenance in petition—Leave not required merely on ground of lapse of time at date when application made—Matrimonial Causes Act 1950, s 19(3), s 29—Matrimonial Causes (Property and Maintenance) Act 1958, s 1—Matrimonial Causes Rules 1957, (S I 1957 No 619), 1957 3(3), proviso(ii), r 44(1), as amended by Matrimonial Causes (Amendment) Rules 1958 (S I 1958 No 2082). **Pachner v Parker (formerly Pachner)** [1960] 1 159, Div.
- Leave of judge—Claim not included in petition but made twelve and a half years after decree absolute—At date of petition maintenance could not be claimed in petition—At date of notice of application for maintenance leave of judge required if no claim for maintenance in petition—Matrimonial Causes Act 1950, s 19(3), s 29—Matrimonial Causes (Property and Maintenance) Act 1958, s 1—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 3(3), proviso (ii). **Eaketts v Eaketts** [1960] 3 581, Div.
- Leave of judge—Claim not included in wife's answer—Answer claiming costs but no specific matrimonial relief—Whether leave needed—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 3(3). **G v G (otherwise H)** [1961] 3 247, Div.
- Leave of judge—Claim not included in wife's answer—Whether leave needed—Matrimonial Causes Act 1950, s 19(2), (3), s 29—Matrimonial Causes (Property and Maintenance) Act 1958, s 1(1), (2) and Schedule—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 3(3), r 44(1), as amended by the Matrimonial Causes (Amendment) Rules 1958 (S I 1958 No 2082). **Hodge v Hodge** [1963] 1 358, CA.
- Leave of judge—Claim not made in petition but made twenty years after decree absolute—Wife an undischarged bankrupt on national assistance—Husband entitled to adduce evidence before leave granted—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 3(3) proviso (ii), r 44(1) proviso(b). **B (V) v B (J)** [1966] 3 768, CA.
- Re-marriage of wife—Application after re-marriage—Matrimonial Causes Act 1950, s 19(2), (3). **Snelling v Snelling** [1952] 2 196, Div.
- Wife entitled to maintenance under order made by justices—Justices' order still in force—Election by wife—Waiver of right to order by Divorce Court—Supreme Court of Judicature (Consolidation) Act 1925, s 190(2). **Ross v Ross** [1950] 1 654, Div.
- Wife having accepted lump sum in full satisfaction of present and future rights—Subsequent application by wife for maintenance and secured provision—Whether subsequent application competent—Whether subsequent application precluded by agreement—Matrimonial Causes Act 1950, s 19(2), (3) (as amended)—Matrimonial Causes (Property and Maintenance) Act 1958, s 1(1). **L v L** [1961] 3 834, CA.

Arrears—

- Action for arrears—Estoppel—Agreement subsequent to original order for payment of maintenance and for settlement of accounts—Absence of consideration—Supreme Court of Judicature (Consolidation) Act 1925, s 190. **Mann v Mann** [1936] 1 952, KBD.
- Committal order against husband—Duration—Need for renewal yearly—Debtors Act 1869, s 5—Matrimonial Causes (Judgment Summons) Rules 1952 (S I 1952 No 2209), r 6(1). **Sichel v Sichel** [1954] 1 1004, Div.
- Committal order against husband—Suspended committal order made on judgment summons for arrears of maintenance pending suit—Committal order not applicable to debt due under order for maintenance made after decree absolute—Matrimonial Causes (Judgment Summons) Rules 1952 (S I 1952 No 2209), r 6(3). **O'Mahoney v O'Mahoney** [1959] 1 163, Div.
- Consent order for maintenance suspended and undertaking given to court by husband to pay one-third of income to plaintiff—Whether plaintiff had cause of action against her deceased husband's estate for arrears of payments. **Re Hudson (dec'd)** [1966] 1 110, ChD.
- Enforcement of order against husband—Attachment of earnings—Husband in receipt of a pension under trust deed—Forfeiture clause in trust deed—Discretionary trust for husband, wife and others arising on attachment of earnings order being made—Payments to husband under discretionary trust would be earnings within Maintenance Orders Act 1958, s 6(1)(b). **Edmonds v Edmonds** [1965] 1 379, Div.
- Judgment summons for arrears of wife's maintenance—Practice regarding husband's applying for variation of maintenance order before instalment order made. **Cockburn v Cockburn** [1957] 3 260, CA.
- No jurisdiction to remit—Matrimonial Causes Act 1950, s 28. **W v W (No 3)** [1962] 1 736, Div.
- Recovery—Limitation in practice to one year's arrears—Application for garnishee order. **Luscombe v Luscombe (Westminster Bank Ltd Garnishee)** [1962] 1 668, CA.
- Remission—Custom of Divorce Division. **Pilcher v Pilcher (No 2)** [1956] 1 463, Div.
- Assessment—**
- Factors to be considered—Ability of husband—Evaluation of all husband's circumstances and resources—Matrimonial Causes Act 1950, s 28. **W v W (No 3)** [1962] 1 736, Div.

DIVORCE (cont)

Maintenance (cont)—

Assessment (cont)—

Factors to be considered—Conduct of parties—Care and control of children awarded to wife—Separate maintenance for children—Conduct of wife cause of divorce—Whether assessment on basis of remuneration for housekeeper. **Milliken-Smith v Milliken-Smith** [1970] 2 560, CA.

Factors to be considered—Conduct of parties—Guidance by trial judge—Supreme Court of Judicature (Consolidation) Act 1925, s 190(1). **Sydenham v Sydenham and Illingworth** [1949] 2 196, CA. **Trestain v Trestain** [1950] 1 618, CA.

Factors to be considered—Conduct of parties—Matters excluded from consideration—Not brought forward at trial—Inconsistency with decree—Matters calculated to produce different result at trial—Supreme Court of Judicature (Consolidation) Act 1925, s 190(1). **Duchesne v Duchesne** [1950] 2 784, Div.

Factors to be considered—Conduct of parties—Ability of husband—Husband living on overdrafts—Conduct of wife—Delay in filing discretion statement—Wife's adultery not a cause of break-up of marriage—Wife not proceeding with charges of cruelty against husband—Lack of sincerity—Matrimonial Causes Act 1950, s 19(2),(3). **J v J** [1955] 2 617, CA.

Factors to be considered—General principles. **Porter v Porter** [1969] 3 640, CA.

Factors to be considered—Husband supporting mistress and her children. **Roberts v Roberts** [1968] 3 479, Div.

Factors to be considered—Wife's earning capacity—When to be taken into account. **Rose v Rose** [1950] 2 311, CA.

Maintenance of wife. *See* Maintenance of wife—Assessment, *post*.

Bankruptcy of wife—

Whether covenanted sums payable to trustee in bankruptcy. **Re Tennant's Application** [1956] 2 753, CA.

Child—

Income tax. *See* Maintenance—Income tax—Small maintenance payments—Payments to be made direct to children included, *post*.

Proceedings in private—Transcripts. *See* Child (Practice—Court proceedings in relation to children—Proceedings in private—Publication of information—Transcripts).

Consent order—

'Settlement' within Settled Land Act—Husband to secure house jointly held to wife 'for her life occupation'—Supreme Court of Judicature (Consolidation) Act 1925, s 192—Settled Land Act 1925, s 1(1),(7). **Bacon v Bacon** [1947] 2 327, Div.

Death—

Provision for surviving spouse after. *See* Financial provision—Deceased former spouse—Maintenance for surviving spouse out of deceased's estate, *ante*.

Deceased former spouse—

Maintenance for surviving spouse out of deceased's estate. *See* Financial provision—Deceased former spouse—Maintenance for surviving spouse out of deceased's estate, *ante*.

Disclosure of negotiations. *See* Collusion—Disclosure—Negotiations which may affect conduct of suit—Correspondence concerning maintenance, *ante*.

Evidence—

Further evidence after conclusion of case—Defence of wife's adultery to be inferred from non-access of husband at time relevant to birth of child—Evidence discovered after cross-examination of wife tending to show adultery at time subsequent to that relevant to birth of child—Alleged inference of adultery at relevant time—Further evidence inadmissible. **Burgess v Burgess** [1958] 2 63, Div.

Res judicata—Charge of adultery against wife—Same charge dismissed in previous High Court proceedings—Estoppel—Res judicata. **James v James** [1948] 1 214, Div.

Res judicata—Matters not raised at trial of suit—Public policy—Undefended petition by wife on ground of adultery—Marriage irretrievably broken down—Evidence of wife's desertion and denial of allegations in her discretion statement sought to be adduced by husband in maintenance proceedings. **Tumath v Tumath** [1970] 1 111, CA.

Financial provision after 31st December 1970. *See* Financial provision, *ante*.

Income tax—

Small maintenance payments—Order for payment of maintenance 'free of tax'—Meaning—Such sum as after deduction of tax at standard rate would produce the sum ordered—Income Tax Act 1952, s 206(1). **Jefferson v Jefferson** [1956] 1 31, CA.

Small maintenance payments—Payments to be made direct to children included—Income Tax Act 1952, s 205(1)(b), as amended by Finance Act 1960, s 40. **Practice Direction** [1966] 2 320, Div.

Injunction to prevent husband dealing with property—

Application for injunction before determination of wife's applications to vary secured and unsecured maintenance. **Wright v Wright** [1954] 1 707, Div.

Jurisdiction—

Husband living in France—Wife's petition, based on desertion by leaving matrimonial home in England—Husband's denial of validity of marriage and allegation of no assets in England or France—Proceedings for annulment instituted by husband in France—Wife resident in England for more than three years—Whether court had jurisdiction over application for order for maintenance of child of marriage in England—Discretion—Matrimonial Causes Act 1950, s 26. **Cammell v Cammell** [1964] 3 255, Div.

On decree of presumption of death and dissolution of marriage—'Dissolution'—'Divorce'—Matrimonial Causes Act 1950, s 16, s 19. **Deacock v Deacock** [1958] 2 633, CA.

Lunatic spouse—

Maintenance of wife—Principles to be applied. *See* Maintenance of wife—Lunatic spouse—Principles to be applied, *post*.

DIVORCE (cont)**Maintenance (cont)—****Lunatic spouse (cont)—**

Order made by magistrates during marriage—Husband to pay weekly sum towards wife's maintenance—Husband granted decree absolute on account of wife's insanity—Husband's liability after decree—Summary Jurisdiction (Married Women) Act 1895, s 7—Supreme Court of Judicature (Consolidation) Act 1925, s 190—Poor Law Act 1930, s 19—Matrimonial Causes Act 1937, s 10(2). **Gornall v Gornall** [1945] 2 186, Div.

Necessaries—

Desertion by husband—No money paid to wife for her support—Payments made by third party to provide necessities—Recovery by third party from husband of sums advanced. **Weingarten v Engel** [1947] 1 425, KBD.

Order—

Enforcement—Attachment—Order that husband pay children's school fees—Breach of order—Default in payment of a sum of money—Jurisdiction—Debtors Act 1869, s 4. **Farrant v Farrant** [1957] 1 204, Div.

Enforcement—Garnishee proceedings—Jurisdiction of Divorce Court—RSC Ord 45—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 82. **W v W (Barclays Bank Ltd, Garnishee)** [1961] 2 56, CA.

Enforcement—Sequestration—Bankruptcy of husband after writ of sequestration—Wife's claim for maintenance not provable in bankruptcy—Husband continuing in contempt of court—Writ of sequestration not discharged—Matrimonial Causes Rules 1950 (S I 1950 No 1940), r 62(1). **Coles v Coles** [1956] 3 542, Div.

Execution—Sequestration—Contract for the sale of land—Person appointed to convey—Trustee Act 1925, s 50. **Hipkin v Hipkin** [1962] 2 155, Div.

Order by consent. *See* Maintenance—Order by consent, *post*.

Variation. *See* Maintenance—Variation of order, *post*.

Order by consent—

Consent order barring liberty to reopen matter without leave of court—Whether matter can be reopened—Supreme Court of Judicature (Consolidation) Act 1925, s 190(1), (2)—Administration of Justice (Miscellaneous Provisions) Act 1938, s 14. **Mills v Mills** [1940] 2 254, CA.

Term barring liberty to apply to vary—Change of circumstances—Petition for reduction of maintenance—Whether petition will lie. **Lambert v Lambert** [1936] 3 20, Div.

Practice—

Order registered in magistrates' court—Variation—Appeal—High Court procedure. **Practice Note** [1960] 2 238, Div.

Review—

Application for reduction—Voluntary settlements by husband on child by previous marriage—Re-marriage of wife. **Perkins v Perkins** [1938] 3 116, Div.

Secured maintenance—

Death of husband before execution of deeds—Liability of executors—Jurisdiction of Divorce Court. **Hyde v Hyde** [1948] 1 362, Div.

Death of husband before maintenance secured—No agreement as to which properties should constitute security—Enforceability of order against husband's executor—Cross-application to vary order—No variation so as merely to extinguish rights given by order—Matrimonial Causes Act 1950, s 28(1). **Mosey v Mosey and Barker** [1955] 2 391, Div.

General charge on all husband's assets—Covenant under seal to pay annual sum—Matrimonial Causes Act 1950, s 19(2). **Barker v Barker** [1952] 1 1128, CA.

Goodwill—Husband's sole asset the goodwill of his practice as a veterinary surgeon—Matrimonial Causes Act 1950, s 28(1), (3). **Foster v Foster** [1964] 3 541, CA.

Liberty to apply as to nature of security—Variation of order—Power of court—Supreme Court of Judicature (Consolidation) Act 1925, s 190(1)—Administration of Justice (Miscellaneous Provisions) Act 1938, s 14. **Fraser v Fraser** [1947] 1 384, Div.

Security on matrimonial home, sole asset of husband—Conduct of husband had shown disregard of wife's well-being—Wife's means of support matrimonial home where she had built up business of guest-house—Matrimonial Causes Act 1950, s 19(2). **Aggett v Aggett** [1962] 1 190, CA.

Token order—Substantive order should be based on evidence as to earnings, means, assets and circumstances of parties—Token sum of £10 ordered to be secured to the wife for life—Matrimonial Causes Act 1965, s 16(1). **Foard v Foard** [1967] 2 660, Div.

Service—

Husband's address—Disclosure of address from government records. **Practice Notes** [1957] 2 504, Div. [1965] 2 670, Div.

Set-off—

Debt owing from wife to husband—Husband ordered to pay to wife by way of maintenance annual sum 'less tax'—Debt owing from wife to husband to be set-off against maintenance by instalments not exceeding 'amount...awarded' to her for maintenance—Whether 'amount awarded' gross annual sum or annual sum after deduction of income tax—Income Tax Act 1952, s 169(1). **Butler v Butler** [1961] 1 810, CA.

Surviving spouse—

Maintenance out of deceased spouse's estate. *See* Financial provision—Deceased former spouse—Maintenance for surviving spouse out of deceased's estate, *ante*.

Undertaking in deed by wife petitioner not to take proceedings for maintenance—

Covenant by husband to pay annuity for wife—Unenforceability of wife's undertaking—Matrimonial Causes Act 1950, s 19(2), (3). **Bennett v Bennett** [1952] 1 413, CA.

Undertaking to pay yearly allowance—

No application by wife to apply for order for maintenance—Enforcement of undertaking. **Combe v Combe** [1951] 1 767, CA.

DIVORCE (cont)

Maintenance (cont)—

Variation of order—

Application to vary an order not appealed against—Original order assumed to have been properly made—Regard to be had to alteration of parties' means since original order, rather than maintenance to be fixed de novo—Matrimonial Causes Act 1950, s 28(1)(3). **Foster v Foster** [1964] 3 541, CA.

Back-dating of order—No payment made under order—Re-marriage of wife—Order varied to nominal sum back-dated to date of re-marriage—Whether jurisdiction to back-date order and thereby to remit arrears—Matrimonial Causes Act 1950, s 28. **MacDonald v MacDonald** [1963] 2 857, CA.

Consent order—Consent order based on mistake—Matrimonial Causes Act 1965, s 31. **B (G C) v B (B A)** [1970] 1 913, Div.

Consent order—Jurisdiction. **Wilkins v Wilkins** [1969] 2 463, Div.

Consent order—Whether question of amount of maintenance at large when first contested before the court—Matrimonial Causes Act 1965, s 31. **Payne v Payne** [1968] 1113, CA.

Decrease in husband's means—Husband a possible beneficiary under discretionary trusts of ante-nuptial settlement—Attempt to bring pressure on trustees to make an allowance to husband—Supreme Court of Judicature (Consolidation) Act 1925, ss 190(2), 192—Administration of Justice (Miscellaneous Provision) Act 1938, s 14. **Howard v Howard** [1945] 1 91, CA.

Evidence—Estoppel—Public policy—Husband not proceeding with charge of adultery against wife in divorce suit but seeking to raise same charge in support of subsequent application to discharge or vary maintenance order—Res judicata—No inquisitorial duty on part of court—Matrimonial Causes Act 1950, s 19(2), s 28(3). **Field v Field** [1964] 2 81, Div.

Power of court to order lump sum payment—Matrimonial Causes Act 1965, s 16(1)(c), s 31(1). **H v H** [1966] 560, Div.

Re-marriage of both parties—Appeal—Discretion—Administration of Justice (Miscellaneous Provisions) Act 1938, s 14(2). **Bellenden (formerly Satherthwaite) v Satherthwaite** [1948] 1 343, CA.

Re-marriage of wife—Husband's application to vary—Affidavit sworn by wife as feme sole—False affidavit—Conduct to be considered in varying maintenance—Matrimonial Causes Act 1950, s 28(3). **Hayfield v Hayfield** [1957] 1 598, Div.

Re-marriage of wife—No power to order refund by wife of money received by her under the order after her re-marriage—Matrimonial Causes Act 1950, s 28(1). **Young v Young (No 2)** [1961] 3 793, Div.

Re-marriage of wife—Wife having custody of child—Additional expenditure by wife due to custody of child—Matrimonial Causes Act 1950, s 19(3), s 28(3). **Kirke v Kirke** [1961] 3 1059, Div.

Unchastity of wife after decree absolute—Wife's application for increase—Untrue statements in affidavit in answer to accusation of unchastity and financial support therefrom—Matrimonial Causes Act 1950, s 28(3). **Medlicott v Medlicott** [1962] 1 449, CA.

Undertaking by husband not to ask for variation of justice's maintenance order—Validity—Summary Jurisdiction (Married Women) Act 1895, s 7. **Russell v Russell** [1956] 1 466, Div.

Wife abroad and partly provided for by friends abroad—Supreme Court of Judicature (Consolidation) Act 1925, s 190—Administration of Justice (Miscellaneous Provisions) Act 1938, s 14—Defence (Finance) Regulations 1939 (S R & O 1939 No 1620), regs 3(1), 30(1)(2). **Acworth v Acworth** [1942] 2 704, CA.

Maintenance of wife—

Agreement for paying maintenance. *See* Husband and wife (Maintenance—Agreement).

Assessment—

Computation of income—Officer's service allowance—How to be taken into account in ascertaining gross income. **Collins v Collins** [1943] 2 474, Div.

Financial provision after 31st December 1970. *See* Financial provision, *ante*.

Lunatic spouse—

Principles to be applied—Purchase of annuity out of patient's capital—Supreme Court of Judicature (Consolidation) Act 1925, s 190—Matrimonial Causes Act 1937, s 10(2). **Swettenham v Swettenham** [1939] 3 989, CA.

Order by consent—

Monthly payments 'until re-marriage'—Recovery from husband's executors—Matrimonial Causes Act 1950, s 19(3). **Hinde v Hinde** [1953] 1 171, CA.

Order registered in magistrates' court—

Variation—Appeal—Matters to be considered—Maintenance Orders Act 1958, s 4(2)(a), (7)—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 61. **Miller v Miller** [1960] 3 115, Div.

Order that payment be secured by deed—

Deed executed—Application to rescind order—No power to rescind—Administration of Justice (Miscellaneous Provisions) Act 1938, s 14. **Blyth v Blyth** [1942] 2 469, CA.

Practice—

Application to High Court while magistrates' court's order existing—Copy of maintenance order of magistrates' court to be lodged. **Practice Direction** [1961] 3 1200, Div.

Matrimonial causes list—

County court list—

Cases set down for hearing—Procedure for automatic removal from list—Restoration. **Practice Direction** [1969] 1 912, Div, [1970] 2 63, Div.

Cases set down for hearing up to 11th April 1968—No date fixed—Removal from list—Restoration. **Practice Direction** [1969] 1 912, Div.

Numbering of cases—Use of prefix letter. **Practice Directions** [1969] 1 912, Div, [1970] 2 63, Div.

Trial—Date for hearing—Notice of setting down—Subsequent change of the date needing good cause and consent of all parties. **Practice Direction** [1968] 2 123, Div.

DIVORCE (cont)

Matrimonial causes list (cont)—

High Court list—

Cases set down for hearing for more than six months liable to be struck off current lists—
Notice of intention to strike out—Restoration to active warned list. **Practice Direction** [1969] 1 912, Div.

Cases set down for hearing up to Dec 31, 1967—No date fixed—Removal from list—
Restoration. **Practice Direction** [1968] 3 871, Prob & Div.

Cases set down for hearing for more than six months liable to be struck out of current lists—
Notice of intention to strike out—Restoration to active warned list. **Practice Direction** [1969] 1 912, Div.

Matrimonial home—

Deserted wife's right to occupy the matrimonial home—

Nature of right. *See* **Licence** (Licence to occupy premises—Deserted wife's right to occupy matrimonial home).

Divorced wife's right—

Liability for rates. *See* **Rates** (Rateable occupation—Occupation by relatives—Husband and wife—Former matrimonial home—Wife in occupation by agreement).

Land charge—

Registration. *See* **Husband and wife** (Matrimonial home—Land charge—Registration).

Rights of spouses. *See* **Husband and wife** (Matrimonial home).

Minor—

Generally. *See* **Infant, ante**.

Removal from jurisdiction—

Application for order prohibiting or allowing removal—Practice. *See* **Child** (Practice—
Matrimonial causes—Application relating to children—Application for order prohibiting
removal of child out of England and Wales).

Mutual decrees—

Dissolution of marriage and judicial separation. *See* **Decree**—Mutual decrees—Dissolution of
marriage and judicial separation, *ante*.

Nullity. *See* **Nullity**.

Parties—

Co-respondent—

Dismissal from suit—Adultery with co-respondent alleged—Discretion of court—No evidence
against co-respondent at close of petitioner's case—Matrimonial Causes Act 1965, s 4(3).
Inglis v Inglis and Baxter [1967] 2 71, Div.

Dismissal from suit—Adultery with named co-respondent alleged—Particulars of adultery
referring merely to confession by wife—Co-respondent not party to confession—Whether
co-respondent should be dismissed from suit—Matrimonial Causes Act 1950, s 5. **Myatt**
v Myatt and Parker [1962] 2 247, Div.

Naming and making alleged adulterer co-respondent—Discretion of court to dispense with
necessity—Adulterer's identity unknown—Supreme Court of Judicature (Consolidation) Act
1925, s 177(1)—Matrimonial Causes (Amendment) (No 1) Rules 1943 (S R & O 1943 No
240), r 5. **Eastham v Eastham** [1943] 1 659, Div.

Naming and making alleged adulterer co-respondent—Discretion of court to dispense with
necessity—'Special grounds'—Burden of proof—Matters for consideration of court—
Supreme Court of Judicature (Consolidation) Act 1925, s 177(1)—Matrimonial Causes
Rules 1944 (S R & O 1944 No 389), r 5. **Sage v Sage**, **Stockbridge v Stockbridge** [1947]
1 492, Div.

Party cited—

Death of party cited—Striking name from suit. **Delahunty v Delahunty (Nobes cited)** [1961]
1 923, Div.

Respondent—

Making alleged adulterer respondent—Petition founded on cruelty—Allegation of condoned
adultery or of reasonable belief in adultery—Whether allegation of improper association—
Whether person named to be respondent—Matrimonial Causes Rules 1968 (S I 1968 No
219), r 13(1), (2). **Chalcroft v Chalcroft** [1969] 3 1172, Div.

Paternity. *See* **Paternity**.Periodical payments. *See* **Financial provision**—Periodical payments, *ante*.

Petition—

Amendment—

Agreement or arrangement subsequently made—Matrimonial Causes Rules 1957 (S I 1957
No 619), r 4(1)(c), added by Matrimonial Causes (Amendment No 2) Rules 1963 (S I 1963
No 1990), r 4. **Alford v Alford** [1964] 3 220, Div.

Allegation of condoned adultery—Relevancy—Amendment at a late stage, **Gillett v Gillett**
[1952] 1 1399, CA.

Amendment at trial by adding charge of adultery based on facts disclosed in other spouse's
discretion statement. **Clueit v Clueit** [1958] 1 417, Assizes.

Ancillary relief—Application for relief—Matrimonial Causes Rules 1950 (S I 1950 No 1940),
r 3(3), proviso, r 15, r 19, r 44(1), as amended by Matrimonial Causes (Amendment) Rules
1957 (S I 1957 No 176), r 4, r 16. **Practice Note** [1957] 1 860, Div.

Ancillary relief—Claim for secured maintenance—Amendment after decree absolute—
Matrimonial Causes Rules 1957 (S I 1957 No 619), r 3(3), r 44(1). **Aggett v Aggett** [1962]
1 190, CA.

Application after decree nisi to amend petition by including prayer for discretion—
Jurisdiction. **Gill v Gill** [1956] 3 240, Div.

Application after decree nisi to amend petition, without reserve, by including prayer for
discretion and to file discretion statement—Full enquiries made by Queen's Proctor—
Exceptional circumstances. **Onions v Onions** [1960] 2 701, Div.

Application to amend petition and decrees nisi and absolute—Matrimonial Causes Rules
1950 (S I 1950 No 1940), r 80. **Thynne (Marchioness of Bath) v Thynne (Marquess of**
Bath) [1955] 3 129, CA.

DIVORCE (cont)

Petition (cont)—

Amendment (cont)—

Petition for dissolution of marriage on ground of desertion—Answer charging cruelty—Amending petition to charge cruelty—Facts relating to charge of cruelty known to petitioner at date of filing petition—RSC Ord 28, r 1—Matrimonial Causes Rules 1957, (S I 1957 No 619), r 15(1), r 82. **Nelson v Nelson and Slinger** [1958] 2 744, CA.

Answer. *See* Practice—Answer, *post*.

Date of presentation—

Matrimonial Causes Act 1937, s 2—Matrimonial Causes Rules 1944 (S R & O 1944 No 389), r 3. **Alston v Alston** [1946] 2 62, Div.

Delay—

Dismissal—Discretion. *See* Cruelty—Delay—Petition by wife dismissed on ground of unreasonable delay—Discretion, *ante*.

Form of petition—

Child of the family—Requirements not changed by Matrimonial Causes Act 1965—Matrimonial Causes Rules 1957 (S I 1957 No 619, as amended by S I 1958 No 2082 and S I 1958 No 2137), r 4(1)(c),(cc) and (ccc). **Practice Note** [1966] 2 144, Div.

Children or issue—Reference to there being no other children of the family. **Practice Note** [1959] 2 163, Div.

Omission of information—Ex parte application before service—Matrimonial Causes Rules 1968 (S I 1968 No 219), r 9(2), App 2, Form 2. **Practice Direction** [1968] 2 88, Div.

Omission of information—Petitioner's address—Matrimonial Causes Rules 1950 (S I 1950 No 1940), r 4(1)(d), substituted by Matrimonial Causes (Amendment) Rules 1957, (S I 1957 No 176), r 5(1). **Practice Note** [1957] 1 860, Div.

Omission of information—Petitioner's address—Procedure—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 4(1)(d). **Practice Direction** [1966] 2 981, Div.

Omission of information—Petitioner's address—Form of registrar's order—Notice to respondent of allegations in affidavit if not referable to any specific allegations in petition—Matrimonial Causes Rules 1957, (S I 1957 No 619), 1957 4(1)(d). **Practice Note** [1960] 2 238, Div.

Omission of information—Petitioner's address—Ex parte application for leave to omit address from petition—Practice. **Practice Direction** [1975] 2 384, FamD.

Prayer for discretion—Matrimonial Causes Rules 1950 (S I 1950 No 1940), r 4, as amended by Matrimonial Causes (Amendment) Rules 1957 (S I 1957 No 176), r 5. **Practice Note** [1957] 1 860, Div.

Prayer for such further and other relief as may be just—Whether needed—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 4(4). **G v G (otherwise H)** [1961] 3 247, Div.

Presumption of death and dissolution of marriage—Prayer for discretion to be included and discretion statement to be filed in appropriate cases—Matrimonial Causes Act 1950, s 16(1)—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 4(4), r 28(1). **Gallacher v Gallacher** [1963] 2 849, Div.

'Previous proceedings'—Orders made by justices—Need for counsel to see certified copies—Matrimonial Causes Rules 1950 (S I 1950 No 1940), r 4(1)(h). **Hearn v Hearn and Jarvis** [1953] 1 797, Div.

Separation order—Resumption of cohabitation—Matrimonial Causes Rules 1937 (S R & O 1937 No 1113), r 4(1)(f). **Bishop v Bishop** [1941] 3 268, Div.

Use of printed forms sold by law stationers—Matrimonial Causes Rules 1971, (S I 1971 No 953), r 9, App 2, Form 2. **Practice Direction** [1971] 3 288, Div.

Fresh petition—

Leave—Petition filed without obtaining leave—Whether irregularity or nullity—Leave given retrospectively—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 3(2), as amended by Matrimonial Causes (Amendment) Rules 1961 (S I 1961 No 1082), r 2(1)—RSC Ord 2, r 1. **Cooper v Cooper** [1964] 3 167, Div.

Leave—Petition for judicial separation—Application by petitioner to strike out prayer for judicial separation and to file supplemental petition for restitution of conjugal rights—Order staying prayer of petition and giving leave to file fresh petition—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 3(2), as amended by Matrimonial Causes (Amendment) Rules 1961 (S I 1961 No 1082), 2(1). **Bainbridge v Bainbridge** [1962] 2 267, Div.

Petition by patient. *See* Insanity—Petition for divorce, *ante*.

Petition filed before 1st January 1971—

Arrangements for care and upbringing of children of the family. *See* Infant—Child of the family—Arrangements for care and upbringing—Practice—Petitions filed before 1st January 1971, *ante*.

Defended petition—Subsequent proceedings contemplated for divorce by consent after two years' separation—Procedure—Divorce Reform Act 1969, s 2(1)(d)—Matrimonial Causes Rules 1968 (S I 1968 No 219), r 12(4) (as substituted by S I 1970 No 1349). **Practice Direction** [1971] 1 893, Div.

Petition heard outside London—

Counsel's fee—Legal aid—Taxation of costs. *See* Legal aid (Taxation of costs—Counsel's fee—Divorce petition heard outside London).

Petition within three years of marriage—

Discretion to allow—Exceptional depravity—Conduct amounting to exceptional depravity—Factor of no prospect of reconciliation—Exercise of court's discretion. **V v V** [1966] 3 493, CA.

Exceptional depravity—Decree on ground other than exceptional depravity—No intent to deceive court—Misrepresentation of the nature of the case—Matrimonial Causes Act 1950, s 2(1). **Stroud v Stroud** [1963] 3 539, Div.

Discretion to allow—Exceptional hardship—Past conduct and future hardship if leave not granted—Whether inability to marry father of child conceived extramaritally constitutes exceptional hardship—Matrimonial Causes Act 1965, s 2(2). **W v W** [1966] 2 889, Div.

DIVORCE (cont)

Petition (cont)—

Petition within three years of marriage (cont)—

Discretion to allow—Exceptional hardship—Adultery of wife leading to pregnancy—Domestic situation causing nervous distress to husband—Matrimonial Causes Act 1950, s 2(1) proviso.(2). **Hillier v Hillier and Latham** [1958] 2 261, CA.

Discretion to allow—Exceptional hardship or exceptional depravity—Court to make provisional determination before exercising discretion—Matrimonial Causes Act 1950, s 2(1). **Brewer v Brewer** [1964] 1 539, CA.

Exceptional hardship—Hardship based only on allegations of past behaviour—Present hardship not alleged—Matrimonial Causes Act 1950, s 2(1), proviso. **Brewer v Brewer** [1964] 1 539, CA.

Exceptional hardship and exceptional depravity—Matrimonial Causes Act 1937, s 1(1). **Bowman v Bowman** [1949] 2 127, CA.

Leave to present—Consideration of affidavit of respondent—Matrimonial Causes Act 1950, s 2(1), proviso—Matrimonial Causes Rules 1950 (S I 1950 No 1940), r 2(2). **Simpson v Simpson** [1954] 2 546, CA.

Leave to present—Cross-prayer in answer—Need to obtain leave to present cross-prayer—Matrimonial Causes Act 1950, s 2(1). **Hollingsworth v Hollingsworth** [1952] 2 284, Div.

Leave to present—Injunction to restrain husband from molesting wife—Jurisdiction of court in proceedings begun by originating summons for leave to present petition. **Winstone v Winstone** [1959] 3 580, Vacation Ct.

Leave to present—Jurisdiction of commissioner to grant—Supreme Court of Judicature (Consolidation) Act 1925, s 70(5)—Matrimonial Causes Act 1937, s 1(1). **Ambler v Ambler** [1951] 1 980, Assizes.

Leave to present—Jurisdiction of commissioner to grant—Supreme Court of Judicature (Consolidation) Act 1925, s 70(5)—Matrimonial Causes Act 1950, s 2(1). **Johnson v Johnson** [1952] 1 250, CA.

Leave to present—Marriage certificate to be lodged. **Practice Note** [1957] 1 290, Div.

Reconciliation—Failure to seek reconciliation after adjournment for that purpose—Matrimonial Causes Act 1965, s 2(2). **C v C** [1967] 1 928, Div.

Reconciliation—Machinery for exploring possibility of reconciliation with a view to determining whether there is reasonable probability of the parties being reconciled—Matrimonial Causes Act 1965, s 2(2). **Practice Note** [1967] 3 139, Div.

‘Previous proceedings with reference to the marriage’—

Summons issued by wife in court of summary jurisdiction and withdrawn before adjudication—Matrimonial Causes Rules 1950 (S I 1950 No 1940), r 4(1)(h). **Penny v Penny** [1952] 2 938, Div.

Second petition—

Petition for divorce on the ground of cruelty—Leave to file second petition on the ground of desertion—First petition still on file. **Demetriou v Demetriou** [1950] 2 49, CA.

Striking out where filed after decree nisi and before decree absolute—Petition for damages only—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 3(2). **Jacks v Wilkie and Jacks** [1961] 1 251, Div.

Service. *See* Practice—Service—Petition, *post*.

Service—

Generally. *See* Practice—Service—Petition, *post*.

Service on infant. *See* Infant—Service, *ante*.

Pleading. *See* Practice—Pleading, *post*.

Poor person—

Costs. *See* Costs—Poor person, *ante*.

Practice—

Advertisement—

Newspaper notice relating to divorce proceedings—Application to substitute or to dispense with service—Reasonable probability that other party would see advertisement in newspaper—Application in respect of spouse whose whereabouts unknown—Enquiries to be made before grant of application. **Practice Direction** [1975] 3 432, FamD.

Newspaper notice relating to divorce proceedings—Notification by Divorce Registry of any replies to advertisement—If no reply, application for registrar's certificate may be made after period of notice has expired—If publication of notice delayed solicitor will be informed.

Practice Direction [1967] 2 1196, Div.

Agreement or arrangement between parties—

Consideration in good time of cases susceptible of agreement or arrangement—Notification to clerk of the rules—Matrimonial Causes Act 1965, s 5(2). **Practice Direction** [1970] 1 557, Div.

Lodgment of copy of terms—Order approving terms—When terms may be incorporated in decree—Practice if terms, not previously approved, are produced at trial—Matrimonial Causes Act 1965, s 5(2). **Practice Direction** [1967] 1 240, Div.

Lodgment of copy of terms—Order approving terms—When terms may be incorporated in order. **Practice Direction** [1972] 3 704, FamD.

Reservation of trial to judge considering agreement or arrangement—Judge's direction noted on file—Regard to be had to direction when transfer of cause considered—Matrimonial Causes Act 1965, s 5. **Practice Direction** [1968] 2 841, Div.

Amendment—

Answer. *See* Practice—Answer—Amendment, *post*.

Petition. *See* Petition—Amendment, *ante*.

Ancillary relief—

Appeal—Leave to appeal—Interlocutory order—Order for financial provision or adjustment of property rights—Order to be regarded as interlocutory—Application for stay of execution pending appeal—Form of order—Order to record whether application for leave or for stay of execution made—Order to record whether application granted or refused. **Guerrera v Guerrera** [1974] 3 460, CA.

DIVORCE (cont)

Practice (cont)—

Ancillary relief (cont)—

Application—Affidavit of means—Standard form. **Practice Direction** [1973] 1 192, FamD.
Application for monetary provision—Discovery—Procedure where discovery or disclosure inadequate. **Practice Direction** [1966] 2 638, Div.

Answer—

Adultery admitted in petition by asking for exercise of discretion—Answer containing cross-petition on grounds of petitioner's adultery—Allegation of adultery based solely on petitioner's prayer for discretion—Insufficient particularity of answer—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 4(1)(i). **Holman v Holman** [1962] 2 477, CA.

Adultery admitted in petition by asking for exercise of discretion—Answer containing cross-petition on grounds of petitioner's adultery—Allegation based solely on prayer for discretion—Insufficiency of pleading—Matrimonial Causes Rules 1924 (SR & O 1924 No 126), r 30(c). **B—v B—and G—** [1936] 2 1254, Div.

Amendment—Amending answer by alleging adultery—Adultery disclosed in petitioner's cross-examination—Generality of pleading. **Lewis v Lewis** [1958] 1 859, CA.

Amendment—Amending answer by alleging adultery—Application to adjourn trial for service of amended answer—No previous steps to obtain proof of adultery—Refusal of leave to amend. **Clear v Clear** [1958] 2 353, CA.

Amendment—Amending answer by adding cross-petition alleging desertion—Date of original answer within three years of alleged desertion. **Swiszcowski v Swiszcowski and Jewasinski** [1959] 1 495, Div.

Amendment—Amending answer by adding cross-petition alleging desertion—Desertion three years before amendments, less than three years before original petition and answer—Cruelty alleged and divorce prayed in original petition and answer—Validity of amendments—Jurisdiction to give leave to amend—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 3(2). **Blacker v Blacker** [1960] 2 291, CA.

Amendment—Amending answer by adding cross-petition alleging desertion—Desertion three years before amendment, less than three years before original answer—Jurisdiction to give leave to amend—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 3(2) (as amended by Matrimonial Causes (Amendment) Rules 1961 (SI 1961 No 1082), r 2). **Tulley v Tulley** [1967] 1 639, Div.

Amendment—Amending answer by adding cross-petition alleging desertion—Three years immediately preceding the presentation of the cross-petition—Date of answer—Amendment by consent—Matrimonial Causes Act 1950, s 1(1)(b). **Robertson v Robertson** [1954] 3 413, Div.

Amendment—Amending answer by adding prayer for discretion—Prayer for discretion not an allegation of fact—Affidavit in support not needed—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 15(3). **Sorrell v Sorrell** [1964] 3 304, Div.

Amendment—Application to amend answer at hearing on petitioner's disclosing adultery—Refusal of leave to amend—Whether refusal justified. **Burford v Burford** [1955] 3 664, CA.

Amendment—Leave to amend—Need of affidavit in support—Matrimonial Causes Rules 1950 (SI 1950 No 1940), r 15(3). **Cheetham v Cheetham** [1954] 2 535, CA.

Answer accepting one allegation but denying another—Right of respondent to dispute grant of decree—Respondent seeking dismissal of petition and grant of decree on answer—Application of petitioner to strike out answer—Whether respondent entitled to dispute grant of decree—Whether respondent entitled to file answer to dispute one allegation—Matrimonial Causes Rules 1973 (SI 1973 No 2016), s 18(1)(a). **Parsons v Parsons** [1975] 3 344, FamD.

Answer by respondent containing cross-prayer for divorce—Supplemental petition by petitioner—Answer by respondent to supplemental petition containing cross-petition for divorce—Respondent's cross-prayer and cross-petition on file at hearing—Withdrawal of cross-prayer and cross-petition—Service of new petition on petitioner in court—Registrar's certificate dispensed with and suits consolidated—Decree nisi—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 3(2). **Jacobs v Jacobs** [1960] 3 578, Div.

Answer containing cross-petition for divorce—Petition based on grounds prescribed by statute—Statute repealed and replaced by new statute before answer filed—New statute prescribing new grounds for divorce—Grounds on which cross-petition should be based. **Willson v Willson** [1971] 1 465, Div.

Answer to cross-petition—Amending answer to cross-petition by adding cross-charge of desertion—Three years immediately preceding the presentation of the cross-petition—Date of cross-petition—Matrimonial Causes Act 1950, s 1(1)(b)—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 18(1). **Thatcher v Thatcher and Gill (Wheeler intervening)** [1959] 2 649, Div.

Consent as defence to charge of cruelty to be pleaded. **Porr v Porr** [1963] 1 213, Div.

Co-respondent opposing claim for damages—Mitigation—Matters to be pleaded—'Allegation'—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 33, proviso (c). **Laxton v Laxton and Hitchcock** [1962] 2 364, Div.

Striking out allegations—Petition alleging desertion—Reasonable cause for leaving the wife—Belief in her adultery—Belief induced by statements of third party—Truth of statements not alleged—Allegations inadmissible. **Elliott v Elliott** [1956] 1 122, CA.

Time—Leave to file answer out of extended time. **D v D** [1963] 1 602, Div.

Time—Leave to file answer out of time—Application—No affidavit explaining merits of application and no draft answer before court—Petition by wife alleging behaviour on part of husband such that wife could not reasonably be expected to live with him—Statement by husband on acknowledgment of service that he did not intend to defend proceedings—Current negotiations between parties regarding financial matters and matrimonial home—Breakdown of negotiations—Application by husband to file answer out of time—Absence of affidavit explaining husband's change of mind and of draft answer—Whether husband showing adequate grounds for discretionary relief. **Spill v Spill** [1972] 3 9, CA.

DIVORCE (cont)

Practice (cont)—

Answer (cont)—

Time—Leave to file answer out of time—Conduct—Relevance of conduct in main suit—Leave to file answer containing cross-prayer alleging desertion and adultery—Petition by wife alleging intolerable behaviour—Acknowledgment by husband that he would defend suit and oppose applications for ancillary relief—Delay in filing answer caused by attempted reconciliation by husband and time taken to obtain sufficient evidence of adultery—Husband applying for leave to file answer—Application supported by affidavit exhibiting draft answer—Refusal of application liable to prejudice husband in ancillary proceedings and in relation to costs of main suit. **Rogers v Rogers** [1974] 2 361, CA.

Time—Leave to file answer out of time—Leave to file answer containing cross-prayer alleging adultery—Reasonable cause for delay shown—No prejudice to respondent in maintenance proceedings by refusal of leave—Respondent free to raise allegation of adultery in ancillary proceedings—Respondent's right to have allegation, if established, made the subject of a public decree. **Huxford v Huxford** [1972] 1 330, FamD.

Time—Leave to file answer out of time—Leave to file answer containing cross-prayer alleging desertion—Petition by husband alleging five year separation—Delay in filing answer caused by negotiations over property and financial arrangements—Wife giving notice that she did not intend to defend in view of agreement on financial arrangements—Husband repudiating agreement at late stage—Wife applying for leave to file answer—No prejudice to wife in maintenance proceedings by refusal of leave—No stigma attached to decree granted on basis of five year separation. **Collins v Collins** [1972] 2 658, CA.

Time—Leave to file answer out of time—Leave to file answer out of extended time. *See* Practice—Answer—Time—Leave to file answer out of extended time, *ante*.

Appeal—

Setting down. *See* Appeal—Setting down, *ante*.

Children—

Applications relating to children—Desirability of making applications early in Trinity term—Difficulty arising where applications not made until just before long vacation. **Practice Direction** [1970] 2 448, Div.

Custody—Evidence—Welfare officer giving evidence privately to judge after withdrawal of parties and their representatives at judge's request—Validity of order. **Fowler v Fowler** [1963] 1 119, CA.

Custody—Chambers—Agreement by parties that matter be referred to chambers—Judge's rejection of application for reference—Order for custody made at hearing—Respondent's non-appearance in reliance on agreement—Order not open to objection. **Cooper v Cooper** [1961] 3 539, CA.

Custody—Reference to court welfare officer. **Practice Note** [1959] 3 780, Div.

Custody—Reference to welfare officer—Welfare officer's reports. **Re K (infants)** [1962] 3 1000, CA.

Judge not satisfied at hearing as to arrangements—Judge's summons to be issued by party in whose favour decree nisi pronounced. **Practice Direction** [1959] 3 862, Div.

Report of court welfare officer to be filed or called for if child in care of local authority—Registrar's duty to call for report, if none filed, on certifying cause fit for trial as required by Matrimonial Causes Rules 1957 (SI 1957 No 619), r 30. **Practice Direction** [1962] 3 464, Div.

Confession—

Respondent interviewed by petitioner's solicitor who took statement—Propriety of solicitor's conduct—Costs. **Davies v Davies** [1960] 3 248, CA.

Consent applications. *See* Consent applications, *ante*.*See* Consent applications, *ante*.Costs. *See* Costs, *ante*.

County court—

Costs—Taxation—Value added tax. *See* Costs (Taxation—Value added tax—Matrimonial proceedings—Divorce county court).

County court list. *See* Matrimonial causes list—County court list, *ante*.

Custody—

Generally. *See* Custody, *ante*.

Decree absolute—

Expediting. *See* Decree absolute—Expediting, *ante*.

Decree nisi. *See* Decree nisi—Practice, *ante*.Disclosure of negotiations. *See* Collision—Disclosure—Negotiations which may affect conduct of suit, *ante*.

District registry—

Whether entitled to refuse to accept divorce petition defective on account of non-compliance with r 4(1)(a) of Matrimonial Causes Rules 1957 (SI 1957 No 619) (added by Matrimonial Causes (Amendment No 2) Rules 1963 (SI 1963 No 1990), r 4(b). **Allford v Allford** [1964] 3 220, Div.

Documents—

Copies—Discretion of registrar. **Practice Direction** [1966] 2 39, Div.

Documents lodged in registry—Form—Expression of sums of money—Decimalisation—Exception for bill of costs—Decimal Currency Act 1969, Sch 1. **Practice Direction** [1970] 3 176, Prob and Div.

Filing system in Divorce Registry. **Practice Note** [1964] 3 650, Div.

Notice to produce and admit—Un defended suit. **Clark v Clark** [1953] 1 704, Div.

Person under disability—Notice to be indorsed on documents for service—Additional provision where patient is to be served—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 66(10), (13), as substituted by Matrimonial Causes (Amendment) (No 2) Rules 1960 (SI 1960 No 1261), r 3. **Practice Note** [1960] 3 352, Div.

Financial provision—

Application. *See* Financial provision—Application, *ante*.

DIVORCE (cont)

Practice (cont)—

Hearing—

Dates. **Practice Direction** [1970] 1 557, Div.Divorce towns—Defended causes—High Court ancillary applications—List of divorce towns—Matrimonial Causes Rules 1971 (SI 1971 No 953), Appendix 1. **Practice Direction** [1971] 3 1367, FamD.Expediting—Un defended suit. **Practice Direction** [1965] 1 340, Div.Royal Courts of Justice. *See Practice* (Hearing—Matrimonial causes—Royal Courts of Justice).Shorthand note of proceedings. *See Practice* (Matrimonial causes—Trial—Shorthand note of proceedings).

Interrogatories—

Adultery—Application for leave to serve interrogatories relating to matter in question between applicant and other party—Jurisdiction of court—Leave to serve such interrogatories as are necessary for disposing fairly of cause or saving costs—Applicant petitioning for divorce—Applicant alleging respondent committed adultery with co-respondents—Respondent not filing answer to petition—Co-respondents contesting suit—Applicant seeking leave to serve interrogatories on respondent relating to adultery—Whether 'matter in question' between applicant and respondent—Whether interrogatories would dispose fairly of cause or save costs—RSC Ord 26, r 1(1)(a), (3). **C v C (divorce: interrogatories)** [1973] 3 770, FamD.Adultery—Interrogatories inviting answers which tend to prove adultery allowable—Interrogatories which may properly be administered—Civil Evidence Act 1968, s 16(5). **Nast v Nast and Walker** [1972] 1 95, Div.Adultery—Interrogatories inviting answers which tend to prove adultery allowable—Interrogatories which may properly be administered—Interrogatories necessary for disposing fairly of cause or matter or for saving costs—Interrogatories asking direct question whether couple had sexual intercourse—Civil Evidence Act 1968, s 16(5)—RSC Ord 26n r 1. **Nast v Nast and Walker** [1972] 1 1171, CA.Adultery—Whether allowable to prove. **A v A and H** [1962] 2 573, Div.Cruelty or desertion—Whether allowable to prove—RSC Ord 31, r 2—Matrimonial Causes Rules 1950 (SI 1950 No 1940), r 23(1). **Hulbert v Hulbert** [1957] 2 226, CA.

Judge—

Right to see judge privately in matrimonial cause—Right to be exercised sparingly. **Schlesinger v Schlesinger (Nystrom and Swanson Intervening)** (Hall cited) [1959] 1 155, CA.Matrimonial causes list. *See* Matrimonial causes list, *ante*.

Notice of intention to proceed—

Delay of more than one year in proceeding with petition—Delay in supplying particulars—RSC Ord 64, r 13—Matrimonial Causes Rules 1950 (SI 1950 No 1940), r 79, r 80. **Browning v Browning** [1951] 1 758, Div.

Order—

Form—Expression of sums of money—Decimalisation—Decimal Currency Act 1969, Sch 1. **Practice Direction** [1970] 3 176, Prob and Div.

Particulars—

Adultery—Allegations of adultery, birth of a child and payments by co-respondent—Petitioner unable to give precise dates—Application for co-respondent to be dismissed from suit—Principles upon which court will act—RSC Ord 25, r 4—Matrimonial Causes Rules 1937 (SR & O 1937 No 1113), r 81. **Wheeler-Cherry v Wheeler-Cherry** [1939] 2 603, CA.Adultery—Allegation that husband not father of wife's child—Need for particulars of facts on which statement based. **Banks v Banks** [1952] 2 232, CA.Behaviour—Petition alleging respondent has behaved in such a way that petitioner cannot reasonably be expected to live with him—Petition giving particulars of respondent's behaviour—Answer containing bare denial that respondent has behaved in such a way that petitioner cannot reasonably be expected to live with him as alleged or at all—Whether adequate. **Andrews v Andrews** [1974] 3 643, FamD.Condonation—Knowledge—RSC Ord 19, r 22. **Hubbock v Hubbock** [1948] 2 412, CA.Cruelty—No particulars of general allegation given or requested—Admissibility of evidence of specific act. **Gunner v Gunner** [1954] 1 695, Div.Denial—Sufficiency of bare denial—Matrimonial Causes Rules 1950 (SI 1950 No 1940), r 17(1). **Slater v Slater** [1952] 1 1343, Div.Denial—Sufficiency of bare denial—Cross-examination of petitioner on matter not pleaded in answer—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 17(1)—RSC Ord 19, r 15. **Finch v Finch (Hayes intervening)** [1960] 2 52, Div.Parties. *See* Parties, *ante*.Petition. *See* Petition, *ante*.

Pleading—

Answer. *See Practice*—Answer, *ante*.Cruelty—Prolixity—Form of pleading. **Rowley v Rowley and Austin and French (Cooper intervening)** [1964] 3 31, Div.Cruelty—Course of conduct of unkindness and neglect—Form of pleading. **Garven v Garven** [1962] 3 241, Div.Particulars. *See Practice*—Particulars, *ante*.Prayer—'Such further and other relief as may be just'—Whether needed. **G v G (otherwise H)** [1961] 3 247, Div.Striking out—Estoppel—Res judicata—Desertion—Answer alleging just cause for leaving—Cross-prayer alleging constructive desertion—Inclusion of matters relied on in wife's previous suit wherein she charged husband with cruelty—Dismissal of previous suit—Husband's conduct not amounting to cruelty—Admissibility of evidence. **Thoday v Thoday** [1964] 1 341, CA.

DIVORCE (cont)

Practice (cont)—

Pleading (cont)—

Striking out—Desertion—Defence of 'just cause' and countercharge of constructive desertion—Pleading based on substantially the same items as relied on to support charges of cruelty in former unsuccessful suit—Summons to strike out pleading. **Dixon v Dixon** [1953] 1 910, Div.

Striking out—Estoppel—Prolixity and want of reasonable cause—Answer to petition for divorce—Pleading based in part on same matters as had been raised on previous unsuccessful application for maintenance—Defects invited by similar defects in petition. **Thompson v Thompson** [1957] 1 161, CA.

Postal facilities in divorce registry—

Use of post in connexion with registrar's certificates, judge's orders on summons, and stopped ex parte applications. **Practice Direction** [1965] 3 824, Div.

Queen's Proctor—

Application for costs against solicitors. *See* Intervention—Queen's Proctor showing cause why a decree nisi should not be made absolute—Costs, *ante*.

Argument—When court should direct papers to be sent to Queen's Proctor—Matrimonial Causes Act 1950, s 10(1). **Lee v Lau** [1964] 2 248, Div.

At what stage communication should be made to Queen's Proctor—Matrimonial Causes Act 1950, s 10. **Middlebrook v Middlebrook** [1965] 1 404, Div.

Receipt or certificate given by solicitor's clerk—

Signature by clerk. **Practice Direction** [1953] 2 1234, Prob & Div.

Reconciliation. *See* Reconciliation—Practice, *post*.Rehearing. *See* Rehearing, *post*.

Service—

Notice—Notice of application by wife for avoidance of disposition made by husband to defeat her claim to financial relief—Service abroad of notice—Service on member of board of foundation set up in foreign state by husband—Foundation having separate legal entity—No reciprocal enforcement of judgments or order—Service set aside—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 10(1)—Matrimonial Causes (Property and Maintenance) Act 1958, s 2. **Wyler v Lyons** [1963] 1 821, Div.

Notice of appeal—Dispensing with service—Petition for presumption of death and for dissolution of marriage. **Maxted v Maxted** [1956] 3 695, CA.

Petition—Adultery charged with infant girl under sixteen years of age—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 9(1), r 17(4). **Practice Note** [1961] 1 129, Div.

Petition—Dispensing with service—Petition for presumption of death and dissolution of marriage—Principles applicable—Matrimonial Causes Act 1950, s 16(1)—Matrimonial Causes Rules 1950 (SI 1950 No 1940), r 9(5). **N v N, L v L, C v C** [1957] 1 536, Div.

Petition—Dispensing with service—Petitioner's lack of means—Respondent's probable knowledge of pending proceedings—Matrimonial Causes Act 1857, s 42. **Weighman v Weighman** [1947] 2 852, CA.

Petition—Dispensing with service—Avoidance of irremediable hardship—Matrimonial Causes Rules 1950 (SI 1950 No 1940), r 9(5). **Spalenkova v Spalenkova** [1953] 2 880, Div.

Petition—Dispensing with service—Respondent resident in enemy territory—Matrimonial Causes Act 1857, s 42. **Read v Read** [1942] 2 423, Div.

Petition—Dispensing with service—Respondent resident in enemy territory—Matrimonial Causes Act 1857, s 42—Supreme Court of Judicature (Consolidation) Act 1925, s 99(1)(a), (g)—RSC Ord 9, r 14(b), Ord 13, r 10—Matrimonial Causes Rules 1937 (SR & O 1937 No 1113), rr 10, 81, 82. **Read v Read** [1942] 1 226, CA.

Petition—Dispensing with service—Respondent resident in enemy-occupied territory—Matrimonial Causes Act 1857, s 42. **Luccioni v Luccioni** [1943] 1 384, CA.

Petition—Dispensing with service—Substituted service ineffective—Discretion of judge—Matrimonial Causes Act 1857, s 42. **Paolantonio v Paolantonio** [1950] 2 404, CA.

Petition—Personal service—Proof of identity of person served. **Practice Direction** [1972] 2 623, FamD.

Service by registered post—No acknowledgment—Need for substituted service—Probability that petition was received—Discretion to dispense with substituted service—Matrimonial Causes Rules 1947 (SR & O 1947 No 523), r 8(1)(2)(3), r 10. **Heath v Heath** [1950] 1 877, CA.

Substituted service—Judgment summons—Judgment summons in respect of arrears under order for interim maintenance—Matrimonial Causes Rules 1968 (SI 1968 No 219), r 87(5)—RSC Ord 65, r 4(1). **Nutkins v Nutkins (Brown cited)** [1970] 3 5, Div.

Substituted service—Newspaper advertisement. *See* Practice—Advertisement, *ante*.

Substituted service—Order for security of wife's costs—Matrimonial Causes Rules 1950 (SI 1950 No 1940), r 62(2)—RSC Ord 67, r 6. **Worboys v Worboys** [1953] 1 857, Div.

Shorthand note of proceedings. *See* Practice (Matrimonial causes—Trial—Shorthand note of proceedings).

Stay of proceedings—

Petition presented in England—Proceedings against petitioner begun by respondent abroad—Advantage to petitioner from proceeding in England—Delay by respondent. **Sealey (otherwise Callan) v Callan** [1953] 1 942, Div.

Summons—

Cause list—Summons listed for hearing in London—File number and year of filing of petition to be shown. **Practice Direction** [1965] 2 724, Div.

Counsel summonses—Place of hearing. **Practice Note** [1959] 2 144, Div.

Transfer from solicitors' to counsel's list. **Practice Direction** [1961] 3 171, Div.

Time—

Extension of time—Re-hearing. *See* Re-hearing—Time—Extension of time for applying for rehearing, *post*.

DIVORCE (cont)

Practice (cont)—

Trial—

Allegation of adultery—Dismissal of co-respondent from suit at end of petitioner's case—Co-respondent submitting no case to answer and not put to election—Matrimonial Causes Act 1950, s 5. **Lance v Lance and Gardner** [1958] 1 388, Div.

Allegation of adultery—Submission by intervener of no case—Election—Matrimonial Causes Act 1950, s 5. **Gilbert v Gilbert & Abdon (Adams intervening)** [1957] 3 604, Div.

Allegation of adultery—Submission by party cited of no case—Need to elect—Election—Matrimonial Causes Act 1950, s 5. **Beal v Beal (Reade cited)** [1953] 2 1228, Div.

Allegation of adultery—Submission by party cited of no case—Need to elect—Matrimonial Causes Act 1950, s 5. **Meyer v Meyer (Hodge cited)** [1959] 2 633, Div.

Allegation of cruelty—Submission of no case to answer—Whether counsel should be put to election whether to call or not to call evidence. **Wilson v Wilson** [1958] 3 195, Assizes.

Circuit—Declaration of validity of marriage or foreign decree not a matrimonial cause—Trial in London. **Practice Direction** [1965] 3 916, Div.

Circuit—Trial of matrimonial causes on circuit. **Practice Direction** [1958] 3 352, Div.

County court list. *See* Matrimonial causes list—County court list, *ante*.

Fixed dates for the hearing of undefended matrimonial causes in London. **Practice Note** [1963] 3 827, Div.

Place of trial—London. **Practice Direction** [1965] 1 1039, Div.

Right to begin—Burden of proof—Matrimonial Causes Act 1950, s 4(2). **Arding v Arding** [1954] 2 671, Div.

Trial by special jury—Application—Order by registrar for trial by special jury—Order reversed by president—Discretion—RSC Ord 54, r 12—Matrimonial Causes Rules 1924 (SR & O 1924 No 126), r 30(b). **Cooper v Cooper, Parish (intervener), Williams (party cited)** [1936] 2 542, CA.

Undeclared causes—

Decree nisi—Decree of judicial separation—Special procedure—Extension—Proceedings to which special procedure applicable—Petition alleging facts other than behaviour—Forms to be used. **Practice Direction** [1975] 3 957, FamD.

Decree nisi—Decree of judicial separation—Special procedure to be followed—Proceedings to which procedure applicable—Alternative methods of dealing with applications for ancillary relief in such cases. **Practice Direction** [1973] 3 1182, FamD.

Warrant—

Form—Expression of sums of money—Decimalisation—Decimal Currency Act 1969, Sch 1. **Practice Direction** [1970] 3 176, Prob and Div.

Writ—

Form—Expression of sums of money—Decimalisation—Decimal Currency Act 1969, Sch 1. **Practice Direction** [1970] 3 176, Prob and Div.

Proceedings in county court—

Whether finding binding in proceedings as to property in High Court. *See* Estoppel (Issue estoppel)—Matrimonial proceedings—County court proceedings—Subsequent proceedings in High Court for determination of property rights).

Proof—

Adultery. *See* Adultery—Proof, *ante*.

Irretrievable breakdown of marriage. *See* Irretrievable breakdown of marriage—Proof, *ante*.

Property—

Adjustment order—

Meaning of property—Local authority tenancy—Order for transfer of tenancy—Jurisdiction of court—Circumstances in which jurisdiction may be exercised—Absence of covenant against assignment—Local authority willing to abide by order—Matrimonial home council dwelling—Tenancy in husband's name—Wife and child leaving home—Wife granted divorce—Application by wife for order transferring tenancy to her—Matrimonial Causes Act 1973, s 24. **Thompson v Thompson** [1975] 2 208, CA.

Meaning of property—Tenancy—Weekly contractual tenancy—No covenant against assignment—Whether tenancy 'property'—Whether court having jurisdiction to order transfer of tenancy—Matrimonial Causes Act 1973, s 24(1)(a). **Hale v Hale** [1975] 2 1090, CA.

Retrospective effect—Decree granted before enactment of statutory power to make order. *See* Financial provision—Lump sum payment—Property adjustment order—Statutory powers—Retrospective operation, *ante*.

Settlement of property—Benefit of other party or children—Matrimonial home—Husband sole owner at law—Exclusion of husband from home—Jurisdiction of court—Husband living in home—Parties given joint custody of children—Care and control given to wife—Order that home be transferred into joint names of parties—Home to be held on trust for sale—Home not to be sold until youngest child reaching specified age—Order excluding husband from home—Power of court to make order—Matrimonial Causes Act 1973, s 24(1)(b). **Allen v Allen** [1974] 3 385, CA.

Transfer of property—Interest in matrimonial home—Share in equity—Postponement of payment—Wife living in home—Transfer of beneficial interest to wife—Transfer subject to payment to husband of sum representing share of equity—Payment postponed to future date—Payment requiring wife to sell house at a date when she would no longer be capable of earning—Whether husband entitled to share. **Jones v Jones** [1975] 2 12, CA.

Transfer of property—Interest in matrimonial home—Matters to be considered—Availability of house as home for wife and children—Parties ordinarily entitled to shares in home on children ceasing to be educated—Wife's prospect of remarriage—Relevance—Circumstances in which whole beneficial interest should be transferred to wife—Matrimonial Proceedings and Property Act 1970, ss 4, 5. **Smith v Smith** [1975] 2 19, FamD.

Settlement of wife's property. *See* Settlement of wife's property, *post*.

DIVORCE (cont)

- Provision for divorced spouse out of deceased former spouse's estate. *See* Financial provision—Deceased former spouse—Maintenance for surviving spouse out of deceased's estate, *ante*.
- Provocation—
 - Defence to charge of cruelty. *See* Cruelty—Provocation, *ante*.
- Queen's Proctor—
 - Argument by. *See* Practice—Queen's Proctor—Argument, *ante*.
 - Intervention by. *See* Intervention—Queen's Proctor showing cause why a decree nisi should not be made absolute, *ante*.
- Rape by husband on wife. *See* Criminal law (Rape—Husband and wife).
- Recognition of foreign decree. *See* Foreign decree—Recognition by English court, *ante*.
- Reconciliation—
 - Certificate with regard to—
 - Names etc of persons qualified to help—Organisations and persons regarded as authorised to help—Reference to marriage guidance counsellor or probation officer not formal step in procedure—Proceedings for divorce or judicial separation—Divorce Reform Act 1969, ss 3(1), 8—Matrimonial Causes Rules 1971 (SI 1971 No 953), r 12(3), App II, Form 3. **Practice Direction** [1972] 3 768, FamD.
 - Condonation. *See* Condonation—Reconciliation, *ante*.
 - Negotiations with view to reconciliation—
 - Privilege. *See* Evidence—Privilege—Negotiations with view to reconciliation, *ante*.
 - Petition within three years of marriage. *See* Petition—Petition within three years of marriage—Reconciliation, *ante*.
- Practice—
 - Certificate with regard to reconciliation. *See* Reconciliation—Certificate with regard to, *ante*.
 - Judge seeing parties individually and separately in his room during trial. **Stevens v Stevens** [1954] 2 381, CA.
 - Machinery for exploring possibility of reconciliation with a view to determining whether there is reasonable probability of the parties being reconciled—Role of court welfare officer—Divorce Reform Act 1969, s 3. **Practice Direction** [1971] 1 894, Div.
- Registry—
 - Postal facilities. *See* Practice—Postal facilities in divorce registry, *post*.
 - Procedure—
 - Consent applications. *See* Consent applications—Divorce Registry, *ante*.
- Re-hearing—
 - Affidavit—
 - Affidavit in support of application—Matrimonial Causes Rules 1950 (SI 1950 No 1940), r 36(1). **Middleton v Middleton** [1952] 2 693, Div.
 - Application for—
 - Divisional Court—Jurisdiction. *See* Appeal—Divisional Court—Jurisdiction—Application for rehearing, *ante*.
- Rehearing—
 - Application for—
 - Jurisdiction—Refusal of trial judge to grant adjournment—Whether error of court—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 36(1). **Woodman v Woodman** [1967] 1 410, Div.
 - Wife respondent not served—Matrimonial Causes Rules 1924 (SR & O 1924 No 126), r 46—Limits of rule—County Courts Act 1888, ss 91, 93—Supreme Court of Judicature Act 1890, s 1—Supreme Court of Judicature (Consolidation) Act 1925, s 30. **Manners v Manners and Fortescue** [1936] 1 41, Div.
 - Classes of applications—
 - Ignorance or lack of proper advice leading to respondent's unawareness of proper procedural steps to preserve his position—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 36(1). **Nash v Nash** [1967] 1 535, Div.
 - Relevance, to an application for rehearing of Supreme Court of Judicature (Consolidation) Act 1925, s 31(1)(e)—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 36(1). **Stevens v Stevens** [1965] 1 1003, CA.
 - Default of solicitor—
 - Co-respondent instructing solicitor to contest issue of damages—Co-respondent not appearing and not represented at hearing through default of his solicitor—Decree nisi granted to husband and damages awarded against co-respondent—Whether rehearing on issue of damages would be ordered—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 36(1). **Jakeman v Jakeman and Turner** [1963] 3 889, Div.
 - Spouse lulled into false sense of security that proceedings have lapsed—
 - Wife returning to husband after presenting petition on ground of cruelty—Husband requesting reconciliation and wife returning no firm answer—Husband informed of hearing of petition on day before hearing—Petition heard as undefended—Wife returning to husband after decree nisi and thereafter giving no firm answer to requests for reconciliation—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 36(1). **Montague v Montague** [1967] 1 802, Div.
- Time—
 - Extension of time for applying for rehearing—Conduct of wife entitling husband to reasonable hope of reconciliation. **Montague v Montague** [1967] 1 802, Div.
- Transcripts—
 - Transcript of proceedings in court below should be before Divisional Court—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 36. **Lambie v Lambie** [1959] 1 639, Div.
- Relevant child. *See* Infant—Relevant child, *ante*.

DIVORCE (cont)

Remarriage—

Application for financial provision. *See* Financial provision—Application—Remarriage of party, *ante*.

Capacity of divorced person to remarry immediately after grant of decree absolute. *See* Decree absolute—Remarriage—Capacity of divorced person to remarry immediately after grant of decree absolute, *ante*.

Residence—

Foreign decree—

Recognition based on residence. *See* Foreign decree—Recognition by English court—Basis of recognition—Residence, *ante*.

Secured maintenance. *See* Maintenance—Secured maintenance, *ante*.

Security for costs—

Legal aid. *See* Legal aid (Security for costs—Matrimonial causes).

Poor person. *See* Costs—Poor person—Security for costs, *ante*.

Security for wife's costs. *See* Costs—Security for wife's costs, *ante*.

Separation—

Financial protection for respondent—

Decree nisi granted—Circumstances in which petitioner should not be required to make financial provision—Application by respondent wife—Cohabitation lasting only two weeks—Separation de facto for 26 years—No child born—No real attempt by either side to make any effective contact—Financial circumstances of husband no better than wife—Application unjustified—Divorce Reform Act 1969, s 6(2)(a). **Krystman v Krystman** [1973] 3 247, CA.

Decree nisi granted—Decree absolute although no financial provision made by petitioner—Satisfactory undertaking by petitioner to 'make such financial provision...as the Court may approve'—Not sufficient for petitioner merely to give undertaking to make financial provision—Petitioner required to submit proposals for financial provision—Approval of court to be given on basis of proposals—Approval to be given before undertaking obtained and decree made absolute—Divorce Reform Act 1969, s 6(3). **Grigson v Grigson** [1974] 1 478, CA.

Decree nisi granted—Decree absolute although no financial provision made by petitioner—Undertaking by petitioner where desirable to make decree absolute without delay—Necessity for undertaking—Better course to withdraw application and make usual application for financial provision or property adjustment order—Matrimonial Causes Act 1973, s 10(4). **Cumbers v Cumbers** [1975] 1 1, CA.

Decree nisi granted—Refusal to make decree absolute—Refusal unless court satisfied that financial provision made by petitioner fair and reasonable or best that can be made in the circumstances—Proposals for financial provision in petition—Proposals fair and reasonable—Proposals not constituting making of provision—Necessity of securing that proposals will be carried out before making decree absolute—Divorce Reform Act 1969, s 6(2). **Wilson v Wilson** [1973] 2 17, CA.

Five year separation—

Costs—Ancillary proceedings—Application for financial provision—Costs of proceedings—Principle to be applied in awarding costs. **Wright v Wright** [1973] 3 932, FamD.

Costs—Petitioner relying only on fact of five year separation—Petitioner not entitled to make any allegation of fault against respondent—Petition undefended—Petitioner not entitled to order for costs against respondent. **Chapman v Chapman** [1972] 3 1089, CA.

Decree nisi—Opposition—Grave financial or other hardship—Opposition after grant of decree nisi—Apparent agreement before decree regarding provision for respondent—Respondent allowing decree to go uncontested—Subsequent discovery of facts showing there has been no real agreement—Respondent's right to object to decree being made absolute—Need for court to ensure proper provision made for respondent—Divorce Reform Act 1969, ss 2(1)(e), 4, 6. **Parkes v Parkes** [1971] 3 870, CA.

Decree nisi—Refusal—Grave financial or other hardship—Social security benefits—Relevance—Loss of chance of widow's pension—Right to supplementary benefit of similar amount to pension—Duty of husband to maintain wife irrelevant in situation where husband assumed to be dead—Entitlement to social security benefits to be taken into account—Matrimonial Causes Act 1973, s 5. **Reiterbund v Reiterbund** [1975] 1 280, CA.

Decree nisi—Refusal—Grave financial or other hardship—Financial hardship—Need to consider gravity of hardship subjectively in relation to particular marriage—Public interest in dissolution of marriage—Relevance of wife's age in considering gravity of financial hardship—Length of period of separation compared with that of cohabitation—Marriage a shell—Parties still young—Divorce Reform Act 1969, ss 2(1)(e), 4. **Mathias v Mathias** [1972] 3 1, CA.

Decree nisi—Refusal—Grave financial or other hardship—Financial hardship—Offsetting contingent financial loss—Husband serving police officer—Husband seeking decree—Wife thereby losing pension rights under police pension scheme—Loss constituting grave financial hardship to wife—Possibility of offsetting loss by means of insurance policy—Husband capable of paying premiums out of own resources—Husband securing obligation by means of second mortgage on his house—Decree granted—Divorce Reform Act 1969, ss 2(1)(e), 4. **Parker v Parker** [1972] 1 410, FamD.

Decree nisi—Refusal—Grave financial or other hardship—Wrong in all the circumstances to dissolve marriage—Conduct of parties—Regard to conduct in considering whether wrong to dissolve marriage—Misconduct of respondent—Desertion—Wife opposing decree—Wife liable to suffer grave financial hardship through loss of pension rights—Wife having deserted husband—Whether court should have regard to wife's desertion in determining whether it would be wrong to dissolve the marriage—Divorce Reform Act 1969, s 4(2). **Brickell v Brickell** [1973] 3 508, CA.

DIVORCE (cont)

Separation (cont)—

Five year separation (cont)—

Decree nisi—Refusal—Grave financial or other hardship—Hardship other than financial hardship—Social and religious hardship—Divorced spouse liable to become social outcast—Parties Hindus—Petition by husband—Evidence that wife would suffer spiritual and social degradation within Hindu community in event of divorce—Whether capable of amounting to grave hardship—Divorce Reform Act 1969, s 4(1)(2). **Banik v Banik** [1973] 3 45, CA.

Decree nisi—Refusal—Grave financial or other hardship—Hardship other than financial hardship—Whether necessary to establish that hardship would be grave—Divorce Reform Act 1969, s 4. **Rukat v Rukat** [1975] 1 343, CA.

Decree nisi—Refusal—Grave financial or other hardship—Pleading—Facts relied on in support of plea of grave financial hardship—Facts of confession and avoidance—Facts relied on to be pleaded—Procedure for obtaining further information. **Parker v Parker** [1972] 1 410, FamD.

Decree nisi—Refusal—Grave financial or other hardship—Social security benefits—Relevance—Loss of pension rights—Husband aged 58 seeking decree—Decree resulting in loss of pension rights to wife of £2 a week—Wife's total income including pension covered by social security benefit—Payment of pension absorbed by repayment of moneys paid by way of benefit—Whether social security benefit to be taken into account—Whether loss of pension rights resulting in grave financial hardship to wife—Divorce Reform Act 1969, s 4. **Dorrell v Dorrell** [1972] 3 343, FamD.

Parties living apart for five years—Meaning of living apart. *See* Separation—Living apart, *post*.

Living apart—

Meaning—Living apart implying more than physical separation—Additional element required that at least one spouse regards marriage as at an end—Additional element capable of being brought into existence unilaterally—No need to communicate existence of additional element to other spouse for it to be operative in law—Proof of moment when additional element came into existence—Divorce Reform Act 1969, s 2(1)(d), (e). **Santos v Santos** [1972] 2 246, CA.

Meaning—Parties 'living apart' unless living with each other in the same household—Parties living in same house—Parties living with each other otherwise than as husband and wife—Wife leaving husband to live with another man as his wife—Husband coming to live in other man's house as paying lodger—Parties treating marriage as at an end—Parties living apart—Divorce Reform Act 1969, s 2(1)(e), (5). **Fuller (otherwise Penfold) v Fuller** [1973] 2 650, CA.

Parties 'living apart' unless living with each other in same household—Two year separation and consent to divorce by respondent spouse—Parties living in same household within two years prior to presentation of petition but sleeping in separate bedrooms—Whether rejection of normal physical relationship sufficient to constitute 'living apart'—Divorce Reform Act 1969, s 2(1)(d), (5). **Mouncer v Mouncer** [1972] 1 289, FamD.

Period of separation—

Computation—Period immediately preceding presentation of petition—Whether day on which separation took place to be excluded in computing period of separation—Matrimonial Causes Act 1973, s 1(2)(c)(d)(e). **Warr v Warr** [1975] 1 85, FamD.

Two year separation—

Consent to decree by respondent—Petitioner legally aided—Consent on terms that there be no order as to costs—Omission of prayer for costs from the petition—Whether proper—Whether court's approval required for agreement on costs—Divorce Reform Act 1969, ss 2(1)(d), 7. **Beales v Beales** [1972] 2 667, FamD.

Parties having lived apart for two years and consented to divorce—Meaning of 'living apart'—Parties having lived apart for five years—Financial protection for respondent—Protection where living apart only fact on which petitioner entitled to rely in support of petition—Requirement that decree nisi should state whether fact of living apart only fact on which petitioner entitled to rely—'Entitled to rely'—Divorce Reform Act 1969, s 6—Matrimonial Causes Rules 1971 (SI 1971 No 953), r 55(3). **Rule v Rule** [1971] 3 1368, FamD.

Parties having lived apart for two years and consented to divorce—Consent a positive requirement—Absence of objection to decree being granted not amounting to consent—Divorce Reform Act 1969, s 2(1)(d). **McG (formerly R) v R** [1972] 1 362, FamD.

Respondent consenting to decree—Consent—Capacity to consent—Respondent patient within the jurisdiction of the Court of Protection—Test to determine whether respondent's consent to decree valid—Divorce Reform Act 1969, s 2(1)(d). **Mason v Mason** [1972] 3 315, FamD.

Sequestration—

Proceeds—

Application—Order for sequestration in respect of husband's contempt in failing to return children within jurisdiction—Assets in hands of sequestrators—Husband's failure to pay alimony pending suit for wife and maintenance for another child in custody of wife—Whether order would be made, to avoid circuity of action, to pay arrears of alimony and maintenance out of assets in hands of sequestrators. **Romilly v Romilly** [1963] 3 607, Div.

Settlement of wife's property—

Adultery of wife—

Application—Form of application—Matrimonial Causes Rules 1950 (SI 1950 No 1940), r 44(1). **Practice Direction** [1955] 2 465, PDA.

Child of marriage primary beneficiary—Provisions appropriate to be in settlement—Matrimonial Causes Act 1950, s 24(1). **Moy v Moy and White** [1961] 2 204, Div.

DIVORCE (cont)

Settlement of wife's property—

Capital given to her by husband during marriage—

Marriage broken by wife's adultery—Restoration of pecuniary status of parties—*Matrimonial Causes Act 1950, s 24(1). Compton (Marquess of Northampton) v Compton (Marchioness of Northampton) and Hussey [1960] 2 70, Div.*

Guilty wife—

Settlement for benefit of child of marriage during minority—Child in custody and care of father—*Supreme Court of Judicature (Consolidation) Act 1925, s 191. Barker v Barker [1944] 2 446, Div.*

Jurisdiction—

Wife domiciled and resident abroad—Property within the jurisdiction—Settlement for benefit of children—Whether person could be appointed to execute settlement if wife did not execute it—*Supreme Court of Judicature (Consolidation) Act 1925, s 47—Matrimonial Causes Act 1950, s 24(1). Hunter v Hunter and Waddington [1961] 2 121, Div.*

Payments to be secured on investments in this country and not on income received from abroad—

Power to order payments to be secured from past date—Power of court to order deed settled by conveyancing counsel—*Matrimonial Causes Act 1950, s 24(1). Style v Style and Keiller [1954] 1 442, CA.*

Power of court to order deed settled by conveyancing counsel—

Power to ante-date deed to date of decree absolute—*Matrimonial Causes Act 1950, s 24(1). Style v Style and Keiller [1953] 2 836, Div.*

Sodomy—

Consent—

Condonation—Whether bars to relief—*Matrimonial Causes Act 1950, s 4. Bampton v Bampton [1959] 2 766, CA.*

Onus of proof. *Keogh v Keogh [1962] 1 472, Div.*

Reality of consent—Wife allowing acts of sodomy because of husband's persuasion that it was normal between married couples and her marital duty—Wife regarding practice as unnatural but not wrong—Whether such consent barred her from obtaining a divorce on the ground of sodomy—*Matrimonial Causes Act 1950, s 1(1). T v T [1963] 2 746, Div.*

Special procedure list. *See Practice—Undefended causes, ante.*Substitution of decree of judicial separation. *See Decree nisi—Substitution of decree of judicial separation, ante.*

Suit—

Solicitor—

Lien—Retaining lien. *See Solicitor (Lien—Retaining lien—Divorce suit).*

Trial or hearing—

Practice. *See Practice—Trial, ante.*

Two year separation. *See Separation—Two year separation, ante.*

Undefended cause—

Adultery—

Proof. *See Adultery—Proof—Undefended cause, ante.*

Desertion—

Evidence. *See Desertion—Evidence—Undefended suit, ante.*

Variation of maintenance order. *See Maintenance—Variation of order, ante.*Variation of order for financial provision. *See Financial provision—Variation of order, ante.*

Variation of settlement—

Sale of house after decree absolute of divorce. *See Variation of settlement (Post nuptial settlement)—Gift of house to husband and wife—Sale of house after decree absolute of divorce.*

Welfare officer—

Reference of case to—

Assessment of possibility of reconciliation. *See Reconciliation—Practice—Machinery for exploring possibility of reconciliation with a view to determining whether there is reasonable probability of parties being reconciled—Duty of court welfare officer, ante.*

DOCK

Crane—

Movable dockside crane—

Repainging—Works of engineering construction—Whether crane a 'steel...structure other than a building' or of similar nature—*Factories Act 1961, s 176(1)—Engineering Construction (Extension of Definition) Regulations 1960 (SI 1960 No 421), reg 3, Sch—Construction (Working Places) Regulations 1966 (SI 1966 No 94), reg 2(1). British Transport Docks' Board v Williams [1970] 1 1135, QBD.*

Dock Labour Board—

Disciplinary functions—

Delegation. *See Employment (Dock labour scheme—Dock Labour Board—Disciplinary functions—Delegation).*

Dock labour scheme. *See Employment (Dock labour scheme).*

Dry dock—

Capital allowances—

Plant. *See Income tax (Capital allowances—Plant—Dry dock).*

Repair of ship in dry dock. *See Repair of ship in dry dock, post.*

Loading and unloading—

Employment of signaller—

Statutory duty to employ signaller when cargo being loaded and unloaded by fall at hatchway—Exception—Barges and lighters—Crane driver able to see into hold of lighter at relevant time—Lighterman injured—Crane driver's view of gunwale obscured—Liability of crane owners—Docks Regulations 1934 (SR & O 1934 No 279), reg 43, proviso (i). *Smith v Port Line Ltd [1955] 2 297, CA.*

DOCK (cont)

Loading and unloading (cont)—

Employment of signaller (cont)—

Statutory duty to employ signaller when cargo being loaded or unloaded by fall at hatchway—Extent of duty—Signaller employed but not present at time of injury to workman—Whether employers in breach of statutory duty—Docks Regulations 1934 (SR & O 1934 No 279), reg 43. **Ashworth v J McQuirk & Co Ltd** [1943] 2 446, CA.

Statutory duty to employ signaller when cargo being loaded or unloaded by fall at hatchway—Extent of duty—Injury to trimmer during temporary absence of signaller—Defective lighting of ship—Liability of shipowner and employers—Docks Regulations 1934 (SR & O 1934 No 279), regs 3, 12, 43. **Johnson v A H Beaumont Ltd (first defendants and third parties), and Ford Motor Co (second defendants)** [1953] 2 106, QBD.

Fencing of hatches—

Hatches of hold accessible to any person employed—Accessible—Meaning—Factories and Workshop Act 1901, s 79—Docks Regulations 1934, reg 37(a). **Henaghan v Rederiet Forangirene** [1936] 2 1426, Assizes.

Friction gearing—

Statutory duty to fence securely—'So far as is practicable without impeding the safe working of the ship'—Docks Regulations 1934 (SR & O 1934 No 279), reg 26. **Ritchie v T G Irving & Co Ltd** [1953] 1 37, CA.

Lifting gear—

Inspection by a competent person—Use by stevedores of ship's derrick and hook and shackle to unload cargo—Fracture of shackle causing load to fall and kill workman—Inspection of shackle within previous three months—'Inspection'—'Competent person'—Liability of shipowners and stevedores—Docks Regulations 1934 (SR & O 1934 No 279), reg 19(a),(c). **Gibson v Skibs A/S Marina and Orkla Grobe A/B and Smith Coggins Ltd** [1966] 2 476, Assizes.

Sling—Rope-sling breaking and contents falling on workman below—Liability of employer—Liability of owner—Dock Regulations 1934 (SR & O 1934 No 279), reg 20. **O'Melia v Freight Conveyors Ltd, and Rederiaktiebolaget Svenska Lloyd** [1940] 4 516, Assizes.

Lighting—

Statutory duty to ensure lighting efficient—Duty to light all parts of ship to which persons employed may be required to proceed in course of employment—Required to proceed—Meaning—Factories and Workshops Act 1901, s 79—Docks Regulations 1934, reg 12(c). **Henaghan v Rederiet Forangirene** [1936] 2 1426, Assizes.

Statutory duty to ensure lighting efficient—Duty while 'processes' being carried on—Duration of unloading process—Factory and Workshop Act 1901, s 79—Factory and Workshop (Dangerous and Unhealthy Industries) Regulations 1934 (SR & O 1934 No 279), reg 12—Docks Regulations 1925 (SR & O 1925 No 231). **Hawkins v Thames Stevedore Co Ltd and Union Cold Storage Co Ltd** [1936] 2 472, KBD.

Statutory duty to ensure lighting efficient—Persons on whom duty rests—Lighting of ship inefficient—Stevedore injured—Liability of shipowner and of employer—Docks Regulations 1934 (SR & O 1934 No 279), reg 12, reg 50. **Simons v W H Rhodes & Son Ltd** [1956] 2 569, CA.

Loading and unloading at intermediate dock—

Statutory duty to strengthen hatch covering—Persons on whom duty rests—Duty on shipowners and not on employees—Docks Regulations 1934 (SR & O 1934 No 279), regs 36, 37(b), 38. **Hanlon v Port of Liverpool Stevedoring Co Ltd** [1937] 4 39, Assizes.

Removal of equipment required by regulations to be provided—

Statutory duty to restore equipment at end of period during which removal necessary—Hatch covers removed for loading—Hatch covers not required by regulations to be provided owing to height of hatch coamings—Loading interrupted and ship moved from berth to buoys—Seaman fatally injured by falling through open hatchway—Whether shipowners under statutory duty to restore hatch covers when loading ceased—Docks Regulations 1934 (SR & O 1934 No 279), reg 45. **Cockerill v William Cory & Son Ltd** [1959] 2 561, CA.

Safe means of access—

Statutory duty to maintain safe means of access from dock to hold in which work being carried on—Work—Unloading—Duration of unloading process—Whether process of 'unloading' ended when bagged cargo discharged from hold but spillage remained to be cleared—Docks Regulations 1934 (SR & O 1934 No 279), reg 11(1). **Mace v R & H Green & Silley Weir Ltd** [1959] 1 655, QBD.

Statutory duty to provide safe means of access to ship—Where reasonably practicable a gangway or in other cases a ladder—Extent of duty—Docks Regulations 1934 (SR & O 1934 No 279), reg 9. **Dawson v Euxine Shipping Co Ltd** [1953] 1 299, QBD.

Statutory duty to provide safe means of access to ship—Where reasonably practicable a gangway or in other cases a ladder—Ladder provided instead of gangway—Onus of proof whether gangway available—Docks Regulations 1934 (SR & O 1934 No 279), reg 9, reg 50. **Walter Wilson & Son Ltd v Summerfield** [1956] 3 550, QBD.

Rates—

Generally. *See Rates* (Valuation—Dock and harbour undertaking).

Mooring charges—

Statutory lien—Payment out of proceeds of sale of ship free from authority's rights. *See Admiralty* (Appraisalment and sale—Payment out of proceeds of sale—Priorities—Harbour authority's claims for rates incurred by ship).

Repair of ship in dry dock—

Lighting—

Statutory duty to ensure efficiency and adequacy of lighting—Duty of occupier—'Occupier'—Vessel undergoing repair—Interruption of lighting—Injury to workman—Liability of employers and shipowner—Factories Act 1937, ss 60, 159(1)—Shipbuilding Regulations 1931 (SR & O 1931 No 133), reg 42(a), (b). **Wilkinson v Rea Ltd** [1941] 2 50, CA.

DOCK (cont)

Repair of ship in dry dock (cont)—

Protection of openings in decks and tank tops—

Statutory duty of occupier—Occupier—Vessel undergoing repairs—Employee of repairers injured—Liability of dockowners and shipowners—Notional occupier—Several repairers engaged on work on ship at same time—Shipbuilding Regulations 1931 (SR & O 1931 No 133), reg 10. *Donovan v Cammell Laird & Co* [1949] 2 82, KBD.

Statutory duty of occupier—Occupier—Vessel undergoing repairs—Employee of shipowners injured—Several repairers engaged on work on ship at same time—Liability of shipowners—Notional occupier—Civil right of action where injury to person employed—Shipbuilding Regulations 1931 (SR & O 1931 no 133), preamble, reg 10—Factories Act 1937, s 60, as amended by Factories Act 1948, s 12(1), sched I. *Canadian Pacific Steamships Ltd v Bryers* [1957] 3 572, HL.

Repair—

Painting with anti-fouling paint—Whether work of repair within Shipbuilding Regulations 1931 (SR & O 1931 No 133), preamble, reg 11(b)(i). *Day v Harland & Wolff Ltd* [1953] 2 387, QBD.

Statutory duty to ensure staging securely constructed and maintained—

Duty of occupier—Occupier—Defective staging—Accident to workman employed by sub-contractors engaged for the electric arc welding—Contractors in occupation of ship—Staging provided by contractors—Sub-contractors not liable—Breach of statutory duty by contractors—Shipbuilding Regulations 1931 (SR & O 1931 No 133), reg 11(b). *Hodgson v British Arc Welding Co Ltd and B and N Green and Silley Weir Ltd* [1946] 1 95, KBD.

Statutory duty to provide safe means of access to work place—

Duty of occupier—Occupier—Sub-contractors' employee injured—Notional occupier—Contractors' duty to provide safe means of access—Shipbuilding Regulations 1931 (SR & O 1931 No 133), reg 1. *Hurley v J Sanders & Co Ltd* [1955] 1 833, Assizes.

Duty of occupier—Occupier—Vessel undergoing repair—Firm of ship-repairers renting dock for purposes of repairing ship—Injury to employee of repairers—Liability—Factories Act 1937, ss 25(1), 26(1), 130(1), 133, 151(1)(f)—Shipbuilding Regulations 1931 (SR & O 1931 No 133), reg 1. *Rippon v Port of London Authority and J Russell & Co (Port of London Authority, Third Party)* [1940] 1 637, KBD.

Means of access—Workman injured while crossing deck of ship carrying boiling pitch to caulk deck—Whether means of access to work includes passage across the ship being repaired—Factories Act 1937, s 26(1). *Gardiner v Admiralty Comrs* [1964] 2 93, HL.

Shipbuilding yard—

Wet dock—

Boiler repairs—Safety of staging—Application of shipbuilding regulations to wet docks—Factories Act 1937, ss 60, 106, 159—Shipbuilding Regulations 1931 (SR & O 1931 No 133). *Lovell v Blundells and T Albert Crompton & Co Ltd* [1944] 2 53, KBD.

Construction of a ship—Statutory duty of occupier—Duty to make staging safe—Nature of duty—Person on whom duty rests—Defective staging—Injury to employee of contractor—Occupation of part of a vessel—Liability of owners of yard—Factory and Workshop Act 1901, ss 79, 82, 104, 140, 141, 142, 149, 151—Shipbuilding Regulations 1931 (SR & O 1931 No 133), regs 11, 13. *Smith v Cammell Laird & Co Ltd* [1938] 3 52, CA.

Lighting—Contractors wiring decks of ship—Injury to workman—Insufficient lighting—Liability of contractors—Factory and Workshop Act 1901, s 79—Factories Act 1937, ss 60, 106, 159—Shipbuilding Regulations 1931 (SR & O 1931 No 133). *Garcia v Harland & Wolff Ltd* [1943] 2 477, KBD.

Ship-repairs and alterations—

Licence—

Need to be in writing—Retrospective effect—Oral permission given by Admiralty licensing officer—Defence (General) Regulations 1939, reg 55(1)—Restriction of Repairs of Ships Order 1940 (SR & O 1940 No 142), art 1. *Howell v Falmouth Boat Construction Ltd* [1951] 2 278, [1956] 1 447, HL.

Workers—

Employment—

Licence to employ registered dock workers. *See* Licence (Dock workers).

Suspension—

Injunction. *See* Injunction (Illegal act of statutory body—Injunction to restrain—Suspension of dock workers).

Working place and approach—

Statutory duty to maintain with due regard to safety of persons employed—

Extent of duty—Injury to workman through article placed on floor of working place—Liability of dock board—Docks Regulations 1934 (SR & O 1934 No 279), reg 1. *Woods v W H Rhodes & Son Ltd* [1953] 2 658, CA.

DOCK BRIEF

Counsel—

Duty. *See* Counsel (Duty—Dock brief).

DOCTOR

Abortion—

Defence. *See* Criminal law (Abortion—Defence—Medical practitioners).

Evidence in criminal proceedings. *See* Criminal evidence (Medical evidence—Weight—Position of doctor giving medical evidence at criminal trial).

Generally. *See* Medical practitioner.

Gift—

Undue influence. *See* Equity (Undue influence—Presumption of undue influence—Doctor and patient).

DOCUMENT

Admissibility in evidence—

Admission of documentary statement without calling maker—

Person beyond the seas—Not reasonably practicable to secure attendance—Attendance at trial—Discretion of judge sitting without jury to admit evidence—Evidence Act 1938, s 1(1), proviso. **Ozzard-Low v Ozzard-Low and Wonham** [1953] 2 550, Div.

Person beyond the seas—Not reasonably practicable to secure attendance—Available for cross-examination under letters of request—Document prepared expressly for being tendered in evidence—Person in court able to give same evidence not tendered as witness—Whether document admissible—Evidence Act 1938, s 1. **Infields Ltd v Rosen** [1939] 1 121, ChD.

Undue delay and expense—Hospital records—Whether undue delay or expense would be caused by calling the makers—Evidence Act 1938, s 1(2). **Reed v Columbia Fur Dressers and Dyers Ltd** [1964] 3 945, QBD.

Undue delay or expense—Letters written by serving officer stationed at a distance—Evidence Act 1938, s 1(1), (2). **Baggs v London Graving Dock Co Ltd** [1943] 1 426, CA.

Affidavit—

Affidavit sworn before district judge but not received in proceedings—Whether 'evidence given on oath' within Fugitive offenders Act 1967. See **Extradition** (Fugitive offender—Evidence given on oath —Affidavit).

Copy of original document—

Extracts—Letter received by wife from her mother—Found by husband in wife's overall—Original letter not put to wife in evidence—Words extracted from letter and put to wife admissible in evidence in proceedings by her for desertion, as evidence of her state of mind—Original letter would have been admissible evidence under Evidence Act 1938, s 1. **Saunders v Saunders** [1965] 1 838, Div.

Need to show undue delay or expense caused by production of original—Copy of statement made to police after road accident—Original statement lost—'Person interested'—Author of statement party to action for negligence—Evidence Act 1938, s 1(2), (3). **Bowskill v Dawson** [1953] 2 1393, QBD.

Declaration in the course of duty—

Determination of question relating to public or general rights—Determination of fact in dispute within duty of compilers of document—Tithe documents—Title to land claimed by municipal corporation as trustees for inhabitants of borough—Ascertainment of proprietorship within duty of commissioners who prepared tithe documents. **Knight (decd) v David (decd)** [1971] 3 1066, ChD.

Public document—Draft of apportionment of rentcharge by valuer under Tithe Act 1836, s 33, s 55. **White v Taylor** [1967] 3 349, ChD.

Document made or produced by witness with his own hand—

Statement dictated to and transcribed by typist—Document checked and amended by witness—Whether made 'with his own hand'—Evidence Act 1938, s 1(4). **Re Powe (decd)** [1955] 3 448, Prob.

Evidence of deceased witness—

Statement made to police officer and signed by deceased—Deposition of evidence given on oath in police court but not signed by deceased—Evidence Act 1938, s 1. **Bullock v Borrett** [1939] 1 505, KBD.

Exclusion of statements made by person interested when proceedings pending or anticipated—

Person interested—Action for negligence against shipowners, 'their servants or agents'—Statements of officers of ship—Evidence Act 1938, s 1(3). **Bain v Moss Hutchison Line Ltd** [1948] 2 294, KBD.

Person interested—Action for right of way—Letter written by vendor of property when action anticipated—Vendor's subsequent death—Possible liability, if plaintiff succeeded, of deceased's estate under covenants for title—Immaterial whether deceased would have supported plaintiff or defendants—Deceased was a 'person interested' within Evidence Act 1938, s 1(3). **Tapner v Strange** [1964] 3 747, ChD.

Person interested—Domestic servant—In charge of employer's child—Injury to child—Action for negligence against person alleged to have caused injury—Evidence Act 1938, s 1(1), (3). **Evon v Noble** [1948] 2 987, KBD.

Person interested—Employee's action for damages for personal injuries against employers—Statement made by employer's supervisor in department where accident occurred sought to be put in evidence by employers—Supervisor present when accident occurred—Efficient administration of department called into question in action—Whether supervisor's statement admissible in evidence after his death—Evidence Act 1938, s 1(3). **Kelleher v T Wall & Sons Ltd** [1958] 2 686, QBD.

Person interested—Fellow servant—Action against employer for damages for personal injury—Written statement by co-employee—Maker of statement present at accident—Not blamed by plaintiff at that time but blamed by him at time of trial—Evidence Act 1938, s 1(3). **Constantinou v Frederick Hotels Ltd** [1965] 3 847, CA.

Person interested—Petition for divorce on ground of wife's desertion—Wife alleging as just cause that husband guilty of misconduct with another woman—Whether other woman a 'person interested'—Evidence Act 1938, s 1(3). **Galler v Galler** [1955] 1 792, Div.

Person interested—Proof of deceased solicitor's clerk—Probate action anticipated—Partner of firm propounding will—Whether clerk 'person interested'—Evidence Act 1938, s 1(3). In **the Estate of Hill (decd)** [1948] 2 489, Prob.

Person interested—Statement made by witness while in defendant's employment but signed subsequently—Evidence Act 1938, s 1. **Cartwright v W Richardson & Co Ltd** [1955] 1 742, QBD.

Person interested—Watchman overpowered by shop-breakers—Statements to police and to employers' insurers' investigators—Action by employers and insurers against police authority for damages in respect of shop-breaking as 'riot'—Evidence Act 1938, s 1(3). **Bearmans Ltd v Metropolitan Police District Receiver** [1961] 1 384, CA.

DOCUMENT (cont)

Admissibility in evidence (cont)—

Exclusion of statements made by person interested when proceedings pending or anticipated (cont)—

Person interested—Written statement by deceased person—Statement by deceased mother of divorce petitioner—Whether 'person interested'—Evidence Act 1938, s 1(3). **Holton v Holton** [1946] 2 534, Div.

Person interested—Written statement by deceased person—Statement made while proceedings pending—Statement by plaintiffs' employee—Whether 'person interested'—Evidence Act 1938, s 1. **Plomien Fuel Economiser Co Ltd v National Marketing Co** [1941] 1 311, ChD.

Proceedings anticipated—Motor car accident—Previous conviction—Written statement by deceased driver made soon after accident—Whether 'proceedings anticipated'—Evidence Act 1938, s 1(3), (5). **Hollington v F Hewthorn & Co Ltd** [1943] 2 35, CA.

Proceedings anticipated—Statement by injured man in respect of accident occurring in course of employment—Statement made to approved society, on form supplied by society, for purpose of claiming disablement benefit under Workmen's Compensation Act 1925—Subsequent proceedings against third party for damages for negligence—Evidence Act 1938, s 1(3). **Jarman v Lambert and Cooke (Contractors) Ltd** [1951] 2 255, CA.

Proceedings anticipated—Written statement made at police station immediately after accident—Whether 'proceedings anticipated'—Evidence Act 1938, s 1(3). **Robinson v Stern** [1939] 2 683, CA.

Exclusion of statements made by person interested at time proceedings pending or anticipated—

Statement under caution taken by police after road accident—'Person interested'—'Proceedings', whether civil and criminal or civil only—Whether proceedings anticipated—Evidence Act 1938, s 1(3). **W & M Wood (Haulage) Ltd v Redpath** [1966] 3 556, QBD.

Extradition proceedings—

Affidavit. *See* **Extradition** (Fugitive offender—Evidence given on oath—Affidavit).

Extrinsic evidence—

Tenancy agreement—Person called 'tenant' mere nominee of actual tenant. **Danziger v Thompson** [1944] 2 151, KBD.

Notice of intention to give documents in evidence—

Evidence by affidavit—Notice not required—Exhibits to affidavit—Whether exhibits deemed to be included in affidavit—Whether notice of intention to give exhibits in evidence necessary—RSC Ord 38, r 21(4). **Re Koscot Interplanetary (U K) Ltd** [1972] 3 829, ChD.

Official transcript of evidence in other legal proceedings. *See* **Evidence** (Statements made on other occasions—Statement made in course of giving evidence in other legal proceedings—Discretion of court—Exercise of discretion—Official of transcript of or

Out of court statement—

Notice of intention to give in evidence—Discretion of court to admit even though notice not given—Notice not given deliberately for tactical reasons—Reason for absence of notice not disclosed to trial judge—Decision of trial judge to admit documents—Validity—Civil Evidence Act 1968, ss 2(1), 4(1), 8(3)(a)—RSC Ord 38, rr 21(1), 22, 23, 29. **Ford (an infant) (by her next friend Vernon Clark) v Lewis (by his guardian ad litem Leslie Charles Windsor)** [1971] 2 983, CA.

Notice of intention to give in evidence—Discretion of court to admit statement even though notice not given—Factors relevant to exercise of discretion—Injustice to other party—Contemporaneity of statement with events forming subject-matter of proceedings—Desirability of adducing statement not appreciated until hearing of action—RSC Ord 38, r 29(1). **Morris v Stratford-upon-Avon Rural District Council** [1973] 3 263, CA.

Notice of intention to give in evidence—Reasons for not calling a person as a witness—Maker of statement beyond the seas—Burden of proof—Balance of probabilities—No effort made to trace actual address overseas—Whether necessary to prove in addition that maker of statement cannot by reasonable diligence be found—Whether court having discretion to exclude statement—Civil Evidence Act 1968, s 8(2)(b)—RSC Ord 38, rr 21(1), 25. **Rasool v West Midlands Passenger Transport Executive** [1974] 3 638, QBD.

Public document—

Hearsay. *See* **Evidence** (Hearsay—Public documents).

Record as evidence of facts stated therein—

Document purporting to be a continuous record—Continuous record—Public document—Report of inquiry by surveyor of land registry as to rights of irrigation—Filing with documents of similar nature—Inquiry not held with object that report be made public—Report not at all times open to public inspection—Whether 'continuous record'—Whether 'public' document—Evidence Act 1938, s 1(1)(i) (b). **Thrasvoulos Ioannou v Papa Christoforos Demetriou** [1952] 1 179, PC.

Maker of statement made it in performance of duty to record information supplied to him—'Information supplied' to person making statement—Notes of evidence taken by clerk at hearing of matrimonial complaint before magistrates' court—Whether 'information supplied' to clerk—Evidence Act 1938, s 1(1)(i)(b). **Brinkley v Brinkley** [1963] 1 493, Div.

Maker of statement made it in performance of duty to record information supplied to him—'Information supplied' to person making statement—Transcript of evidence given in earlier action brought on same facts, but by different plaintiff—Death of witness before trial in present proceedings—Evidence Act 1938, s 1(1)(i) (b), (3), (4). **Barkway v South Wales Transport Co Ltd** [1948] 2 460, CA.

DOCUMENT (cont)

Admissibility in evidence (cont)—

Record as evidence of facts stated therein (cont)—

Maker of statement made it in performance of duty to record information supplied to him—'Maker of the statement'—Oral information given to police officer by independent eye-witness of road accident—Police officer recording the information in performance of duty—Informant not available to give evidence—Whether statement in officer's notebook admissible in evidence—Evidence Act 1938, s 1(1)(i)(b). *Simpson v Lever* [1962] 3 870, QBD.

Motor car registration book—Whether public document. *R v Sealby* [1965] 1 701, Liverpool Crown Court.

Onus of establishing that statutory requirements have been fulfilled—Letter—Evidence that writer had first-hand knowledge of matters stated in letter—Record—Meaning of 'record'—Evidence that document formed 'part of a record compiled by person under a duty'—Civil Evidence Act 1968, ss 2(1), 4(1). *Re Koscot Interplanetary (U K) Ltd* [1972] 3 829, ChD.

Regimental record—Bastardy proceedings by married woman—Evidence of non-access by husband—Evidence Act 1938, s 1. *Andrews v Cordiner* [1947] 1 777, KBD.

Regimental record—Whether public document. *Pettit v Lilley* [1946] 1 593, KBD.

Tithe document—Evidence of title to land—Document compiled by commissioners in pursuance of statutory duty from information supplied to them—Direct oral evidence that machinery of Act carried out and that certain persons were registered as proprietors of land admissible—Presumption that information supplied by persons having personal knowledge of matters dealt with—Civil Evidence Act 1968, s 4. *Knight (decd) v David (decd)* [1971] 3 1066, ChD.

Transcript of criminal proceedings—Proceedings generally—Whether admissible in subsequent civil proceedings—Civil Evidence Act 1968, ss 2(1), 4(1). *Taylor v Taylor (Taylor intervening, Holmes cited)* [1970] 2 609, CA.

Transcript of criminal proceedings—Summing-up—Whether admissible in subsequent civil proceedings—Civil Evidence Act 1968, s 4(1). *Taylor v Taylor (Taylor intervening, Holmes cited)* [1970] 2 609, CA.

Secondary evidence of contents of document—

Lost document—Note of memorandum of agreement—Lease—Admission of counterpart on proof of loss of lease—Law of Property Act 1925, s 40. *Barber v Rowe* [1948] 2 1050, CA.

Tithe document—

Dispute concerning title to land—Whether document 'satisfactory evidence of matters therein recited' for purpose of establishing ownership—Tithe Act 1836, s 64. *Knight (decd) v David (decd)* [1971] 3 1066, ChD.

Without prejudice correspondence. *See Evidence* (Without prejudice correspondence).

Written statement made by witness—

Previous written statement of witness at variance with his evidence—Statement adduced in examination-in-chief as evidence of the facts—Evidence Act 1938, s 1(1). *Harvey v Smith-Wood* [1963] 2 127, QBD.

Previous written statement of witness on fact in issue—Statement adduced at outset of examination-in-chief—Whether statement admissible as of right where statutory conditions fulfilled—Evidence Act 1938, s 1(1), (2). *Hilton v Lancashire Dynamo Nevelin Ltd* [1964] 2 769, QBD.

Alteration—

Material alteration by one party—

Alteration after execution—Alteration made by party's solicitor without party's knowledge or consent—Document in custody of party—Validity of document. *Spector v Ageda* [1971] 3 417, ChD.

Bankruptcy—

Costs—

Calculation of length of document. *See Bankruptcy* (Costs—Taxation—Documents—Calculation of length).

Chancery Division—

Practice. *See Practice* (Chancery Division—Documents).

Civil proceedings—

Practice—

Chancery Division. *See Practice* (Chancery Division—Documents).

Construction—

Arbitration—

Conclusiveness of arbitrator's finding. *See Arbitration* (Special case—Conclusiveness of arbitrator's findings).

Duty of court—

Concession by party—Concession as to meaning of document—Court not bound by concession—Construction a question of law—Duty of court to construe document. *Bahamas International Trust Co Ltd v Threadgold* [1974] 3 881, HL.

False trade description or statement. *See Trade description* (Document—Interpretation).

Issue estoppel. *See Estoppel* (Res judicata—Construction of document).

Public document—

Admission of extrinsic evidence to alter or qualify meaning—Planning permission. *Slough Estates Ltd v Slough Borough Council (No 2)* [1969] 2 988, HL.

Repugnancy between manifest intention and literal meaning—

Document under seal of Minister of Crown purporting to be made under repealed enactment—Enactment re-enacted in different terms—Effect given to intention. *Finbow v Air Ministry* [1963] 2 647, QBD.

Words descriptive of family relationship—

Group life assurance scheme—Descendant—Words descriptive of family relationship, where used as terms of art in legal documents, construed as being confined to legitimate relations. *Sydall v Castings Ltd* [1966] 3 770, CA.

DOCUMENT (cont)

- Construction (cont)—
 - Written agreement. *See* **Contract** (Construction).
- Copy—
 - Admissibility. *See* Admissibility in evidence—Copy of original document, *ante*.
- Copying—
 - Costs—
 - Taxation. *See* **Costs** (Taxation—Documents).
- Costs—
 - Taxation. *See* **Costs** (Taxation—Documents).
- Court—
 - Detention by. *See* **Practice** (Document—Detention by court).
- Delivery of. *See* **Deed** (Escrow).
- Destruction—
 - Routine destruction of business documents—
 - Obligation to preserve documents relevant to discovery in current litigation—Duty of solicitor to ensure clients appreciate obligation. *See* **Discovery** (Duty of solicitor—Ensuring that clients appreciate their duty in regard to disclosure on discovery—Wide scope of discovery—Preservation of relevant documents that might otherwise be subject to destruction in accordance with business routine).
- Detention by court. *See* **Practice** (Document—Detention by court).
- Discovery of documents. *See* **Discovery**.
- Divorce—
 - Practice. *See* **Divorce** (Practice—Documents).
- Drawing—
 - System of charging. *See* **Costs** (Taxation—Documents—System of charging).
- False document—
 - Forgery. *See* **Criminal law** (Forgery—False document).
- Hearsay evidence—
 - Criminal proceedings. *See* **Criminal evidence** (Hearsay—Document).
- House of Lords—
 - Procedure in respect of documents. *See* **House of Lords** (Procedure—Documents).
- Inspection—
 - Company documents. *See* **Company** (Documents—Inspection).
- Ex parte application—
 - Court of Appeal—Jurisdiction. *See* **Court of Appeal** (Jurisdiction—Ex parte application—No proceedings—Application to inspect document filed in central office).
- Inspection by court—
 - Document for which privilege claimed. *See* **Discovery** (Privilege—Inspection of documents by court).
 - Local authority. *See* **Local government** (Documents—Inspection).
- Judgments, orders and other documents for use abroad. *See* **Practice** (Document—Documents for use abroad—Certification—Judgments, orders and other filed documents for use in foreign or Commonwealth courts).
- Length—
 - System of charging. *See* **Costs** (Taxation—Documents—System of charging).
- Letter of credit—
 - Generally. *See* **Bank** (Documentary credit).
- Lien on—
 - Solicitor. *See* **Solicitor** (Lien—Mortgage).
- Local authority. *See* **Local government** (Document).
- Non est factum—
 - Reasonable care—
 - Form signed in blank—Form completed by third party—Contract form—Duty of signatory to other contracting party to take reasonable care—Duty to take care that completed form represents his true contractual intention—Loan agreement—Form signed by borrower in blank—Agreement between finance company and borrower for provision of money by way of loan for purchase of car—Borrower leaving dealer to fill in price of car and deposit paid—Dealer filling in false figures—Whether borrower bound by agreement—Whether plea of non est factum available to borrower. **United Dominions Trust Ltd v Western** [1975] 3 1017, CA.
- Paper sizes—
 - International Standards Organisation—
 - Taxation of costs. *See* **Costs** (Taxation—Documents—System of charging—Page basis method—International Standards Organisation paper sizes).
- Photographic copies—
 - Chancery Division. *See* **Practice** (Chancery Division—Documents—Photographic copies).
- Preparation—
 - Unqualified person. *See* **Solicitor** (Unqualified person—Preparation of documents etc).
- Privilege—
 - Discovery. *See* **Discovery** (Privilege).
 - Production of documents—
 - Legal professional privilege—Criminal proceedings. *See* **Privilege** (Legal professional privilege).
- Probate—
 - Evidence. *See* **Probate** (Document—Admission to probate).
- Production—
 - County court. *See* **County court** (Production of documents).
 - Criminal appeal. *See* **Criminal law** (Court of Appeal—Production of documents).
 - Generally. *See* **Discovery** (Production of documents).
 - Production before foreign tribunal—
 - English company documents. *See* **Company** (Documents—Production of documents—Production before foreign tribunal).

DOCUMENT (cont)

Production (cont)—

Solicitor. *See* **Solicitor** (Litigation—Production of documents).

Transfer of licence to sell intoxicating liquor—

Jurisdiction of justices to order production. *See* **Licensing** (Licence—Transfer—Production of documents).

Public document—

Hearsay evidence—

Admissibility. *See* **Evidence** (Hearsay—Public documents).

Rectification—

Mistake. *See* **Mistake** (Rectification).

Secondary evidence as to contents—

Criminal proceedings. *See* **Criminal evidence** (Document—Secondary evidence as to contents).Service. *See* **Practice** (Service).

Signature without reading—

Mistake as to nature of document. *See* **Mistake** (Nature of document—Non est factum).

Tape recording—

Whether a 'document' for purposes of discovery. *See* **Discovery** (Production of documents—Document—Meaning—Tape recording).**DOG**Generally. *See* **Animal** (Dog).

Racecourse—

Totalisators. *See* **Gaming** (Totalisators on dog racecourses).**DOMESTIC TRIBUNAL**Exceeding jurisdiction. *See* **Tribunal** (Domestic tribunal exceeding jurisdiction).

Jurisdiction—

Review of decision. *See* **Tribunal** (Review of decision—Domestic tribunal—Jurisdiction of court).Natural justice. *See* **Natural justice** (Domestic tribunal).**DOMESTIC WATER SUPPLY**Duty of statutory water undertakers. *See* **Water supply**.**DOMICILE**

Abandonment of domicile of choice—

Intention—

Standard of proof—Whether absence of intention to return sufficed or positive intention not to return had to be established. *Re Flynn (decd)* [1968] 1 49, ChD.

Acquisition of domicile of choice—

Residence—

Alien—Liable to be deported during period of residence—Alien given permission to land on condition he would emigrate on completion of training—Internment on outbreak of war—Four years' residence—Evidence of animus manendi. *May v May and Lehmann* [1943] 2 146, Div.

Administration of deceased's estate—

Deceased domiciled abroad—

Intestacy. *See* **Intestacy** (Grant of administration—Grant when deceased domiciled abroad).Distribution. *See* **Administration of estates** (Distribution—Domicile).

Adoption—

Applicants domicile. *See* **Adoption** (Order—Jurisdiction—Applicant's domicile outside Great Britain).

Change of domicile—

Matrimonial domicile—

Proprietary rights of husband and wife inter se—Husband's domicile English at time of marriage—Intention of spouses before marriage to settle in France as soon as possible after marriage—Intention not carried into effect until some two years later—Death of husband—Whether estate to be administered on footing that community of property according to French law applicable. *Re Egerton's Will Trusts* [1956] 2 817, ChD.Divorce. *See* **Divorce** (Domicile).

English domicile of origin—

Residence in Scotland—

Intention to continue Scottish residence—Declaration in will—'I have not relinquished and do not intend to relinquish my English domicile'. *Re Liddell-Granger's Will Trust* [1936] 3 173, ChD.

Family provision—

Domicile of deceased. *See* **Family provision** (Domicile of deceased).

Grant of administration—

Domicile of deceased. *See* **Administration of estates** (Grant of administration—Practice—Domicile of deceased).

Husband and wife—

Widow—

Retention of domicile of husband. *Re Wallach (decd)* [1950] 1 199, Prob.Separation of spouses—Intention of wife to acquire domicile of choice—Intention expressed during existence of marriage—Husband pre-deceasing wife by six weeks—No further expression of intention by wife after husband's death—Whether widow's domicile changed after husband's death. *Re Scullard's Estate* [1956] 3 898, ChD.

Wife's domicile—

One domicile only for one person at one time—No de facto as well as de jure domicile—Wife unable to acquire domicile independent of her husband. *Garthwaite v Garthwaite* [1964] 2 233, CA.

DOMICILE (cont)

Income tax. *See* **Income Tax** (Domicile).

Nullity suit. *See* **Nullity** (Domicile).

Probate—

Grant—

Domicile of deceased. *See* **Probate** (Grant—Domicile of deceased).

Testator. *See* **Will** (Testator—Domicile).

Will—

Will of person domiciled abroad—

Probate. *See* **Probate** (Will of person domiciled abroad).

DOMINION AND PROVINCIAL LEGISLATION

Canada. *See* **Canada** (Dominion and provincial legislation).

DONATIO MORTIS CAUSA

See **Gift** (Donatio mortis causa).

DONEES

Will—

Specific donees. *See* **Will** (Gift—Specific donees).

DOUBLE PORTIONS

Ademption. *See* **Administration of estates** (Ademption—Double portions).

Will. *See* **Will** (Double portions).

DOUBLE TAXATION

Income tax relief. *See* **Income tax** (Double taxation relief).

Relief—

Estate duty. *See* **Estate duty** (Allowance—Double taxation).

Income tax. *See* **Income tax** (Double taxation relief).

DOWRY

Foreign law—

Recognition. *See* **Conflict of laws** (Foreign law—Recognition—Right to dowry).

DRAFTING

Variation of settlement—

Covenant to pay annual sum—

Error in drafting. *See* **Variation of settlement** (Covenant to pay annual sum—Liability to pay annual sum no longer binding owing to error in drafting).

DRAINAGE

Easement. *See* **Easement** (Drainage).

Land drainage. *See* **Land drainage**.

New buildings. *See* **Public health** (Drainage).

Rates—

Land drainage. *See* **Land drainage** (Drainage rates).

Rights of drainage—

Sea wall. *See* **Land drainage** (Sea wall—Right to drain from seaward to landward side of wall).

DRAINAGE BOARD

See **Land drainage** (Drainage board).

DRAINS

Highway—

Maintenance. *See* **Highway** (Drains—Maintenance).

DRAWING

Copyright—

Infringement. *See* **Copyright** (Infringement—Artistic work—Drawing).

DRINK

Driving while unfit. *See* **Road traffic** (Driving while unfit to drive through drink or drugs).

Manslaughter—

Intoxication. *See* **Criminal law** (Manslaughter—Mens rea—Causing death by unlawful act—Intoxication).

Unfitness to drive—

Driving while unfit. *See* **Road traffic** (Driving while unfit to drive through drink or drugs).

In charge of vehicle. *See* **Road traffic** (Being in charge of vehicle when unfit to drive through drink or drugs).

DRINKING-UP TIME

Intoxicating liquor—

Permitted hours. *See* **Licensing** (Permitted hours—Prohibition of sale on consumption of intoxicating liquor outside permitted hours—Drinking-up time).

DRIVER

Disqualification. *See* **Road traffic** (Disqualification for holding licence).

Duty to comply with traffic directions. *See* **Road traffic** (Directions).

Goods vehicle—

Records. *See* **Road traffic** (Goods vehicle—Driver's records).

Motor insurance. *See* **Motor insurance**.

Unlicensed—

Driving vehicle—

Motor insurance policy. *See* **Motor insurance** (Using vehicle or causing or permitting vehicle to be used on road without policy being in force—Vehicle driven by unlicensed driver).

DRIVING

Motor vehicle. *See* **Road traffic** (Driving).

DRIVING CERTIFICATE

False signature. *See* **Criminal law** (Forgery—Making false document—Signature on driving certificate).

DRIVING EXAMINER

Negligence—

Duty of care. *See* **Negligence** (Duty to take care—Driving examiner).

DRIVING LICENCE

Disqualification for holding. *See* **Road traffic** (Disqualification for holding licence).

Generally. *See* **Road traffic** (Driving licence).

DRIVING SCHOOL

Insurance—

Motor insurance—

Implied duty to insure against third party risks. *See* **Motor insurance** (Driving school—Implied duty to insure against third party risks).

DRIVING TEST

Conduct of test. *See* **Road traffic** (Driving licence—Test conducted in accordance with regulations).

Disqualified driver. *See* **Road traffic** (Disqualification for holding licence—Test of competence to drive).

DRUGS

Abortion—

Procuring drugs with intent to effect abortion. *See* **Criminal law** (Abortion—Procuring drugs or instrument with intent to effect abortion).

Administration of drug to facilitate sexual intercourse. *See* **Criminal law** (Sexual intercourse—Administration of drug to obtain or facilitate intercourse).

Dangerous drugs—

Assisting in or inducing commission of offences outside United Kingdom—

Assisting—Meaning—Direct or indirect assistance—Assisting in importation of drugs into foreign country—Acts of accused not directly concerned with actual importation—Accused's acts leading indirectly to importation—Whether accused guilty of 'assisting' in importation—Misuse of Drugs Act 1971, s 20. **R v Vickers** [1975] 2 945, CA.

Cannabis—

Being concerned in the management of premises used for smoking of cannabis or dealing in cannabis—Information charging managing premises for purposes of smoking and dealing in cannabis—Whether bad for duplicity—Dangerous Drugs Act 1965, s 5(b). **Fox v Dingley** [1967] 1 100, QBD.

Being concerned in the management of premises used for smoking or dealing in cannabis—Whether absolute offence or whether mens rea necessary—Dangerous Drugs Act 1964 s 9(1)(b). **Yeandel v Fisher** [1965] 3 158, QBD.

Importation—Restriction—Fraudulent evasion. *See* **Customs and excise** (Importation of prohibited goods—Knowingly concerned in fraudulent evasion of prohibition or restriction—Importation of drugs—Cannabis).

Occupier permitting premises to be used for smoking of cannabis—Permitting—Occupier allowing room in house to be used freely by registered drug addicts—Notice on door stating that police would be called if any indication that there were illegal drugs on premises—Evidence that occupier had turned away people in illegal possession of drugs—Occupier denying knowledge of cannabis found on premises—Whether reasonable ground for suspicion sufficient to support charge of permitting premises to be used for smoking cannabis—Whether occupier having taken adequate steps to prevent illegal smoking—Dangerous Drugs Act 1965, 5(a). **R v Souter** [1971] 2 1151, CA.

Occupier permitting premises to be used for smoking of cannabis or dealing in cannabis—Information charging managing premises for purpose of smoking cannabis or for purpose of dealing in cannabis—Whether bad for duplicity—Dangerous Drugs Act 1965, s 5(a), (b). **Ware v Fox** [1967] 1 100, QBD.

Custody of authorised person—

Drugs to be kept in locked receptacle which can only be opened by him—Locked receptacle—Drugs left in unlocked case in locked motor car—Dangerous Drugs Regulations 1937 (S R & O 1937 No 560), reg 5(2). **Dhulipala Kameswara Rao v Wyles** [1949] 2 685, KBD.

Heroin—

Administration of heroin—Criminal offence. *See* **Criminal law** (Administering poison or other destructive or noxious thing—Noxious thing—Substance likely to cause danger in common use—Heroin).

Illegal possession—Sentence—Dangerous Drugs (No 2) Regulations 1964 (SI 1964 No 1811), reg 9(1)—Dangerous Drugs Act 1965, s 13(a). **R v Fraser** [1967] 3 544, CA.

Prohibition on supply of—Accused injecting another with heroin unlawfully in latter's possession—Whether administering injection was supplying the drug. *See* **Dangerous drugs**—Prohibition on supplying dangerous drugs—Supply—Accused injected another accused with heroin unlawfully in the latter's possession, *post*.

Occupier of premises permitting activities in connection with drugs to take place there—

Occupier—Licence entitling licensee to possession—Exclusivity of possession—Room in college hostel—Furnished room provided as lodging for university undergraduate—Undergraduate paying for use of room—Whether undergraduate the 'occupier' of room—Misuse of Drugs Act 1971, s 8. **R v Tao** [1976] 3 65, CA.

DRUGS (cont)

Dangerous drugs (cont)—

Possession—

Custody or control—Servant having custody or control of goods belonging to master—Evidence from which it could be inferred that servant knew goods were dangerous drug—Whether servant in 'possession' of dangerous drug—Dangerous Drugs Law (Jamaica), s 7(c). **Director of Public Prosecutions v Brooks** [1974] 2 840, PC.

Unauthorised possession. *See* Dangerous drugs—Unauthorised possession, *post*.

Premises used for smoking or dealing in cannabis—

Absolute offence. *See* Criminal law (Absolute liability—Statutory offence—Premises used for smoking or dealing in cannabis).

Prohibition on supplying dangerous drugs—

Supply—Accused injected another accused with heroin unlawfully in the latter's possession—Whether administering injection was supplying the drug—Dangerous Drugs (No 2) Regulations 1964 (SI 1964 No 1811), reg 8—Dangerous Drugs Act 1965, s 13(a). **R v Harris** [1968] 2 49, CA.

Supply—

Offer to supply controlled drug—Mens rea—Belief of defendant and person to whom offer made that substance a controlled drug—Belief erroneous—Offer by defendant to third party to supply him with lysergide—Third party purchasing substance believing to be lysergide—Substance not lysergide or any other controlled drug—Whether defendant guilty of offering to supply a controlled drug—Misuse of Drugs Act 1971, s 4(1)(3)(a). **Haggard v Mason** [1976] 1 337, QBD.

Unauthorised possession—

Burden of proof of exception from offence—Burden on accused to show that he came within exception when once his possession of the drug was shown—Drugs (Prevention of Misuse) Act 1964, s 1(1)(a). **R v Ewens** [1966] 2 470, CCA.

Drugs lawfully obtained by patient under doctor's prescription—Patient mistakenly believing drugs destroyed—Patient obtaining fresh supply from doctor—Patient subsequently discovering original supply—Whether possession of original supply after discovery unlawful—Drugs (Prevention of Misuse) Act 1964, s 1(1). **R v Buswell** [1972] 1 75, CA.

Mens rea—Alleged lack of knowledge of contents of parcel containing prohibited drugs—Mental element in statutory offence—Whether absolute offence—Drugs (Prevention of Misuse) Act 1964, s 1(1). **Warner v Metropolitan Police Comr** [1968] 2 356, HL.

Mens rea—Lack of knowledge of foreign matter on penknife blade—Foreign matter containing cannabis. **R v Marriott** [1971] 1 595, CA.

Microscopic particles—Particles measurable—Whether sufficient to constitute 'possession'—Dangerous Drugs (No 2) Regulations 1964 (SI 1964 No 1811), reg 3. **R v Graham** [1969] 2 1181, CA.

Microscopic particles—Particles not measurable—Particles not visible to naked eye—Whether sufficient to constitute 'possession'—Dangerous Drugs (No 2) Regulations 1964 (SI 1964 No 1811), reg 9. **R v Worsell** [1969] 2 1183, CA.

Microscopic particles—Traces of cannabis resin in bowl of pipe—Traces too minute to be weighed or measured—Chemical analysis showing that quantity at least 20 micrograms—Whether sufficient to constitute 'possession'—Dangerous Drugs Act 1965, s 13(a)—Dangerous Drugs (No 2) Regulations 1964 (SI 1964 No 1811), reg 3. **Bocking v Roberts** [1973] 3 962, QBD.

Nature of offence—Absolute offence—Dangerous Drugs Act 1965 s 13(a)—Dangerous Drugs (No 2) Regulations 1964 (SI 1964 No 1811), reg 9. **Lockyer v Gibb** [1966] 2 653, QBD.

Possession—Microscopic particles—Whether sufficient to constitute possession. *See* Dangerous drugs—Unauthorised possession—Microscopic particles, *ante*.

Possession—Traces of amphetamine powder in urine—Whether in possession contrary to the Drugs (Prevention of Misuse) Act 1964, s 1(1). **Hambleton v Callinan** [1968] 2 943, QBD.

Proof—Approximately 307 grains of cannabis resin found in television set—Traces also found—Whether sufficient to constitute 'possession'. **R v Frederick** [1969] 3 804, CA.

Driving while unfit through drugs. *See* Road traffic (Driving while unfit to drive through drink or drugs).

Ethical drugs—

Resale price maintenance. *See* Restrictive trade practices (Resale price maintenance—Reference for exemption—Medicaments).

Importation—

Restriction—

Fraudulent evasion. *See* Customs and excise (Importation of prohibited goods—Knowingly concerned in fraudulent evasion of prohibition or restriction—Importation of drugs).

Murder. *See* Criminal law (Murder—Intent—Drugs).

Poison. *See* Poison.

Proprietary drugs—

Resale price maintenance. *See* Restrictive trade practices (Resale price maintenance—Reference for exemption—Medicaments).

Sale of drugs—

Chemists and druggists—

Offence by—Title or description calculated to suggest qualification—Business carried on as 'Spink's, the Chemists'—No qualified chemist at branch shop—Card displayed stating no qualified assistant in charge—Pharmacy and Poisons Act 1933, s 3(2). **Denerley v Spink** [1947] 1 835, KBD.

Supply by chemist under National Health Service. *See* National Health Service (Pharmaceutical services).

DRUGS (cont)

Taking—
Effect—

Offence caused whilst under influence. *See* **Criminal law** (Manslaughter—Mens rea—Causing death by unlawful act—Intent—No specific intent necessary for conviction—Death caused by acts performed while under influence of drugs).

Trade mark—

Colouring. *See* **Trade Mark** (Mark—Representation or description of external appearance of goods—Colour scheme—Scheme a complete representation of goods as they appear to eye—Capsules containing drugs).

Unfitness to drive—

Driving while unfit through drugs. *See* **Road traffic** (Driving while unfit to drive through drink or drugs).

In charge of vehicle. *See* **Road traffic** (Being in charge of vehicle when unfit to drive through drink or drugs).

DRUNKENNESS

Criminal proceedings—

Defence. *See* **Criminal law** (Intoxication as a defence).

Disorderly conduct in public place. *See* **Intoxicating liquor** (Offences—Drunk and disorderly in a public place).

Driver of vehicle—

Passenger—

Knowledge of risk. *See* **Negligence** (Volenti non fit injuria—Knowledge of risk—Passenger in car—Intoxicated driver).

Unfitness to drive. *See* **Road traffic** (Driving while unfit to drive through drink or drugs).

Driving—

Contributory negligence of passenger—

Knowledge that driver under the influence of drink. *See* **Negligence** (Contributory negligence—Road accident—Passenger in car—Passenger knowing that driver under the influence of drink).

Person in charge of vehicle. *See* **Road traffic** (Being in charge of vehicle when unfit to drive through drink or drugs).

DRY DOCK

Joint tortfeasors. *See* **Tort** (Contribution between joint tortfeasor—Occupiers of public dry dock).

Rates—

Plant. *See* **Rates** (Valuation—Plant and machinery—Dry dock).

Repair of ship in dry dock. *See* **Dock** (Repair of ship in dry dock).

Safe system of working. *See* **Safe system of working** (Safe place of work—Dry dock).

DUAL PURPOSE VEHICLE

See **Road traffic** (Motor vehicle—Dual purpose vehicle).

DUMPER

Vehicle intended or adapted for use on road. *See* **Road traffic** (Motor vehicle—Intended or adapted for use on road—Dumpers).

DUP LICITY

Indictment. *See* **Indictment** (Duplicity).

Information. *See* **Magistrates** (Information—Duplicity).

Statute—

Whether enactment creating one or several offences. *See* **Statute** (Offence—Duplicity—One or more offences).

DURATION

Lease. *See* **Landlord and tenant** (Lease—Duration).

DURESS

Accord and satisfaction—

Absence of true accord. *See* **Accord and Satisfaction** (Duress).

Consent to marriage vitiated. *See* **Nullity** (Consent to marriage—Duress).

Contract. *See* **Contract** (Duress).

Defence to criminal charge. *See* **Criminal law** (Duress as a defence).

Institution of divorce proceedings, under. *See* **Divorce** (Foreign decree—Invalidity—Basis of invalidity—Lack of consent to divorce proceedings—Duress).

DUST

Removal of dust in factory. *See* **Factory** (Removal of dust).

DUTY

Customs and excise. *See* **Customs and excise** (Duties).

Death duty—

New South Wales. *See* **New South Wales** (Death duty).

Estate duty—

Generally. *See* **Estate duty**.

New Zealand. *See* **New Zealand** (Estate duty).

Legacy duty—

Generally. *See* **Legacy duty**.

New South Wales. *See* **New South Wales** (Legacy duty).

Pool betting. *See* **Gaming** (Pool betting).

Public duty—

Act done in pursuance of public duty or authority—

Generally. *See* **Public authority** (Act done in pursuance of public duty or authority).

DUTY (cont)

Public duty (cont)—

Act done in pursuance of public duty or authority (cont)—

Limitation of action. *See* **Public authority (Limitation of action—Act done in execution of statute or of public duty or authority).**Stamp duty. *See* **Stamp duty.**

Statutory—

Coal mining. *See* **Coal mining (Statutory duty).**Generally. *See* **Statutory duty.**Succession duty. *See* **Succession duty.**Trustee. *See* **Trust and trustee (Duty of trustee).**

Vehicle excise licence—

Rate of duty. *See* **Road traffic (Excise licence—Rate of duty).****DUTY OF CARE**Negligence. *See* **Negligence (Duty to take care).****DUTY TO ACCOUNT**Agent. *See* **Agent (Account—Duty to account).****DWELLING-HOUSE**

Adverse possession—

Limitation of action. *See* **Limitation of action (Land—Adverse possession—Period of adverse possession—Decontrolled dwelling house).**Capital gains tax. *See* **Capital gains tax (Exemptions and reliefs—Private residences).**

Capital gains tax—

Exemption. *See* **Capital gains tax (Exemptions and reliefs—Private residences).**Change of use for planning purposes. *See* **Town and country planning (Development—Material change of use—Dwelling-house).**

Displacement from dwelling—

Compensation. *See* **Compensation (Displacement from land—Home loss payment).**

Legal aid—

Assisted person's dwelling-house—

Charge on property recovered for deficiency of costs. *See* **Legal aid (Charge on property recovered for deficiency of costs—Assisted person's dwelling-house).**

Notice to quit—

Validity. *See* **Landlord and tenant (Validity of notice to quit).**

Possession—

Protected tenancy. *See* **Rent restriction (Possession).**Relief from rates. *See* **Rates (Relief—Dwelling-house).**

Rent restriction—

Change in conditions—

Application for determination of new fair rent. *See* **Rent restriction (Rent—Determination of fair rent—Application—Change in condition of dwelling-house).**

Short lease—

Implied covenant to repair. *See* **Landlord and tenant (Implied covenant to repair—Short lease of dwelling-house).**

Tenancy—

Rent restriction. *See* **Rent restriction (Dwelling-house).****DYKE**Maintenance and repair. *See* **Land drainage (Drainage board—Maintenance and repair of dyke).****EARLY CLOSING**Shop. *See* **Shop (Hours of closing).****EARNED INCOME**Tax relief. *See* **Income tax (Earned income relief).****EARNINGS**

Attachment—

Enforcement of maintenance order. *See* **Husband and wife (Maintenance—Attachment of earnings).**

Loss—

Damages—

Personal injuries cases. *See* **Damages (Personal injury—Loss of earnings).**

Prostitution—

Living on earnings of prostitution. *See* **Criminal law (Prostitution—Living on earnings of prostitution).****EARNINGS-RELATED SUPPLEMENT***See* **National insurance (Benefit—Earnings-related supplement).****EASEMENT**

Access—

Refuse collection. *See* **Public health (Refuse—Collection—Closure or obstruction of means of access).**

Characteristics of easements—

Connection with dominant tenement as such—

Use of land—Right to store vehicles for repair and repaired vehicles awaiting collection—Benefit to claimant's business. **Copeland v Greenhalf [1952] 1 809, ChD.**

EASEMENT (cont)

Compulsory purchase—

Land required for housing accommodation—

Ancillary rights. *See* **Housing** (Compulsory purchase—Property to be acquired—House—Appurtenances belonging thereto and usually enjoyed therewith—Ancillary rights—Easements and quasi-easements).

Ancillary rights. *See* **Housing** (Compulsory purchase—Property to be acquired—House—Appurtenances belonging thereto and usually enjoyed therewith—Ancillary rights—Easements and quasi-easements).

Creation—

Non-continuous easement—

Right to enter on land to maintain outside wall of house. *See* **Repair**—Right to enter on land to maintain outside wall of house—Non-continuous easement—Creation, *post*.

Right of way. *See* **Right of way**—Creation, *post*.

Right to use lavatory accommodation. *See* **Lavatory accommodation**, *post*.

Declaration—

Jurisdiction of county court. *See* **County court** (Jurisdiction—Declaration—Easement).

Distinction from profit-à-prendre—

Quasi-easement—

Foreshore—Right to take sea-borne coal—Whether such a prescriptive or customary right capable of being acquired by inhabitants of locality. **Alfred F Beckett Ltd v Lyons** [1967] 1 833, CA.

Disturbance—

Right of way. *See* **Right of way**—Disturbance, *post*.

Dominant tenement—

Right of way. *See* **Right of way**—Dominant tenement, *post*.

Drainage—

Express grant—

Rule against perpetuities—Easement commencing at uncertain future date—Right to use sewers and drains then passing or thereafter to pass under private road owned by adjacent landowners—No sewers or drains in existence at date of grant—Validity of grant—Law of Property Act 1925, s 162(1)(d) (iv). **Dunn v Blackdown Properties Ltd** [1961] 2 62, ChD.

Right to lay and maintain pipes connecting to sewer—

Ownership of pipes. *See* **Pipes**—Right to lay and maintain pipes on servient land, *post*.

Equitable easement—

Land charge—

Right of re-entry—Registration. *See* **Land charge** (Estate contract—Option to purchase right of pre-emption or other like right).

Meaning—

Right conferred by lease to enter and remove fixtures—Whether an 'equitable easement'. **Poster v Slough Estates Ltd** [1968] 3 257, ChD.

Registration as land charge. *See* **Land charge** (Equitable easement).

Express grant—

Drainage. *See* **Drainage**—Express grant, *ante*.

Extinguishment—

Right of way. *See* **Right of way**—Extinguishment, *post*.

Fence—

Right to have fence maintained—

Boundary fence—Prescription—Hedge repaired by owner for servient tenement for over 40 years. **Jones v Price** [1965] 2 625, CA.

Fences and walls adjoining moorland—Duty to maintain fences and walls of farms adjoining a moor to keep out moorland sheep—Custom of moor to fence farms—Right to have other farms fenced enjoyed with each farm—Duty in nature of an easement, or an 'advantage', which passed on the sale of one of the farms by the common owner—Law of Property Act 1925, s 62. **Crow v Wood** [1970] 3 425, CA.

Grazing—

Right to graze—

Prescription—Interruption—Enjoyment as of right—Interval of thirteen months between last letter of protest and issue of summons—Long occupation of servient tenement by tenant—Owner without knowledge of prescriptive user—Prescription Act 1832, s 1, s 5. **Davies v Du Paver** [1952] 2 991, CA.

Sheep. *See* **Profit à prendre** (Prescription—Sheep rights).

Implied grant—

Right of way. *See* **Right of way**—Extent—Derogation from grant, *post*.

Ventilation. *See* **Ventilation**—Implied grant, *post*.

Implied reservation—

Lease—

Right to display advertisements—Display on outer wall of demised premises—No reservation of advertising rights over outer wall—Permissive user for more than ten years before grant of lease—Whether right to display advertisements reserved. **Re Webb** [1951] 2 131, CA.

Lavatory accommodation—

Right to use lavatory accommodation—

Creation of easement—Lease—of easement—Law of Property Act 1925, s 1(2)(a). **Miller v Emcer Products Ltd** [1956] 1 237, CA.

Light—

Acquisition of right to light—

Statutory right—Prevention of acquisition—Agreement or consent in writing—Prescription Act 1832, s 3. **Willoughby v Eckstein (No 2)** [1937] 1 257, ChD.

Interference with light—

Damages—Measure of damages. **Ough v King** [1967] 3 859, CA.

EASEMENT (cont)

Light (cont)—

Interference with light (cont)—

Test whether interference complained of amounting to nuisance—Amount of diminution—Factors to be considered—Locality to be regarded—Standard of lighting expected at present day to be taken into account—No fixed rule that where half of room at table level is sufficiently lit the lighting is adequate—Measure of damages. **Ough v King** [1967] 3 859, CA.

Lost grant—

Particulars. *See* **Pleading** (Particulars—Lost grant—Easement).

Mining rents—

Income tax. *See* **Income tax** (Mining rents—Easement).

Necessity—

Ventilation. *See* **Ventilation**—Implied grant—Necessity, *post*.

Pipes—

Right to lay and maintain pipes on servient land—

Pipes connecting to sewer—Whether ownership of pipes vested in dominant owner—Whether right to use of pipes. **Simmons v Midford** [1969] 2 1269, ChD.

Pleasure ground—

Right to enjoy pleasure ground—

Jus spatiandi—Enjoyment in common by owners of adjoining property—Compensation (Defence) Act 1939, s 2(2). **Re Ellenborough Park, Re Davies (decd)** [1955] 3 667, CA.

Prescription—

Grazing. *See* **Grazing**—Right to graze—Prescription, *ante*.

Repair. *See* **Repair**, *post*.

Right of way. *See* **Right of way**—Prescription, *post*.

Profit à prendre. *See* **Profit à prendre**.

Profit à prendre distinguished. *See* **Distinction from profit à prendre**, *ante*.

Protection against weather—

Easement unknown to law—

Advantage—Not an advantage within the meaning of Law of Property Act 1925, s 62(1).

Phipps v Pears [1964] 2 35, CA.

Registration—

Sale of land. *See* **Sale of land** (Easements—Registration).

Repair—

Right to enter on land to maintain outside wall of house—

Non-continuous easement—Creation—Severance of land from common ownership—General words in conveyance—Implication—Prescription—Derogation from grant—Grant by incumbent of benefice—Law of Property Act 1925, s 62. **Ward v Kirkland** [1966] 1 609, ChD.

Right of way—

Creation—

Consensual privilege not capable of being the subject of a legal grant—Use of back entrance through courtyard by tenant of greengrocers' shop—Use confined to business hours and subject to exigencies of landlord's business on their adjoining and neighbouring land—New leases successively granted to tenant whose consensual use of back entrance continued—Whether tenant obtained a right of way limited to business hours under Law of Property Act 1925, s 62. **Green v Ashco Horticulturist Ltd** [1966] 2 232, ChD.

Estoppel—Conduct. *See* **Estoppel** (Conduct—Conduct leading representee to act to his detriment—Knowledge that representee intending to act in that way—Right of way).

Reservation in conveyance—Execution and regrant by purchaser no longer required—Construction of reservation—Rule applying to exceptions applicable to reservations—Law of Property Act 1925, s 65(1). **Cordell v Second Clanfield Properties Ltd** [1968] 3 746, ChD.

Reservation in conveyance—Execution and regrant by purchaser no longer required—Whether reservation taking effect by way of regrant by purchaser—Law of Property Act 1925, s 65(1). **St Edmundsbury and Ipswich Diocesan Board of Finance v Clark (No 2)** [1975] 1 772, CA.

Disturbance—

Remedy—Undertaking by servient tenant—Enforcement against servient tenant's successor—Adoption of disturbance—Action for nuisance—Right of way—Servient tenant placing ramps on way to slow down vehicles—Potholes developing at end of ramps resulting in interference with plaintiff's right of way—Undertaking by servient tenant to remake and maintain way and ramps so as to protect plaintiff's enjoyment of right of way—Adequacy of undertaking—Enforcement against servient tenant's successor—Failure of successor to comply with undertaking amounting to adoption of nuisance. **Saint v Jenner** [1973] 1 127, CA.

What amounts to disturbance—Interference—Substantial obstruction only. **Keefe v Amor** [1964] 2 517, CA.

Dominant tenement—

Adjoining land—Right appurtenant to particular close—Grant of right of way to owner of close—Owner of close subsequently acquiring land adjoining close—Right of way to adjoining land—Whether grant having effect of creating right of way to adjoining land. **Bracewell v Appleby** [1975] 1 993, ChD.

Ascertainment—Construction of conveyance—Meaning of words not clear—Admissibility of evidence of surrounding circumstances—Purchaser's plans for use of land acquired—'Successors in title' insufficient identification of dominant tenement in conveyance of land adjoining existing site of grantee's factory—Evidence that land acquired for extension of factory—Whether dominant tenement included both factory site and land conveyed. **The Shannon Ltd v Venner Ltd** [1965] 1 590, CA.

Ascertainment—Dominant tenement not identified in deed but ascertainable by inference from facts known to parties at date of deed—Reservation to equitable owner of adjoining land—Whether easement created. **Johnstone v Holdway** [1963] 1 432, CA.

EASEMENT (cont)

Right of way (cont)—

Dominant tenement (cont)—

Benefit to dominant tenement—Intervening land between dominant and servient tenements—Whether existence of intervening land prevented acquisition of right—Effect of purchase of dominant tenement by owner of intervening land. **Pugh v Savage** [1970] 2 353, CA.

Excessive user—

Grant of right of way to part of residential estate—User for business purposes. **Robinson v Bailey** [1948] 2 791, CA.

Grant of right 'to go pass and re-pass' over way 'at all times hereafter with or without horses carts and agricultural machines'—Grant made in 1919—Use of road by 3-ton motor lorries—Whether use by lorries excessive user. **Kain v Norfolk** [1949] 1 176, ChD.

Prescriptive right of way—Caravan site—Prescriptive right of way to and from caravan site over railway crossing—Substantial increase in number of caravans and vehicles using crossing—No change in character of user or dominant tenement—Whether mere increase in numbers made user excessive. **British Railways Board v Glass** [1964] 3 418, CA.

Prescriptive right of way—User by plaintiffs as occupiers of dominant tenement for business purposes—Whether right of user extended to plaintiffs' customers—Whether identity of persons using way for business purposes material—Whether increase in number of customers using way rendered user excessive. **Woodhouse & Co Ltd v Kirkland (Derby) Ltd** [1970] 2 587, ChD.

Right of action—Damage to surface of private road by excessive user by owner of one dominant tenement—Whether action for such damage lay at suit of owner of another dominant tenement as distinct from action for interference with right to pass and repass. **Weston v Laurence Weaver Ltd** [1961] 1 478, QBD.

Extent—

Derogation from grant—Right of way enjoyed by plaintiffs over defendants' land—Sale by defendants to plaintiffs of strip of land—Sale for purpose of widening plaintiffs' gateway at end of right of way—Whether implied grant of wider right of way—Erection of posts narrowing entry to plaintiffs' land—Whether derogation from grant. **Woodhouse & Co Ltd v Kirkland (Derby) Ltd** [1970] 2 587, ChD.

Grant of right of way at all times and for all purposes in common with all other persons having the like right—Change of user of dominant tenement—Agricultural land changed to caravan and camping site—Reasonable use of right of way for changed purpose permissible—Proposed user excessive, being such as would interfere with enjoyment of right of way by other persons entitled to the like right—Excessive use restrainable by injunction. **Jelbert v Davis** [1968] 1 1182, CA.

Grant of right of way 'as at present enjoyed' over agricultural land—Land increasingly used for camping—Whether within terms of grant. **Hurt v Bowmer** [1937] 1 797, ChD.

Grant of right to pass and re-pass over yard with or without vehicles—Implied right to stop. **McIlraith v Grady** [1967] 3 625, CA.

Number etc of users—Whether increase in number etc constituting excessive user. *See* Right of way—Excessive user, *ante*.

Physical characteristics—Narrow gateway at date of grant making access with motor vehicles impossible—Gateway subsequently enlarged—Whether easement limited to a footway. **Keefe v Amor** [1964] 2 517, CA.

Prescriptive right of way—Proof of user for horses and carts—Whether including right to use for mechanically-propelled vehicles. **Lock v Abercester Ltd** [1939] 3 562, ChD.

Prescriptive right of way—User for all purposes while dominant tenement agricultural—Change of character of dominant tenement. **R P C Holdings Ltd v Rogers** [1953] 1 1029, ChD.

Extinguishment—

Land acquired by the authorities for defence purposes—Land subsequently conveyed to private purchaser—No reservation of right of way—Purchaser holding land free of estates, leases, rights etc 'notwithstanding any Defect in the Title' of the authorities—Whether purchaser acquiring land free from right of way—Defence Act 1842, s 14. **Attorney-General v Shonleigh Nominees Ltd** [1972] 2 263, CA.

Way over soil later becoming highway—Order by quarter sessions stopping up highway—Effect on private right of way—Highway Act 1835, s 91. **Walsh v Oates** [1953] 1 963, CA.

Prescription—

Change of route—Dominant and servient owners agreeing to change route of way during prescription period—Effect—Substitution of new route for original route—Original route and substituted route to be considered as one if both used as of right for same purpose—Periods of use to be added together for purpose of establishing right of way by prescription over servient tenement. **Davis v Whitby** [1974] 1 806, CA.

Enjoyment as of right—User permissive in origin—Oral permission—Twenty years uninterrupted user—Whether right defeated—Prescription Act 1832, s 2. **Healey v Hawkins** [1968] 3 836, ChD.

Lost modern grant—Power of servient owner to grant right of way—Power subject to consent—Presumption as to consent—Glebe land—Power of incumbent to grant right of way subject to consent of Ecclesiastical Commissioners—Incumbent having knowledge of acts constituting user of way—Commissioners having no such knowledge—Whether consent of commissioners to grant of right of way by incumbent could be presumed. **Oakley v Boston** [1975] 3 405, CA.

Pleadings—Pleadings stating that way 'enjoyed without interruption...for over 30 years immediately prior to commencement of these proceedings'—Whether pleadings confined dominant owner to claim under Prescription Act 1832—Whether claim based on common law prescription or lost grant also open. **Pugh v Savage** [1970] 2 353, CA.

Prescription in favour of long user—User shown for 36 years—Letting of servient tenement eight years after commencement of user—Whether letting prevented acquisition of right of way. **Pugh v Savage** [1970] 2 353, CA.

EASEMENT (cont)

Right of way (cont)—

Prescription (cont)—

Proof of 20 years' uninterrupted user—Commencement of action after 19 years—Whether commencement of action an interruption—Prescription Act 1832, s 2, s 4. **Reilly v Orange** [1955] 2 369, CA.

User by dominant owner—Commencement of period of user—Freehold owner of servient tenement in occupation or having express knowledge of user—Proof that owner in occupation or had knowledge when period of user commenced—Onus of proof—Onus on servient owner to prove that he or predecessor not in occupation and not having express knowledge when user commenced. **Davis v Whitby** [1973] 3 403, ChD.

User by dominant owner—Knowledge of servient owner—Means of knowledge—Acts of diligent landowner—Agricultural land—Servient land subject to successive agricultural tenancies—Use of way across field by owner of neighbouring farm—Use of way with vehicles between six and ten times a year during period of tenancies—Gate between field and neighbouring farm—Occasional visits to farm by owner—Whether owner having means of knowledge of user. **Diment v N H Foot Ltd** [1974] 2 785, ChD.

User by dominant owner—Knowledge of servient owner—Burden of proof—Knowledge of servient owner's agent—Absent landowner employing agents to manage agricultural land—Use of way across field by owner of neighbouring farm—Whether presumption that agents had knowledge of user—Whether burden on person claiming right of way to prove agents had knowledge. **Diment v N H Foot Ltd** [1974] 2 785, ChD.

Reservation in conveyance—

Construction of reservation—Construction with reference to physical circumstances—Reservation of right of way simpliciter—Reservation prima facie including right of way for vehicles—Way at time of conveyance consisting of path too narrow for vehicular traffic—Proper approach to construction of reservation—Whether reservation to be given prima facie meaning before looking at physical circumstances to see whether width of meaning cut down—Whether reservation including right of way for vehicles. **St Edmundsbury and Ipswich Diocesan Board of Finance v Clark (No 2)** [1975] 1 772, CA.

Construction of reservation—Right to 'pass and re-pass' over yard 'with or without vehicles'—No such user at time of reservation—Implied right to halt vehicles in yard for purpose of unloading and loading—Failure to exercise right for some years—Right to exercise right not prejudiced. **Bulstrode v Lambert** [1953] 2 728, ChD.

Construction of reservation—Surrounding circumstances—Reservation of 'right of way' simpliciter—Words ambiguous—Examination of surrounding circumstances essential to resolve ambiguity—Circumstances at date of conveyance indicating that way used and suitable for use on foot only—Reservation to be construed as being right of way on foot only and not including a right of way with vehicles. **St Edmundsbury and Ipswich Diocesan Board of Finance v Clark (No 2)** [1975] 1 772, CA.

Way of necessity—

Land not completely surrounded by grantor's land—Whether necessary for land granted to be completely surrounded by grantor's land. **Barry v Hasseldine** [1952] 2 317, ChD.

Storage—

Right of unlimited storage in confined space—

Whether capable of subsisting at law. **Grigsby v Melville** [1973] 1 385, ChD.

Support—

Adjoining semi-detached houses—

Compulsory purchase order on one house—Owner of other house not notified. *See* **Compulsory purchase** (Compulsory purchase order—Application to quash order—Notification of owner of land comprised in order—Failure to notify owner of semi-detached house adjoining house subject to order—Whether easement of support 'land comprised in the order').

Interference—

Demolition of adjoining house—Demolition by corporation in pursuance of clearance order—Liability of corporation—Housing Act 1936, ss 13, 26. **Bond v Norman** [1940] 2 12, CA.

Demolition of adjoining house—Demolition in obedience to clearance order—Liability of person demolishing. **Bond v Norman** [1939] 2 610, ChD.

Land. *See* **Land** (Support).

Natural right of support—

Withdrawal of support—Right of action—Neighbouring owners—Escape of water—Natural use of land—Escape by operation of natural causes—Water blown on to adjoining land by wind. **Rouse v Gravelworks Ltd** [1940] 1 26, CA.

Prescriptive right—

Knowledge of servient owner—Diligent owner—Acquisition not visible from servient tenement or from highway—Change of burden—Conversion of earth-closets to water-closets. **Lloyds Bank Ltd v Dalton** [1942] 2 352, ChD.

Title to easement—

Licence granted by proprietors of common rights to sink well on common—

Right of proprietors to make grant—Enclosure Acts dealing with common—Nuisance—Pollution of water by third party—Grantees' right of action. **Paine & Co Ltd v St Neots Gas & Coke Co** [1939] 3 812, CA.

Ventilation—

Implied grant—

Necessity—Easement entitling tenant of cellar restaurant to construct and maintain ventilation system—Lease of cellars—Tenant's covenants to use premises as restaurant without causing nuisance by smells and to comply with health regulations—Ventilation insufficient at time of demise—Proper ventilation required duct affixed outside the building—Whether tenant entitled to install duct. **Wong v Beaumont Property Trust Ltd** [1964] 2 119, CA.

EASEMENT (cont)

Water—

Acquisition of water rights by water board—

Pipes passing through land not contiguous to reservoirs or works—Whether easement in gross. *Re Salvin's Indenture* [1938] 2 498, ChD.

Right to take water from pond—

Right of owner of pond to clean pond. *Kain v Norfolk* [1949] 1 176, ChD.

Water rights—

Acquisition by water board—

Pipes passing through land not contiguous to reservoirs or works—Whether easement in gross. *Re Salvin's Indenture* [1938] 2 498, ChD.**EAST AFRICA**

Appeal to Privy Council—

Appeal as of right—

Value of matter in dispute—Appeal as of right where 'matter in dispute amounts to or is of value of £500 or upwards'—Calculation of value—Eastern African (Appeal to Privy Council) Order in Council 1951, art 3(a). *Meghji Lakhamshi & Bros v Furniture Workshop* [1954] 1 273, PC.

Court of Appeal—

Criminal appeal—

New trial—Jurisdiction of Court of Appeal for Eastern Africa to order new trial in criminal case—Eastern African Court of Appeal Order in Council 1950 (S.I. 1950 No 1968), s 16(1), s 18(1)—Eastern African Court of Appeal Rules 1954 (Kenya Proclamations, Rules and Regulations 1954, No 33), r 41. *Ross v Reginam* [1957] 1 451, PC.

New point raised on appeal—

Point not raised in court below—Whether new point should have been allowed to have been taken. *Warehousing & Forwarding Company of East Africa Ltd v Jafferai & Sons Ltd* [1963] 3 571, PC.

Criminal law—

Nolle prosequi—

Second information for same offence on same facts—Second information signed before nolle prosequi entered—No fresh committal—Validity of second information—Kenya Criminal Procedure Code (Laws of Kenya 1948, c 27), s 82(1). *Poole v Reginam* [1960] 3 398, PC.

Income tax—

Undistributed income—

Direction—Direction that percentage of company's undistributed income be deemed to have been distributed among shareholders—Shareholders including two infants holding under a settlement—Whether sums deemed to have been received by infants to be treated as part of settlor's income—East African Income Tax (Management) Act 1952, (No 8 of 1952), ss 22(1), s 24(1). *Houry v Comr of Income Tax* [1959] 3 781, PC.

Landlord and tenant—

Crown lease—

Covenant or condition—Breach—Relief against forfeiture according to principles of 'English law' and doctrines of equity—Whether English statute law applicable—Crown Lands Ordinance 1915, (Laws of Kenya 1948, s 83—Registration of Titles Ordinance, 1919 (Laws of Kenya 1948, s 21, Sch 1. *Bashir v Comr of Lands* [1960] 1 117, PC.

Rent restriction—

Sub-tenancy—Sub-letting without landlord's consent—Landlord's right to obtain order of possession against sub-tenant when premises lawfully sub-let—Kenya Increase of Rent (Restriction) Ordinance 1949 (Ordinance No 22 of 1949), ss 16(1) (i)(6). *Chogley v Bains* [1955] 3 148, PC.**EASTERN AFRICA COURT OF APPEAL***See East Africa* (Court of Appeal).**ECCLESIASTICAL BUILDING**Planning control. *See Town and country planning* (Building of special architectural or historic interest—Ecclesiastical building).**ECCLESIASTICAL LAW**

Appeal—

Faculty proceedings. *See Faculty*—Appeal, *post*.Aumbry. *See Ornaments*—Aumbry, *post*.

Censure—

Factors to be considered—

Paramount consideration gravity of offence—Censure of deprivation only to be pronounced where offence merits severe punishment. *Bland v Archdeacon of Cheltenham* [1972] 1 1012, Ct of Arches.

Chancel—

Liability to repair chancel—

Improper rector—Liability of lay improprators to contribute to repair of chancel—Whether improprator liable after sale of rectorial property—Covenants for title—Law of Property Act 1925, Sch II, Part I. *Chivers & Sons Ltd v Secretary of State for Air (Queens College, Cambridge, third party)* [1955] 2 607, ChD.

Chancellor—

Discretion—

Faculty—Sale of chattel. *See Faculty*—Sale of chattel—Discretion of chancellor, *post*.

Faculty—

Jurisdiction. *See Faculty*—Jurisdiction—Chancellor, *post*.

ECCLESIASTICAL LAW (cont)

- Church—
 - Altar—
 - Substitution of stone altar for movable altar—Faculty—Jurisdiction. *See* Faculty—Jurisdiction—Substitution of stone altar for movable stone altar, *post*.
 - Demolition—
 - Faculty—Jurisdiction. *See* Faculty—Jurisdiction—Demolition of church, *post*.
 - Indecent behaviour—
 - Interruptions during divine service—Meaning of indecent behaviour—Ecclesiastical Courts Jurisdiction Act 1860, s 2. **Abrahams v Cavey** [1967] 3 179, QBD.
 - Ornaments. *See* Ornaments, *post*.
 - Property—
 - Insurance. *See* Insurance—Property of parish church, *post*.
 - Site—
 - Consecrated ground—Secular use—Faculty. *See* Faculty—Secular use of consecrated ground—Church site, *post*.
 - Spire—
 - Removal—Faculty—Jurisdiction. *See* Faculty—Jurisdiction—Removal of spire, *post*.
 - Unconsecrated curtilage—
 - Secular use—Faculty. *See* Faculty—Unconsecrated curtilage of church, *post*.
- Church in Wales—
 - Dis-establishment—
 - Effect on grant of marriage licences—Right of rector concurrent with bishop of diocese to grant—Whether right continued after date of disestablishment of the Church in Wales—Welsh Church Act 1914, s 3, s 23—Welsh Church (Temporalities) Act 1919, s 6. **Powell v Representative Body of the Church in Wales** [1957] 1 400, ChD.
 - Existing interests at passing of Act—Holder of ecclesiastical office—Annuity—Appointment to new office with special stipend—Rights of holder of office—Welsh Church Act 1914, s 18(e). **Price v Representative Body of the Church in Wales** [1938] 1 351, CA.
 - Transfer of property—Lay corporation—Duty to repair chancel of parish church—Right of representative body to part of redemption stock—Welsh Church Act 1914, ss 1, 3, 4, 8, 10, 13, 19, 28—Welsh Church (Temporalities) Act 1919, ss 1, 2, 4—Tithe Act 1936, ss 1, 2, 4, 31. **Comrs of Church Temporalities in Wales v Representative Body of the Church in Wales and Tithe Redemption Commission** [1940] 3 1, CA.
- Clergyman—
 - Offence—
 - Neglect of duty—Analogy with common law negligence—False analogy—Neglect of duty failure to perform ecclesiastical duty without due cause—Ecclesiastical Jurisdiction Measure 1963, s 14. **Bland v Archdeacon of Cheltenham** [1972] 1 1012, Ct of Arches.
- Communion vessel—
 - Sale—
 - Faculty. *See* Faculty—Sale of chattel—Communion vessel, *post*.
- Consecrated ground—
 - Use for secular purpose—
 - Faculty. *See* Faculty—Secular use of consecrated ground, *post*.
- Consistory court—
 - Certorari to quash decision of. *See* **Certorari** (Jurisdiction—Consistory court).
 - Faculty—
 - Jurisdiction—Royal arms. *See* Faculty—Jurisdiction—Royal arms, *post*.
 - Jurisdiction—
 - Confirmatory faculty—Faculty proceedings for confirmation of re-siting—Disregard of faculty previously granted—Whether court had jurisdiction to make mandatory order to secure observance of faculty previously granted. **Re St John-in-Bedwardine, Worcester** [1961] 3 216, Ct of Arches.
 - Faculty—Unconsecrated curtilage of church. *See* Faculty—Unconsecrated curtilage of church, *post*.
 - Faculty to approve trustee or administrator of charity making grant in relation to land comprising trust—Whether consistory court is a court for the purposes of Charitable Trusts Amendment Act 1855, s 29. **Re Parish of St Swithin, Norwich** [1959] 3 301, Con Ct.
 - Offence charged not involving matter of doctrine, ritual or ceremonial—Charge of serious neglect of duty—Refusal to baptise a child—Whether refusal to baptise a child offence involving matter of doctrine—Ecclesiastical Jurisdiction Measure 1963, s 6(1)(a). **Bland v Archdeacon of Cheltenham** [1972] 1 1012, Ct of Arches.
 - Proceedings against priest or deacon—
 - Chancellor sitting with assessors—Questions by assessors—Discretion of chancellor. **Bland v Archdeacon of Cheltenham** [1972] 1 1012, Ct of Arches.
 - Representation of parties—
 - Numerous parties opposing petition—Representative parties opponent. **Norfolk County Council v Knights and Caister-on-Sea Joint Burial Committee** [1958] 1 394, Con Ct.
- Conveyance—
 - Conveyance under Places of Worship Sites Act 1873—
 - Conveyance for purposes of model deed of United Methodist Free Churches—Trust for Sunday school and social purposes—Statutes of Mortmain not complied with—No express mention in conveyance of Places of Worship Sites Act 1873—Express provisions for reverter offending rule against perpetuities—Whether conveyance made under Place of Worship Sites Act 1873, s 1, 4. **Imperial Tobacco Company (of Great Britain and Ireland) Ltd v Wilmott** [1964] 2 510, ChD.
- Court of Arches—
 - Function—
 - Appeal from consistory court—Faculty proceedings. *See* Faculty—Appeal—Appeal from Consistory court—Function of Court of Arches, *post*.

ECCLESIASTICAL LAW (cont)

Divine service—

Attendance—

Westminster Abbey—Right of member of public to attend—Right of public not parishioners. **Cole v P C 443A** [1936] 3 107, KBD.

Obligation to hold services—

Dispute as to form of service—Jurisdiction of High Court—Divine service—Ripon Cathedral—Dispute regarding provision in cathedral statute for 'full choral service'—Obligation to hold services part of ecclesiastical law alone—Disobedience to statute punishable only in ecclesiastical court—Refusal of High Court to make declaration regarding construction of statute—Cathedrals Measure 1931 (No 7), ss 2(1), 6(v), 8, 10(1),(2)(xv),(xvi). **Attorney-General v Ripon Cathedral, Dean and Chapter** [1945] 1 479, ChD.

Faculty—

Appeal—

Appeal from consistory court—Function of Court of Arches. **Re St Edburga's, Abberton** [1961] 2 429, Ct of Arches.

Appeal from decision of chancellor exercising his discretion—Appellate court having power to substitute own discretion. **Re St Gregory's, Tredington** [1971] 3 269, Ct of Arches.

Citation—

Faculty issued without citation in parish—Effect—Faculty a nullity. **Re St Michael the Archangel, Brantham, and St Peter with St Mary at Quay, Ipswich** [1962] 3 609, Con Ct.

Costs—

Tombstone erected in churchyard without faculty or incumbent's permission—Stonemasons' oral undertaking to customer to obtain necessary permission—Faculty subsequently granted in part—Stonemasons ordered to pay costs of all parties and to bear costs of removal of part of tombstone. **Re Woldingham Churchyard** [1957] 2 323, Con Ct.

Demolition of church—

Jurisdiction. *See* Faculty—Jurisdiction—Demolition of church, *post*.

Display of royal arms in church—

Jurisdiction. *See* Faculty—Jurisdiction—Royal arms, *post*.

Disused burial ground—

Enlargement of church. *See* Burial (Burial ground—Disused—Erection of building on burial ground—Enlargement of the church).

Exhumation and re-interment of human remains in communal grave—

Jurisdiction. *See* Faculty—Jurisdiction—Faculty for exhumation and re-interment of human remains in communal grave, *post*.

Jurisdiction—

Chancellor—Need to prove good and sufficient ground for grant of faculty—Onus of proof—Onus on petitioners. **Re St Helen's, Brant Broughton** [1973] 3 386, CA.

Demolition of church—Dangerous structure—Urgency—Procedure—Safeguards. **Re Parish Church of St George, Birmingham** [1960] 3 185, Con Ct.

Faculty for exhumation and re-interment of human remains in communal grave. **Norfolk County Council v Knights and Caister-on-Sea Joint Burial Committee** [1958] 1 394, Con Ct.

Land—Secular use—Unconsecrated curtilage of church. *See* Faculty—Unconsecrated curtilage of church, *post*.

Land—Secular use—Consecrated ground. *See* Faculty—Secular use of consecrated ground, *post*.

Nature of jurisdiction—Considerations affecting exercise of jurisdiction. **Re St Mary's, Tyne Dock (No 2)** [1958] 1 1, Con Ct.

Removal of dead body from consecrated ground for purpose of cremation. **Re Matheson (decd)** [1958] 1 202, Con Ct.

Removal of spire. **Re St Edburga's, Abberton** [1961] 2 429, Ct of Arches.

Royal arms—Display in church to signify royal supremacy—Display on organ loft—Armorial bearings—Display as decorative scheme—Arms of kingdom of England—St George's Cross—Arms of borough and county—Arms of province and diocese—Power of consistory court to grant faculty—Notice of petition to bearer of arms. **Re St Paul, Battersea** [1954] 2 595, Con Ct.

Royal arms—Display in church to signify royal supremacy—Power of Consistory Court to grant faculty—Need of consent of Home Secretary. **Re West Tarring Parish Church** [1954] 2 591, Con Ct.

Sale of communion vessel. *See* Faculty—Sale of chattel—Communion vessel, *post*.

Substitution of stone altar for movable altar—Need for principal altar to be movable—Canon 92 and rubric at beginning of Book of Common Prayer. **Re St John The Divine, Richmond** [1953] 1 818, Con Ct.

Unconsecrated land forming part of curtilage of church. *See* Faculty—Unconsecrated curtilage of church, *post*.

Memorial. *See* Memorial, *post*.

Petition—

Locus standi—Parties entitled to be joined as petitioners—Petition for faculty to erect monument in churchyard—Memorial committee formed to consider erection of monument—Petition by local authority as freeholder of churchyard for faculty to allow memorial committee to erect monument—Whether members of memorial committee should be joined as petitioners. **Re St Luke's, Chelsea** [1976] 1 609, Con Ct.

Right to present petition—Necessity for petitioner to have interest in suit—Minister of Aviation petitioning for faculty—Danger to Crown property—Right of Minister to present petition. **Re St James', Bishampton, Re St Edburga's, Abberton** [1961] 2 1, Con Ct.

Unopposed petition—Archdeacon to instruct solicitors and counsel—Faculty Jurisdiction Measure 1964, s 9. **Re St Gregory's, Tredington** [1971] 3 269, Ct of Arches.

Practice—

Submission to archdeacon—Faculty Jurisdiction Measure 1964, (No 5), s 9. **Re St Mary's, Westwell** [1968] 1 631, Canterbury Commissary Ct.

ECCLESIASTICAL LAW (cont)

Faculty (cont)—

Removal of dead body from consecrated ground for purpose of cremation—Jurisdiction. *See* Faculty—Jurisdiction—Removal of dead body from consecrated ground for purposes of cremation, *ante*.

Removal of spire—

Jurisdiction. *See* Faculty—Jurisdiction—Removal of spire, *ante*.

Sale of chattel—

Communion vessel—Sale on open market—Whether jurisdiction to authorise sale. *Re St Mary's, Gilston* [1966] 2 408, Con Ct.

Communion vessel—Vessels too valuable for use and money needed for repair of church—Vessels given to church—Jurisdiction of chancellor to grant faculty for sale—No requirement that vessels should be protected from secular or profane use. *Re St Gregory's, Tredington* [1971] 3 269, Ct of Arches.

Communion vessel—Vessels too valuable for use and money needed for repair of church—Whether sale on open market would be authorised—Terms of order granting faculty. *Re St Mary's, Westwell* [1968] 1 631, Canterbury Commissary Ct.

Discretion of chancellor—Factors governing exercise of discretion—Chattel still being used for purpose for which donated—Strong parochial feeling against sale—Valuable painting—Painting forming part of reredos of church—Donor's intention that painting should form part of an architectural scheme still being fulfilled—Risk of theft and damage—Insurance cover limited to cost of replacement—Financial burden on parish of retaining painting—Whether petitioners having discharged onus of proving good and sufficient ground for sale. *Re St Helen's, Brant Broughton* [1973] 3 386, CA.

Factors governing exercise of discretion—Article in nature of national treasure and of high intrinsic quality—Financial needs of church—Absence of any urgent and expensive requirement of funds for repair of church—Article forming part of funeral accoutrements associated with tomb in church—Whether faculty should be granted. *Re St Andrew's, Thornhaugh* [1976] 1 154, Con Ct.

Monument—Funeral accoutrement associated with tomb—Jousting helmet—Helmet dissociated from tomb—Jurisdiction to grant faculty—Factors governing exercise of discretion. *Re St Mary's, Broadwater* [1976] 1 148, Con Ct.

Monument—Funeral accoutrements associated with tomb—Ownership—Consent of owner to sale—Owner not traced—Whether court having jurisdiction to grant faculty authorising sale—Faculty Jurisdiction Measure 1964, s 3. *Re St Andrew's, Thornhaugh* [1976] 1 154, Con Ct.

Secular use of consecrated ground—

Burial ground—Road improvement scheme necessitating exhumation and reinterment of remains. *Morley Borough Council v St Mary the Virgin, Woodkirk (Vicar and Churchwardens)* [1969] 3 952, Ch Ct, York.

Burial ground—Use for erection of electricity sub-station. *Re St Peter the Great, Chichester* [1961] 2 513, Con Ct.

Church site—Church demolished by enemy action—Proposed user of site as car park—No immediate prospect of church being re-built—No evidence that purpose for which ground consecrated could no longer lawfully be carried out. *Re St John's, Chelsea* [1962] 2 850, Con Ct.

Use of disused churchyard as private garden—Rights of parishioners. *Re St Clement, Eastcheap with St Martin Orgar* [1964] 1 47, Con Ct.

Secular use of unconsecrated curtilage of church. *See* Faculty—Unconsecrated curtilage of church, *post*.

Unconsecrated curtilage of church—

Curtilage—Churchyard—Whole churchyard not necessarily curtilage of church—Curtilage limited to that area of churchyard physically adjoining church building and serving some purpose of it in a necessary or useful way—Sufficient if church and adjoining land in common but not necessarily exclusive occupation—Content of conveyances irrelevant as a criterion for determining what is a curtilage—Faculty Jurisdiction Measure 1964, s 7(1). *Re St George's Church, Oakdale* [1975] 2 870, Con Ct.

Curtilage—Unconsecrated yard surrounding church—Whether curtilage of church—Whether faculty for use as a youth centre, a non-ecclesiastical purpose, would be granted—Appropriate form of relief and time for application—Faculty Jurisdiction Measure 1964 (No 5), s 7. *Re St John's Church, Bishop's Hatfield* [1966] 2 403, Con Ct.

Right of way—Jurisdiction to grant right of way. *Re St Peter's, Bushey Heath* [1971] 2 704, Con Ct.

Sale—Power to authorise sale—Sale for purpose of building access road to proposed housing development—Circumstances in which appropriate to authorise sale rather than grant of licence. *Re Christ Church, Chislehurst* [1974] 1 146, Rochester Con Ct.

Sale—Power to authorise sale—Court having 'same jurisdiction over [unconsecrated curtilage] as over the church'—Court having no jurisdiction to authorise sale of consecrated land—Whether court having jurisdiction to authorise sale of unconsecrated curtilage—Faculty Jurisdiction Measure 1964, s 7(1). *Re St George's Church, Oakdale* [1975] 2 870, Con Ct.

Glebe land—

Disposition of land—

Power of incumbent as corporation sole—Easement—Power to grant right of way in fee simple—Ecclesiastical Leasing Act 1842, s 4—Ecclesiastical Leasing Act 1858, s 1. *Oakley v Boston* [1975] 3 405, CA.

ECCLESIASTICAL LAW (cont)

- Graveyard—
 - Disused burial ground. *See* **Burial** (Burial ground—Disused).
- Incumbent—
 - Freehold—
 - Church and consecrated land—Option to take lease—Whether rector held land on trusts within Settled Land Act 1925, s 29—Whether rector having power to grant option and lease. *Re* **Parish of St Swithin, Norwich** [1959] 3 301, Con Ct.
 - Power to convey land for statutory purpose—Open space—Power of corporation (other than municipal corporation) to convey land to local authority for use as open space—Corporation—Meaning—Whether including beneficed vicar or rector—Open Spaces Act 1906, s 7(1). *Re* **St George's Church, Oakdale** [1975] 2 870, Con Ct.
 - Relations with parochial church council. *See* Parochial church council—Relation to incumbent, *post*.
- Insurance—
 - Property of parish church—
 - Movables—Duty to obtain proper insurance cover—Meaning of 'proper insurance'—Valuable painting—Impossibility of obtaining cover for full commercial value—Whether insurance cover for cost of replacement sufficient. *Re* **St Helen's, Brant Broughton** [1973] 3 386, CA.
- Limitation of action—
 - Conduct occurring within period of three years ending with the day on which the proceedings are instituted—
 - Offence—Conduct unbecoming office and work of clerk in Holy Orders—Offence charged comprising series of acts—Number of specified acts occurring outside limitation period—Appropriate direction to be made in circumstances—Ecclesiastical Jurisdiction Measure 1963, s 16. *Bland v Archdeacon of Cheltenham* [1972] 1 1012, Ct of Arches.
- Memorial—
 - Inscription inviting prayers for the dead—
 - Legality—Inscription on tombstone—'Pray for the repose of the Soul of...'—Discretion to grant faculty. *Re* **St Mary the Virgin, Ilmington** [1962] 1 560, Con Ct.
 - Legality—Proposal to erect memorial window in church, with inscription 'Pray for the soul of the deceased'—Whether faculty would be granted. *Re* **Parish of South Creake** [1959] 1 197, Con Ct.
- Neglect of duty—
 - Offence. *See* Clergyman—Offence—Neglect of duty, *ante*.
- Ornaments—
 - Aumbry—
 - Reservation of the Sacrament—Legality—Reservation sanctioned by the bishop—Reservation a necessity for the Communion of the sick—Faculty granted. *Bishopwearmouth (Rector and Churchwardens) v Adey* [1958] 3 441, Con Ct.
 - Reservation of the Sacrament—Legality—Faculty sought to reconstitute ancient aumbry in central position behind central subsidiary altar at east end of church—Effect of Alternative Services (second series) Rubric 40 in regard to legality of reservation—Whether restrictions in deposited Prayer Book of 1928 binding—Prayer Book (Alternative and Other Services) Measure 1965, (No 1), s 1. *Re* **St Peter and St Paul v Leckhampton** [1967] 3 1057, Gloucester Con Ct.
 - Reservation of the Sacrament—Tabernacle—Legality—Reservation sanctioned by the bishop. *Re* **Lapford** [1954] 3 484, Ct of Arches.
 - Tabernacle—Sanctuary gong and bells—Candlesticks—Incense—Confessional table and chair—Crucifix—Processional crucifix—Third Holy Table—Stations of the Cross—Statue of Virgin and Child—Legality. *Re* **St Mary's, Tyne Dock** [1954] 2 339, Con Ct.
 - Candlesticks—
 - Legality of six candlesticks on the Holy Table or retable. *Re* **St Saviour's, Walthamstow** [1950] 2 812, Ct of Arches.
 - Legality of six candlesticks on the Holy Table or retable—Exercise of discretion in grant of faculty. *Re* **St George's, Southall** [1952] 1 323, Con Ct.
 - Ciborium—
 - Legality. *Re* **St Mary's, Tyne Dock (No 2)** [1958] 1 1, Con Ct.
 - Crucifix—
 - Position—Legality. *Re* **St Saviour's, Walthamstow** [1950] 2 70, Con Ct.
 - Pyx—
 - Legality—Lawful ornament if use subsidiary to lawful services of church. *Re* **St Nicholas, Plumstead (Rector and Churchwardens)** [1961] 1 298, Con Ct.
 - Sanctuary lamp—
 - Faculty to authorise placing on altar. *Re* **All Saints, Leamington Priors** [1963] 2 1062, Con Ct.
 - Stations of the Cross—
 - Legality. *Re* **St Mary the Virgin, West Moors** [1962] 3 722, Con Ct, *Re* **St Augustine's, Brinksway** [1963] 3 389, Con Ct.
 - Legality—Ten Gospel Stations—Representation of the three falls—Representation of the legend of St Veronica—Grant of faculty 'until further order'. *Re* **St Peter, St Helier, Morden, Re St Olave, Mitcham** [1951] 2 53, Con Ct.
 - Stone altars—
 - Aumbries—Sanctuary lights—Faculty jurisdiction. *Re* **St Hilary, Cornwall** [1938] 4 147, Ct of Arches.

ECCLESIASTICAL LAW (cont)

Parochial church council—

Conduct of financial affairs of church—

Borrowing powers—Power of councils to borrow money but not to give security for a loan.
Re St Peter Roydon [1969] 2 1233, Chelmsford Con Ct.

Relation to incumbent—

General duty to co-operate with incumbent in church work—In performing particular duties regarding church affairs vested in councils as successor to the vestry and churchwardens, councils free to differ from minister after paying proper regard to his wishes and suggestions—Parochial Church Councils (Powers) Measure 1956 (No 3), ss 2, 4. **Re St Peter, Roydon** [1969] 2 1233, Con Ct.

Right to sue—

Right of way appurtenant to churchyard—Incumbency vacant—Fee simple in church and churchyard in abeyance—Council's powers and duties of care and maintenance of church and churchyard—Right of way part of property of church—Council having locus standi to bring action to establish existence of right of way—Parochial Church Councils (Powers) Measure 1956, s 4(1)(ii). **St Edmundsbury and Ipswich Diocesan Board of Finance v Clark** (No 2) [1973] 3 902, ChD.

Place of meeting for religious worship—

Registration of premises—

Duty of Registrar General—Duty to be satisfied that premises qualify for registration—Chapel of Church of Scientology—Places of Worship Registration Act 1855, ss 2 and 3. **R v Registrar General, ex parte Segerdal** [1970] 3 886, CA.

Presentation to benefice—

Patron's right of presentation—

Approval of presentation by parochial church council and bishop—Refusal of approval—Review of decision by archbishop—Function of archbishop—Objection raised by parochial church council to the presentation—Duty of the archbishop to review the bishop's refusal is administrative not judicial—Benefices (Exercise of the Rights of Presentation) Measure 1931, s 3. **R v Archbishop of Canterbury** [1944] 1 179, CA.

Unconsecrated curtilage of church—

Secular use—

Faculty. *See* Faculty—Unconsecrated curtilage of church, *ante*.

Union of benefices—

Scheme—

Consultation between pastoral committee and parochial church council—Need of vote of council—Need of opportunity for members to ask questions and express views—Consideration of interest of diocese as a whole—Pastoral Reorganisation Measure 1949 (No 3), s 3(1)(2)(a). **Re Union of the Benefices of Whippingham and East Cowes** [1954] 2 22, PC.

Opposition—Person interested—Preliminary point—Necessity for determination of the preliminary point before the hearing of the main appeal—Provision for such hearing in the Order in Council—Union of Benefices Act 1860, s 16. **Re All Hallows, Lombard Street** [1937] 2 64, PC.

Opposition—Union entailing measure of loss to parishioners without any corresponding benefit—Principles to be applied in determining whether scheme should be approved—Union of Benefices Measure 1923 (No 2), s 2(6)—Union of Benefices (Amendment) Measure 1936 (No 2), s 2(1). **Re A Special Reference in the Matter of the Union of Benefices of Westoe and South Shields, St Hilda (County of Durham)** [1939] 1 282, PC.

Union of churches—

Anglican—

Methodist union—Approval by Methodist Church conference—Whether approval ultra vires—Methodist Church Union Act 1929, s 8(2),(6). **Barker v O'Gorman** [1970] 3 31, ChD.

ECONOMIC LOSS

Damages—

Loss not consequent on physical damage. *See* Damages (Remoteness of damage—Economic loss not consequent on physical damage).

Negligence—

Duty to take care. *See* Negligence (Duty to take care—Economic loss).

EDUCATION

Advancement of education—

Charitable purpose. *See* Charity (Education).

Canada. *See* Canada (Education).

Charitable purposes. *See* Charity (Education).

Cleanliness of pupil. *See* Pupil—Cleanliness of pupil, *post*.

College—

Governing body—

Natural justice—Duty to act fairly—Governing body of teacher-training college—Academic board of college recommending to governing body that student be dismissed on academic grounds—Student not present at meeting of academic board—Academic board sending report to governing body—Copy given to student prior to meeting of governing body—Student present at that meeting—Report only document before governing body—Student having opportunity to show why should not be dismissed—Governing body refusing to re-open academic board's assessment—Governing body refusing to allow opinions and reports on which assessment reached to be revealed—Whether breach of rules of natural justice. **Herring v Templeman** [1973] 3 569, CA.

EDUCATION (cont)

College (cont)—

Governing body (cont)—

Power of Minister to prevent unreasonable exercise of functions—Governing body of teacher-training college—Governing body passing resolution accepting recommendation of college's academic board that student be dismissed—Student alleging breach of rules of natural justice—Student bringing action against governing body—Whether student precluded by statute from resort to courts—Education Act 1944, s 68. **Herring v Templeman** [1973] 2 581, ChD.

Land—

Restriction on powers of leasing—College founded by royal charter. *See* Land—Leasing and other disposition—Restriction on powers of leasing—College founded on royal charter, *post*.

Visitor—

Jurisdiction—Teacher—training college—College governed by trust deed—Appointment of visitor under trust deed—Governing body of college passing resolution accepting recommendation of academic board that student be dismissed—Student alleging resolution contrary to terms of trust deed and in breach of rules of natural justice—Student bringing action against governing body—Whether complaint within exclusive jurisdiction of visitor. **Herring v Templeman** [1973] 2 581, ChD.

Commonwealth immigrant—

Admission to United Kingdom to attend course of study. *See* Commonwealth immigrant (Admission—Grounds of admission—Attendance on course of study).

Comprehensive schools—

Alteration of education from grammar schools to comprehensive schools—

Revision of development plan. *See* Development plan—Revision—Alteration of development plan by introduction of scheme for converting existing secondary schools into comprehensive schools, *post*.

Contract to educate—

Frustration—

Temporary enforced absence of headmaster. *See* Contract (Frustration—Contract for personal services—Temporary enforced inability to perform services—Education).

Implied term—

Notice. *See* Contract (Implied term—Implication by usage—Education—Contract between parents and headmaster for education of child—Notice by parents of intention to withdraw child from school).

Development plan—

Revision—

Alteration of development plan by introduction of scheme for converting existing secondary schools into comprehensive schools—Whether parents had a right to be consulted as to the revision of the development plan—Whether remedy by civil action lay under Education Act 1944, s 8, s 11, s 76—London Government Act 1963, s 31(2). **Wood v London Borough of Ealing** [1966] 3 514, ChD.

Elementary education—

County councillor representing local education authority—

Member of education committee of county council—Right to vote at committee meetings—Education Act 1921, s 9—Local Government Act 1933, s 75. **Alderton v Essex County Council** [1937] 3 219, ChD.

Gift—

Rule against perpetuities. *See* Rule against perpetuities (Application of rule—Objects of trust capable of taking outside perpetuity period—Gift for education of children of named families).

Industrial training. *See* Industrial training.

Land—

Acquisition for educational purposes—

Treasury grant—Condition—No sale with Ministerial consent or repayment of Treasury grant—Compulsory purchase by local authority—Confirmation order—Whether amounting to consent to sale—Whether sale valid—School Grants Act 1855, **Re Mill Lane Land, Everton, Re Liverpool Education (Emmanuel School Purchase) Order, 1929**, ex parte **Liverpool Corpn** [1937] 4 197, ChD.

Leasing and other disposition—

Restriction on powers of leasing—College founded by royal charter—Land not ecclesiastical in character—Ecclesiastical Leases Act 1571, s 2—Whether that Act restricted the powers of leasing conferred by Universities and College Estates Act 1925—Ecclesiastical Leases Act 1571, s 2. **Eton College v Minister of Agriculture, Fisheries and Food** [1962] 3 290, ChD.

Local education authority—

Dismissal of teacher—

Appointment during authority's pleasure—Natural justice. *See* Natural justice (Public authority—Dismissal of employee—Appointment during authority's pleasure).

Negligence—

Classes in physical training—Small fee charged—Classes held where floor highly polished—Exercise in nature of game—Injury to member of class—Breach of warranty—Availability of defence *volenti non fit injuria*. **Gillmore v London County Council** [1938] 4 331, KBD.

Duty of education authority to pupils—Cooking—class—Gas-cooker—No guard—Injury to pupil—Liability of authority. **Fryer v Salford Corpn** [1937] 1 617, CA.

Duty of education authority to pupils—Pupils going home—Five year olds—System for release of children from school—Whether school responsible for pairing each child with parent. **Barnes (an infant) v Hampshire County Council** [1969] 3 746, HL.

Duty of education authority to pupils—Pupils going home—Five year olds—Child normally met by parent—Release five minutes early—Liability for injury to child on way home. **Barnes (an infant) v Hampshire County Council** [1969] 3 746, HL.

EDUCATION (cont)

Local education authority (cont)—

Negligence (cont)—

Duty of education authority to pupils—Pupil injured on school premises—Liability of authority. **Rich v London County Council** [1953] 2 376, CA.

Duty of education authority to pupils—Supervision—Children unsupervised before start of school—Playground with flint wall—Injury to child in course of informal play caused by flint wall. **Ward v Hertfordshire County Council** [1970] 1 535, CA.

Persons to whom duty to take care owed—Child at nursery school permitted to run on to highway—Injury to vehicle's driver in avoiding child—Liability of authority. **Carmarthenshire County Council v Lewis** [1955] 1 565, HL.

Supervision of physical training—Pupil injured in fall—Negligence of teacher—Liability of education authority. **Gibbs v Barking Corp** [1936] 1 115, CA.

Supervision of physical training—Pupil injured in fall—Approved system of supervision—Regular and recognised practice. **Wright v Cheshire County Council** [1952] 2 789, CA.

Teacher—Boy carrying oil-can on instruction of teacher—Injury to boy—Whether teacher negligent—Whether authority liable. **Wray v Essex County Council** [1936] 3 97, CA.

Power of Secretary of State to prevent unreasonable exercise of functions—

Unreasonable—Conduct in which no reasonable authority would engage—Modification of proposals approved by previous members of authority—Proposals for introducing comprehensive system of education—Proposals approved by Secretary of State—Local government elections changing composition of authority—New members of authority postponing proposals—Difficulty of selecting pupils for grammar instead of comprehensive schools—Whether authority acting unreasonably—Whether Secretary of State entitled to direct authority to implement proposals—Education Act 1944, s 68. **Secretary of State for Education and Science v Metropolitan Borough of Tameside** [1976] 3 665, HL.

Power to require teacher to supervise school meals. *See* Teacher—Contract of service—
 Repudiation—Refusal to supervise school meals—Local education authority empowered to require teachers to supervise school meals, *post*.

Provision of transport for pupils—

Transport to and from school—Payment of public transport to point within three miles of destination—'Suitable arrangements'—Reasonable travelling expenses—Education Act 1944, s 39(2)(c), s 55(2) (as amended by Education (Miscellaneous Provisions) Act 1948, s 11, Sch 1, Part I) **Surrey County Council v Ministry of Education** [1953] 1 705, QBD.

Regard to wishes of parents—

Authority giving effect to wishes subject to limitation—Restriction on parents' choice of secondary schools—Discretion of authority in allocating pupils to secondary schools—Policy fettering exercise of discretion—Reasonableness of policy—Parents with children at Roman Catholic primary schools restricted to choice from Roman Catholic secondary schools—Sufficient places at non-Roman Catholic secondary schools only for children from non-Roman Catholic primary schools—Whether authority acted beyond their powers—Parents' remedy—Education Act 1944, ss 68, 76. **Cummings v Birkenhead Corp** [1971] 2 881, CA.

Duty to educate pupils in accordance with parents' wishes—Duty to secure provisions of secondary schools—Extent of duty—Local education authority providing secondary grammar school education at independent school—Parents sending children to another school—Grant towards tuition fees at school chosen by parents—Obligation to educate in accordance with parents' wishes—Right of parents to payment of difference between full tuition fees and authority's contribution—Education Act 1944, s 8, s 76—Education (Miscellaneous Provisions) Act 1953, s 6. **Watt v Kesteven County Council** [1955] 1 473, CA.

Statutory duty in respect of school premises—

Duty to secure premises conform to prescribed standards—Failure to comply with duty—Remedy—New school—Premises not of prescribed standard—Proposal of local education authority to change existing grammar and secondary modern schools into new comprehensive schools—Whether remedy lay by injunction—Failure in duty one of non feaseance not malfeasance—Education Act 1944, s 10(2), as amended, s 13(6), (7)—Education (Miscellaneous Provisions) Act 1948, s 7(1), (2)(b). **Bradbury v London Borough of Enfield** [1967] 3 434, CA.

Safety—Duty to secure that the construction and properties of materials should be such that safety of occupants should be reasonably assured—Breach of duty—Objective test for breach—Pupil injured by her hand going through glass panel of swing door—Whether pupil had cause of action—Education Act 1944, s 10(1), (2)—Standards for School Premises Regulations 1959 (SI 1959 No 890), reg 51—Occupiers' Liability Act 1957, s 2(2). **Reffell v Surrey County Council** [1964] 1 743, QBD.

Statutory duty to ascertain what children mentally defective—

Determination by Board of Education in case of doubt—Schoolboy certified as mentally defective by two medical officers but examined by one only—Certificate by boy's doctor that boy fit to be educated at council school—Whether 'case of doubt'—Whether certification by medical officers an administrative or a judicial act—Mental Deficiency Act 1913, s 31(1)—Education Act 1921, s 55(6). **R v Boycott, ex parte Kearsley** [1939] 2 626, KBD.

Transfer of property from former authority to county education authority—

'Former authority'—Dispute whether property liable to transfer—Question for determination by Minister—Education Act 1944, ss 6(3), 96(2), 114(1). **Gillingham Corp v Kent County Council** [1952] 2 1107, ChD.

Maintenance—

Provision of education for child over 16.

see **Minor** (Maintenance—Education or training).

EDUCATION (cont)

Parental wishes—

Regard to, by local education authority. *See* Local education authority—Regard to wishes of parents, *ante*.

Pupil—

Attendance. *See* School attendance, *post*.

Cleanliness of pupil—

Pupil subject of compulsory cleansing order—Pupil found to be infested with vermin after order—Proceedings against parent—Pupil living with father and mother—Liability of mother—Education Act 1944, s 54(6). *Plunkett v Alker* [1954] 1 396, QBD.

Rates—

Educational charity—

Relief. *See* Rates (Charitable and other organisations—Hereditaments wholly or mainly used for charitable purposes—Educational charity).

School—

Attendance. *See* School attendance, *post*.

Choice of—

Parental wishes—Regard to, by local education authority. *See* Local education authority—Regard to wishes of parents, *ante*.

Conveyance under School Sites Acts—

Reverter—Cesser of use of school—Possession retained by trustees and possessory title acquired—Whether land held on trusts of original grant. *Re Ingleton Charity* [1956] 2 881, ChD.

Reverter—Conveyance by owner in fee simple for full value—Enrolment—Charitable Uses Act 1735, School Sites Act 1841, s 2—School Sites Act 1844, s 3—School Sites Act 1849, s 4—Public Parks, Schools and Museums Act 1871, ss 3, 4. *Re Cawston's Conveyance* [1939] 1 140, CA.

Conveyance under School Sites Act—

Reverter—Land conveyed for school site in 1840—Scheme under Endowed Schools Act 1869 in 1949—School closed in 1956—Whether land held on resulting trust for grantor—School Sites Act 1836—School Sites Act 1841, s 15—Endowed Schools Act 1869, ss 9, 45, 46, 47—Education Act 1944, s 86. *Banker v Salisbury Diocesan Council of Education Incorporated* [1960] 2 372, ChD.

Endowed school—

Negligence of cleaner—Liability of governors—Limitation period—Whether governors of endowed school 'public authority'—Limitation Act 1939, s 21. *Woodward v Mayor of Hastings* [1944] 2 565, CA.

Establishment or discontinuance of school—

Proposals—Approval by Secretary of State—Approval with modifications—Meaning of modification—Process of alteration subject to continued existence of original entity—Intention of education authority to cease to maintain school—Proposals for that purpose—Submission of proposals to Secretary of State for approval—Mere statement of authority's intention to cease to maintain school not amounting to a proposal for that purpose—Proposal must explain what authority proposes to do with pupils from school to be closed—Submission to Secretary of State of interlocking scheme affecting three schools—Scheme involving closure of school A and transfer of pupils to school B—Scheme proposing consequent expansion of school B and transfer of school A's premises to school C—Secretary of State purporting to approve proposal to cease to maintain school A but refusing approval of proposals to expand schools B and C—Mere closure of school A not a proposal submitted to Secretary of State—Change too great to amount to approval of proposals with 'modifications'—Approval by Secretary of State *ultra vires*—Education Act 1944, s 13(1)(4). *Legg v Inner London Education Authority* [1973] 3 177, ChD.

Proposals—Public notice—Manner of giving notice—Procedural requirements—Failure to comply with requirements—Effect—Substantial compliance—Information concerning proposals brought to attention of those affected by proposals—No prejudice caused by failure to comply with regulations—Failure to post notice at or near any main entrance to school—Whether procedural requirements directory of mandatory—Whether failure to comply with requirements rendering Secretary of State's approval of proposals invalid—Education Act 1944, ss 13(3), 99—County and Voluntary Schools (Notices) Regulations 1968 (SI 1968 No 615), reg 2. *Coney v Choyce* [1975] 1 979, ChD.

Proposals—Public notice—Contents of public notice—Education Act 1944, s 13(1), (3). *Legg v Inner London Education Authority* [1972] 3 177, ChD.

Proposals—Public notice—Ceasing to maintain school—Establishing new school—Proposals of local education authority to change existing grammar and secondary modern schools into comprehensive schools—Failure to give public notices for objections to be considered in respect of eight schools—Whether local authority ceased to maintain these schools—Whether injunction should be granted to compel statutory duty to be complied with—Education Act 1944, s 13(1), (4)—London Government Act 1963, s 31(5). *Bradbury v London Borough of Enfield* [1967] 3 434, CA.

Managers—

Liability for acts of employees—Corporal punishment by assistant mistress—Box on the ear—Course of employment—Liability of managers of non-provided school—Right to contribution—Law Reform (Married Women and Tortfeasors) Act 1935, s 6(1), (2). *Ryan v Fildes* [1938] 3 517, Assizes.

Non-provided school—

Repair—Liability—Managers—Public authority—Public Authorities Protection Act 1893, s 1—Education Act 1921, ss 29–35. *Griffiths v Smith* [1941] 1 66, HL.

Rates. *See* Rates (Charitable and other organisations—Hereditaments occupied by charity—School).

Transport to and from—

Provision by local education authority. *See* Local education authority—Provision of transport for pupils—Transport to and from school, *ante*.

EDUCATION (cont)

School attendance—

Duty of parent to secure regular attendance of pupil—

Failure to secure regular attendance—Proceedings against parent—Defence—Non-attendance due to unavoidable cause—Permanent incapacity of widowed mother—Whether 'unavoidable cause'—Education Act 1944, s 39(2)(a). *Jenkins v Howells* [1949] 1 942, KBD.

Failure to secure regular attendance—Proceedings against parent—Evidence—Closing of attendance register half-an-hour after commencement of morning session—Certificate of absence—Whether evidence of failure of parent to secure regular attendance—Education Act 1944, s 39(1), s 95(2)(c). *Hinchley v Rankin* [1961] 1 692, QBD.

Failure to secure regular attendance—Proceedings against parent—Defence—Distance of home from school—Nearest available route—Road unsafe for unescorted children—Dangerous crossing—Education Act 1944, s 39(5). *Shaxted v Ward* [1954] 1 336, QBD.

Failure to secure regular attendance—Proceedings against parent—Defence—Reasonableness of parent's conduct—Relevance of reasonableness of parent's conduct—Attendance of female pupil in trousers—Refusal of head mistress to admit pupil without medical certificate—Failure of parent to provide certificate—Education Act 1944, s 39(1), (2). *Spiers v Warrington Corp* [1953] 2 1052, QBD.

Enforcement—

Remedies—Wardship proceedings—Mother's refusal to send children to school—Local education authority's proceedings—Two convictions unavailing—Application to have children made wards of court—Directions sought as to their education—Chancery court's jurisdiction—Education Act 1944, s 36, s 37, s 40(2)—Law Reform (Miscellaneous Provisions) Act 1949, s 9. *Re Baker (infants)* [1961] 3 276, CA.

School meals—

Duties of teachers in respect of school meals—

Extent of duties—Whether including duty to collect money for school meals service—Education Act 1944, s 49. *Price v Sunderland Corp* [1956] 3 153, QBD.

Refusal of teachers to supervise school meals—

Repudiation of contract of service. *See* Teacher—Contract of service—Repudiation—Refusal to supervise school meals, *post*.

Teacher—

Contract of service—

Aided voluntary school—Employment by governors—Whether local education authority also party to contract. *Hannam v Bradford City Council* [1970] 2 690, CA.

Repudiation—Refusal to supervise school meals—Local education authority empowered to require teachers to supervise school meals—Supervision of meals part of teacher's duties—Exclusion from school until willing to resume supervision—Entitlement to salary during period of exclusion if 'suspended'—Teacher's conduct amounting to repudiation of contract—Whether repudiation accepted. *Gorse v Durham County Council* [1971] 2 666, QBD.

Rescission of appointment and re-employment at reduced salary—Whether termination or variation of contract of service—Guyana. *See* Guyana (Crown servant—Contract of service—Termination or variation of contract—School teacher's appointment rescinded but teacher re-employed at reduced salary).

Dismissal—

Appointment during pleasure—*See* Natural justice (Public authority—Dismissal of employee).

Bias of tribunal inquiring into dismissal. *See* Tribunal (Membership—Bias).

Duties—

School meals. *See* School meals—Duties of teachers in respect of school meals, *ante*.

Negligence—

Liability of local education authority. *See* Local education authority—Negligence—Teacher, *ante*.

Part-time—

National insurance. *See* National insurance (Employed person—Contract of service—Part-time teacher at drama school).

Remuneration—

Augmentation of war service pay—New Burnham scales of salary introduced in 1945—Right of teachers on war service to increased scales. *Turburville v West Ham Corp* [1950] 2 54, CA.

Suspension—

Suspension pending determination of charges against teacher—Right of teacher to be heard prior to suspension. *See* Natural justice (Educational establishment—Complaint against teacher—Duty to hear parties etc).

Teacher-training college—

Dismissal of student-teacher—Governing body accepting academic board's recommendation student-teacher be dismissed on academic grounds—Application of rules of natural justice. *See* College—Governing body—Natural justice—Duty to act fairly—Governing body of teacher training college, *ante*.

Technical education payments—

Deduction in computing profits for income tax. *See* Income tax (Deduction in computing profits—Technical education payments).

University—

Residence—

Voting at Parliamentary elections. *See* Elections (Parliamentary—Qualification to vote—Residence—Residence on qualifying date—University students in halls of residence or colleges on qualifying date).

Student—

Natural justice—Suspension of student. *See* Natural justice (Educational establishment—Suspension of student—Duty to hear parties etc).

EDUCATION (cont)

University (cont)—

What constitutes a university—

College incorporated by royal charter—College at outset theological college—Further degree subjects added—Whether college a 'university'. *St David's College, Lampeter v Ministry of Education* [1951] 1 559, ChD.

Visitor—

Jurisdiction—

College. *See* College—Visitor—Jurisdiction, *ante*.

Wishes of parents—

Regard to, by local education authority. *See* Local education authority—Regard to wishes of parents, *ante*.**EFFLUENT**

Trade effluent—

Discharge into river. *See* Water and watercourses (Pollution of river—Discharge of trade effluent).**EGG MARKETING**

Voluntary compensation fund—

Contributions—

Failure of packer to contribute—Direction transferring producers to other packers—Validity—Bill of Rights 1688 —Defence (General) Regulations 1939, regs 54C, 55—Eggs (Control and Prices) (Great Britain) Order 1944 (S I & O 1944 No 502), arts 3, 14. *Yoxford and Darsham Farmers' Assn Ltd v Llewellyn* [1946] 2 38, CA.**EJUSDEM GENERIS RULE**Construction of statute. *See* Statute (Construction—Ejusdem generis rule).**ELDER BRETHREN**Admiralty proceedings. *See* Admiralty (Practice—Assessors—Elder Brethren).**ELECTION**Action against principal or agent. *See* Agent (Liability as principal—Undisclosed principal—Election to sue principal).

Contract—

Breach of contract—

Election whether to affirm or not. *See* Contract (Condition—Breach—Election whether to affirm or not).

Election not to accept repudiation—

Effect. *See* Contract (Election not to accept repudiation—Effect).Election whether to accept repudiation. *See* Contract (Repudiation—Election whether to accept repudiation).Equitable doctrine of election. *See* Equity (Election).Estoppel. *See* Estoppel (Election).

Evidence—

Election to call no evidence—

Appeal—Order for new trial. *See* Court of Appeal (New trial—Election to call no evidence).

Proceedings before different tribunals—

Election between. *See* Practice (Stay of proceedings—Concurrent proceedings before distinct tribunals—Election by plaintiffs held to be appropriate course).

Remedy—

Workmen's compensation. *See* Workmen's compensation (Election of remedy).

Specific performance—

Election to claim damages in lieu. *See* Specific performance (Summary procedure—Claim for specific performance or damages in lieu).Will. *See* Equity (Election—Application of doctrine of election to will).**ELECTIONS**

Election address—

Defamation—

Qualified privilege. *See* Libel and slander (Qualified privilege—Public interest—Election).

Election court—

Jurisdiction—

Succession to peerage—Election petition alleging disqualification of candidate for election to Parliament—Jurisdiction to determine succession to peerage. *Re Bristol South East Parliamentary Election* [1961] 3 354, QBD.

Expenses—

Expenses incurred with a view to promoting or procuring election of a candidate at an election—

Prohibition on expenses unless incurred by candidate, election agent or authorised person—Three or more persons standing at election—Expenses incurred by unauthorised person with a view to preventing election of one of those candidates—Person not intending to promote or procure election of any particular candidate—Meaning of 'promote'—Whether intention to prevent election of a particular candidate or candidates promoting or procuring election of other candidate—Representation of the People Act 1949, s 63(1)(5). *Director of Public Prosecutions v Luft* [1976] 2 569, HL.

ELECTIONS (cont)**Expenses (cont)—**

Prohibition of expenses not authorised by election agent—

Expenses incurred with view to promoting or procuring election of candidate—Company issuing unauthorised advertisement criticising political party in general—Whether 'expenses' incurred in promoting election of candidate—Representation of the People Act 1949, s 63(1)(b). **R v Tronoh Mines Ltd** [1952] 1 697, CCC.

Local government—**Ballot papers—**

Inspection—London borough council election—Discrepancy in voting figures—Offence in relation to ballot papers—Whether order for inspection of ballot papers required for purpose of instituting or maintaining prosecution for offence—London Borough Council Elections Rules 1968 (S I 1968 No 497), r 49(1)(b). **McWhirter v Platten** [1969] 1 172, QBD.

Rejection—Ballot paper marked elsewhere than in proper place—Ballot paper marked otherwise than by means of a cross—Clear intention to vote for one or other of candidates—Ballot paper marked with cross over instead of opposite candidate's name—Ballot paper on which one candidate's name left blank and lines drawn through names of other two candidates—Whether papers void—Representation of the People Act 1949, Sch 2, Local Elections Rules, r 43(3). **Levers v Morris** [1971] 3 1300, QBD.

Rejection—Papers insufficiently marked with official stamp—Initials written on papers—Mark near name of candidate—Whether papers void—Local Government Act 1933, s 29, Sch II, Part III, paras 18, 34(a)(c)(d). **Re South Newington (Kingston-upon-Hull) Municipal Election Petition** [1948] 2 503, KBD.

Disqualification for office as member of local authority—

Conviction before election—Person acting as member of local authority while disqualified—Institution of proceedings—Time for institution of proceedings—Six months from the date on which he so acted—Local Government Act 1933, ss 59(1)(e), 84(1). **Bishop v Deakin** [1936] 1 255, ChD.

Election of aldermen—

Persons entitled to vote—Mayor candidate for election as alderman—Vacation of mayoral chair by mayor and an alderman chosen to preside—Vote made by mayor—Mayor's vote counted, making equality of votes each for seven candidates including himself—Presiding alderman gave casting vote for candidates for whom mayor had voted and declared them duly elected—Whether mayor was entitled to be present and vote at meeting of council over which he did not preside—Whether the seven aldermen duly elected—Local Government Act 1933, Sch 3, Part 2, para 3. **Re Wolverhampton Borough Council's Aldermanic Election** [1961] 3 446, QBD.

Persons entitled to vote—Office of mayor and alderman held by same person—Right of mayor to vote—Casting vote of mayor—Municipal Corporations Act 1882, s 60—Municipal Corporations Amendment Act 1910, s 1—Local Government Act 1933, ss 17, 21, 22. **Burdon v Barron** [1939] 2 525, KBD.

Election of rural district councillors—

Petition alleging illegal practice—Time limit for presentation of petition—Petitions presented one day late owing to bank holiday—Extension of time—Parliamentary Elections Act 1868, ss 25, 49—Municipal Corporations Act 1882, ss 100(1), 230—Municipal Elections (Corrupt and Illegal Practices) Act 1884, s 25(1)—Local Government Act 1933, ss 40(2), 295—Rural District Councilors' Election Rules 1934 (S R & O 1934 No 546), r 5(5). **Re Counter's Petition** [1938] 1 186, CA.

Nomination papers—

Particulars to be given on nomination paper—Duty of returning officer to declare paper invalid where particulars not as required by law—Effect of determination—Home address of candidate—Address given by candidate not home address—Returning officer not aware address incorrect—Paper not declared invalid by returning officer—Whether nomination valid—Local Elections (Principal Areas) Rules 1973 (S I 1973 No 79), Sch 2, rr 5(2), 8(2). **R v An Election Court, ex parte Sheppard** [1975] 2 723, QBD.

Rejection—Determination of returning officer—Election of county councillor—Welsh language used for nomination paper—Time for rejection of nomination paper by returning officer—Representation of the People Act 1949, Sch 2, Parliamentary Elections Rules, r 13(2), Local Elections Rules, r 1, r 9(2)—County and Borough Election Forms Regulations 1951 (S I 1951 No 264), reg 1, Sch 1, Form B. **Evans v Thomas** [1962] 3 108, Election Ct.

Signature—Urban district councillors' election—Subscription to nomination paper—Elector's usual signature not corresponding to form of name in electoral register—Urban District Council Election Rules 1951 (S I 1951 No 267), Sch 1, r 9(2), Appendix. **Re Melton Mowbray (Egerton Ward) Urban District Council Election** [1968] 3 761, QBD.

Validity of election—

Breach of duty of returning officer—Failure to hold re-count—Re-count requested by candidate—Rules for the conduct of elections directory only—No substantial irregularity—Absence of re-count not affecting result—Representation of the People Act 1949, s 37(1), Sch 2, Parliamentary Elections Rules, r 47, Local Election Rules, r 42. **Levers v Morris** [1971] 3 1300, QBD.

Irregularities affecting result—Ballot papers not bearing official mark—Rejection—44 ballot papers rejected for lack of official mark out of total of 23,691—Rejection of ballot papers affecting result of election—Whether election void—Representation of the People Act 1949, s 37(1). **Morgan v Simpson** [1974] 3 722, CA.

ELECTIONS (cont)

Local government (cont)—

Validity of election (cont)—

Irregularities affecting result—Ballot papers not bearing official mark—Rejection—Substantial irregularities likely to affect result—Rejected ballot papers almost all issued at one polling station—Officers at polling station in question failing to stamp 98 out of 189 ballot papers issued—Rejection of ballot papers affecting result of election—Whether election conducted substantially in accordance with law as to elections—Whether election void—Representation of the People Act 1949, s 37(1). *Gunn v Sharpe* [1974] 2 1058, QBD.

Malaysia. *See* Malaysia (Elections).

Parliamentary—

Nomination—

Description of candidate—Sufficiency—Opinion of returning officer—Removal of surplusage—Ballot Act 1872, Sch 1, Part I, rr 6, 9, 22. *Edwards v Jackson and Dingle* [1946] 2 129, Assizes.

Qualification to vote—

Residence—Residence on qualifying date—University students in halls of residence or colleges on qualifying date—Whether 'resident'—Representation of the People Act 1949, ss 1, 4(1). *Fox v Stirk* [1970] 3 7, CA.

Redistribution of seats—

Discretion of the Boundary Commission—Number of constituencies in England to be increased from 506 to 511—Method employed in determining number of constituencies stated in report—Draft Order in Council giving effect to commission's recommendations approved by both Houses of Parliament—Validity of report challenged by two electors—Application to restrain draft order from being submitted to Her Majesty in Council—House of Commons (Redistribution of Seats) Act 1949, s 2(1)(a), (5) s 3(4), Sch II. *Harper v Secretary of State for the Home Department* [1955] 1 331, CA.

Retroactive validation—

Gambia. *See* Gambia (Elections—Retroactive validation).

Validity—

Ceylon. *See* Ceylon (Election—No appeal to Crown—Validity of Parliamentary election).

Disqualification of candidate—Peer—Disqualification attributable to status and not dependent on receiving writ of summons to House of Lords—Disqualification made known to electors before votes cast—Majority of votes cast for disqualified candidate—Validity of election of sole opponent. *Re Bristol South East Parliamentary Election* [1961] 3 354, QBD.

Petition alleging breaches of Parliamentary Elections Rules—Whether election conducted substantially in accordance with law—Onus of proof—Representation of the People Act 1949, s 16(3). *Re Kensington North Parliamentary Election* [1960] 2 150, Election Ct.

Publications—

Publication printed, published, posted or distributed for the purpose of promoting election of a candidate—

Publication required to bear on face name and address of printer and publisher—Three or more candidates standing at election—Publication distributed for the purpose of preventing election of one of those candidates—Distributor not intending to promote or procure election of any particular candidate—Whether publication required to bear name and address of printer and publisher—Representation of the People Act 1949, s 95(1). *Director of Public Prosecutions v Luft* [1976] 2 569, HL.

Registration appeals—

Procedure—

Non-compliance with rules—Names of ninety-six persons placed on electoral register—Appeal by objector to county court only in regard to six names—Procedure in regard to selected appeals not followed—No jurisdiction of county court to direct registration officer to remove remaining ninety names from register—Representation of the People Act 1949, s 45(1)(e), (4)—CCR Ord 43, r 8. *R v His Honour Judge Sir Donald Hurst, ex parte Smith* [1960] 2 385, QBD.

Trade union—

Endorsement of shop steward's election. *See* Natural justice (Trade union—District committee of union—Discretion to refuse member's election as shop steward).

Rules.

see Trade union (Rules—Election).

ELECTRICAL WIRING

Building operations. *See* Building (Building operations—Electrical wiring).

ELECTRICITY

Central Electricity Generating Board—

Relationship with area electricity boards—

Whether area electricity boards subsidiary companies—Companies Act 1948, s 154(1)—Redundancy Payments Act 1965, s 48(4). *Southern Electricity Board v Collins* [1969] 2 1166, QBD.

Contract for supply—

Termination—

Canada. *See* Canada (Electricity—Power supply—Contract to supply for the mining life of a property).

Electricity board—

Liability for accidents by reason of board's works—

Installation of new meter—Failure to test circuit—Faulty installation—Fireman electrocuted—Liability of electricity board—Negligence—Breach of statutory duty—Electricity Supply Regulations 1937, reg 25(a). *Hartley v Mayoh & Co* [1953] 2 525, Assizes.

ELECTRICITY (cont)

Electricity board (cont)—

Liability for accidents by reason of board's works (cont)—

Installation of supply of electricity—Failure to test earthing arrangements—Wife of consumer electrocuted—Liability of electricity board—Negligence—Breach of statutory duty—Electricity Supply Regulations 1937, reg 27(a). **Sellers v Best** [1954] 2 389, Assizes.

Electricity Commissioners—

Powers—

Increase of capital of power company—Application by power company for authorisation of increase of capital—Right of Electricity Commissioners to impose condition—Electricity (Supply) Act 1919, s 1—South Wales Electric Power Act 1932, s 19. **R v Electricity Comrs, ex parte South Wales Electric Power Co** [1941] 2 686, KBD.

Factory—

Regulations. *See* **Factory** (Electricity regulations).

Nationalisation—

Undertaking formerly maintained by local authority—

Expenses and receipts of undertaking to be paid out of and into general rate fund—Authority directed 'to show under a separate heading or division' accounts of their undertakings—Excess revenue of undertaking to be credited to revenue account of undertaking for the next following year—Liability of local authority to account for electricity authority for sum transferred in aid of rates in account for year ending Mar 31, 1947—Exeter Corporation Act 1935, s 108(1), s 109(1), s 112(1)(b). **British Electricity Authority v Exeter Corp'n** [1953] 1 502, ChD.

Overhead lines—

Power of undertakers to place lines over land—

Extent of power—Consent of Minister of Power to acquisition of wayleave in default of consent of landowner—Deviation of position of proposed lines from position for which planning permission given by Minister—Right to erect supporting towers—Functions of Central Electricity Authority transferred to Central Electricity Generating Board—Transfer of benefit of consent—Electric Lighting Act 1882, s 32—Electric Lighting (Clauses) Act 1899, Schedule, s 10(b), as amended by Electricity Act 1947, s 57, Sch 4, Part 3—Electricity (Supply) Act 1919, s 22(1), as amended by Electricity Act 1947, s 57, Sch 4, Pt 3—Electricity Act 1957, s 26(1)(b), (2). **Central Electricity Generating Board v Jennaway** [1959] 3 409, ChD.

Powers of undertakers to place lines over land—

Extent of power—Erection of poles to carry supply line—Necessity for consent of local authority—Persons entitled to be heard—'Parties concerned'—Electric Lighting (Clauses) Act 1899, Sch, s 10(b)—Electricity (Supply) Act 1919, ss 21, 22(1)—Electricity Act 1947, s 57(2), Sch IV, Part III. **National Trust for places of Historic Interest or Natural Beauty v Midlands Electricity Board** [1952] 1 298, ChD.

Power of undertakers to place lines over land—

Limitation—Power not exercisable where land used as pleasure ground—Meaning of pleasure ground—Placing of overhead line overland including land occupied by gliding club—Consent of Minister to entire route—Whether club's land 'pleasure ground'—Whether Minister consent ultra vires—Electricity (Supply) Act 1919, s 22. **Central Electricity Generating Board v Dunning** [1970] 1 897, ChD.

Pylons—

Support—

Right of electricity board to have condition imposed on mineral undertaker not to withdraw support. **Re Naylor Benzon Mining Co Ltd** [1950] 1 518, ChD.

Regulations—

Wiring—

Building operations. *See* **Building** (Building operations—Electrical wiring).

Supply—

Charges for supply—

Agreement for supply on two-part tariff system—Method of assessing fixed annual charge—Validity of agreement made under Electric Lighting (Clauses) Act 1899, Sch, ss 33—Incorporating two-part tariff—Electric Lighting Act 1882, ss 19, 20—Electric Lighting (Clauses) Act 1899, Sch, s 33—Electricity (Supply) Act 1926, s 42. **Attorney-General (at the relation of Stevens) v Wimbledon Corp'n** [1940] 1 76, ChD.

Supply to Central Electricity Board by company owning selected station—Calculation of price—Consideration of average rate of dividends and interest on—'Share and loan capital'—Electricity Supply Act 1926, Sch II, para (e) (ii). **Yorkshire Electric Power Co v Central Electricity Board** [1943] 2 651, KBD.

Undue preference or discrimination—Differential in prices charged to high voltage consumers and lower voltage consumers—Whether 'undue discrimination' against high voltage consumers—Whether high voltage consumers and low voltage consumers separate classes of persons—Electricity Act 1947, s 37(8). **South of Scotland Electricity Board v British Oxygen Co Ltd** [1956] 3 199, HL.

Undue preference or discrimination—Differential in prices charged to high voltage consumers and low voltage consumers—Whether 'undue discrimination' against high voltage consumers—Remedies available to consumers—Electricity Act 1947, s 37(8)—Hydro-Electric Development (Scotland) Act 1943, s 10A(5), added by Electricity Reorganisation (Scotland) Act 1954, s 15(1), Sch 1, Pt 1. **South of Scotland Electricity Board v British Oxygen Co Ltd (No 2), Same v British Oxygen Gases Ltd** [1959] 2 225, HL.

Undue preference or discrimination—Two-part tariff—Standing quarterly charge plus charge per unit—Higher standing charge for larger houses—Higher installation and maintenance costs—No undue discrimination—Electricity Act 1947, s 37(8)—Electricity Act 1957, s 42(3), Sch 5, Pt 2. **London Electricity Board v Springgate** [1969] 3 289, CA.

Contract—

Frustration—War. *See* **Contract** (Frustration—War—Supply of electricity for public lighting).

ELECTRICITY (cont)

Supply (cont)—

Conversion from direct to alternating current—

No contract between occupiers and undertakers—Right to supply of direct current—Expense of changing consumer's installation—Strand District Electric Lighting Order 1895, art 27—Electricity Supply Regulations 1937, reg 34(a), (b). *London Investment and Mortgage Co Ltd v Central London Electricity Ltd* [1948] 1 386, ChD.

Statutory duty—

Electricity authority's duty to supply electrical energy to premises at request of owner or occupier—Meaning of 'occupier'—Premises inhabited by squatters—Squatters requesting supply of electricity—Electricity authority refusing to supply electricity to premises—Whether squatters 'occupiers'—Whether electricity authority bound to supply electricity to premises—Electric Lighting (Clauses) Act 1899, Sch, s 27(1). *Woodcock v South Western Electricity Board* [1975] 2 545, QBD.

Supply outside area—

Powers of undertakers—Supply for haulage or traction to owners or lessees of railway—Amalgamated railway company—Electrification of part of railway undertaking outside area of supply—Electrified part previously owned by company absorbed into amalgamated company—Electric Lighting Act 1909, s 5(1)—Electricity (Supply) Act 1926, ss 12, 47. *Attorney-General v Liverpool Corp'n and London, Midland & Scottish Ry Co* [1937] 3 691, CA.

Transfer of undertaking—

Compensation for loss of employment—

Right to compensation—Employee of authorised undertaking other than a transferred undertaking—Electricity (Supply) Act 1919, s 16—Electricity (Supply) Act 1922, s 21—Electricity (Supply) Act 1933, s 1. *Re An Arbitration between Stimpson and Gosport and Fareham Omnibus Co and Portsmouth Corp'n* [1939] 2 411, KBD.

Underground cable—

Damage. *See* **Trepass to goods** (Defence—Involuntary accident—Accidental damage to underground electric cable).

ELEPHANT

Damage caused by elephant—

Liability of owner or keeper. *See* **Animal** (Dangerous animal—Damage—Liability—Elephants).

EMBARGO

Trade union—

Position at common law. *See* **Trade union** (Conspiracy—Position at common law).

EMBASSY

Employee—

Diplomatic immunity from legal process. *See* **Constitutional law** (Diplomatic privilege—Immunity from legal process—Employee of foreign embassy).

Premises—

Whether part of territory of receiving state—

Whether divorce obtained on premises in London divorce obtained outside British Isles. *See* **Divorce** (Foreign decree—Recognition by English court—Divorce obtained in country outside British Isles—Foreign territory outside British Isles—Diplomatic premises).

EMBEZZLEMENT

See **Criminal law** (Embezzlement).

EMBRACERY

See **Criminal law** (Embracery).

EMERGENCY

State of emergency—

India. *See* **India** (State of emergency).

EMERGENCY LEGISLATION

Air-raid precautions—

Provision of air-raid shelter—

Provision by owner of commercial building—Building in which more than 50 persons work—Arcade consisting of number of buildings in each of which less than 50 persons employed—Whether premises 'commercial building'—Air-raid Precautions Act 1937—Civil Defence Act 1939, ss 14, 15, 16, 17, 19, 30, 89(5), 90. *Goodchild v Romford Borough Council* [1940] 2 309, KBD.

Check trading—

Restrictions—

Regulations of poundage and discount—Whether ultra vires the Defence (General) Regulations—Defence (General) Regulations 1939, reg 55—Check Trading (Control) Order 1942 (S R & O 1942 No 1235)—Check Trading Direction 1942 (S R & O 1942 No 1236). *Progressive Supply Co Ltd v Dalton* [1942] 2 646, ChD.

Company—

Appointment of receiver—

'Circumstances directly or indirectly attributable to any war'—Contract made after cessation of active hostilities—Onus of proof—Business impeded by fuel difficulties and shortage of supplies—Courts (Emergency Powers) Act 1943, ss 1(2)(a)(iii), (4), 2(3). *National Provincial Bank Ltd v Meyrick Redmayne Farms Ltd* [1949] 1 329, CA.

Jeopardy—Conditional appointment—Courts (Emergency Powers) Act 1943, s 1(2). *Re Newport Construction Co Ltd* [1948] 1 365, ChD.

EMERGENCY LEGISLATION (cont)

Company (cont)—

Debenture—

Appointment of joint receivers and managers—Subsequent voluntary liquidation of company—Application for leave to sell—Necessity for leave—Courts (Emergency Powers) Act 1939, s 1(2). **Re S Brown & Son (General Warehousemen) Ltd** [1940] 3 638, ChD.

Appointment of receiver with leave of court—Receiver appointed by debenture-holder with leave of court after winding-up order—Status of receiver—Whether application by receiver for leave to sell necessary—Courts (Emergency Powers) Act 1943, s 1(2)(a)(v). **Re Northern Garage Ltd, Re Newton and Cattermoles (Transport) Ltd's Contract** [1946] 1 566, ChD.

Appointment of receiver with leave of court—Subsequent application by receiver for leave to sell—Whether second application necessary—Courts (Emergency Powers) Act 1939, s 1(2). **Re Wood** [1940] 4 306, ChD.

Service of demand on company under Companies Act—

Application for leave to enforce remedy—Remedy not available to applicant—Power of court to refuse leave—Companies Act 1929, s 169—Courts (Emergency Powers) Act 1939, s 1(2)(a)(v). **Re Gregory & Co (Bruton Street) Ltd** [1943] 1 293, ChD.

Winding-up order—

Post-war contract—Jurisdiction to make order—Courts (Emergency Powers) Act 1939, s 1(5). **Re Middlesex Brick Co Ltd** [1941] 3 410, ChD.

Contract—

Debt or obligation arising by virtue of contract made after commencement of Act—

Building agreement followed by lease—Lease made with company incorporated after commencement of Act—Building agreement made before commencement of Act with promoters of company—Rent in arrears—Whether debt arising out of contract made after commencement of Act—Courts (Emergency Powers) Act 1939, s 1(2), proviso. **Smallman v Embassy Cinema (Tottenham Court Road) Ltd** [1941] 1 241, CA.

Frustration—

Contract to display advertisements—Name and address of advertiser obliterated under Defence (General) Regulations 1939—Whether contract frustrated—Defence (General) Regulations 1939—Removal of Direction Signs Order 1940 (S R & O 1940 No 1007). **White & Carter Ltd v Macbis Bay Garage Ltd** [1941] 2 633, CA.

Contracting out of statutory provisions—

Agreement between parties—

Validity. **Bowmaker Ltd v Tabor** [1941] 2 72, CA, **Smart Bros Ltd v Ross** [1941] 3 326, ChD.

Control of goods. *See* Control of goods.

Corporate body—

Proceedings on behalf of corporate body—

Application by solicitor—Proceedings of procedural character—Solicitor not validly appointed—Objection by respondent. **Re Royal Mutual Benefit Building Society's Application** [1941] 3 313, ChD.

Criminal law—

Sentence—

Suspended sentence. *See* Sentence (Suspended sentence—Emergency legislation).

Cultivation control. *See* Cultivation control.Cyprus. *See* Cyprus (Emergency legislation).

Deposit—

Forfeiture of deposit—

Notice that deposit would be forfeited if balance not paid by stated time—Whether exercising remedy by way of forfeiture of deposit—Courts (Emergency Powers) Act 1939, s 1(2). **O'Hara v Lipman** [1940] 4 223, ChD.

Destruction of rats—

Person using land—

Contractor threshing corn—Rats Order (No 2) 1940 (S R & O 1940 No 1557), arts 1, 2, 6. **Chappell v Rundle** [1941] 2 774, KBD.

Detention under defence regulations—

Action for ill-treatment during detention—

Striking out statement of claim. **Arbon v Anderson** [1942] 1 264, CA.

Application for writ of habeas corpus—

Form of detention order—Recital of necessity to exercise control—Defence (General) Regulations 1939, reg 18B. **R v Brixton Prison (Governor), ex parte Pitt-Rivers** [1942] 1 207, KBD.

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Inaccurate copy of order served on detainee—Legality of detention—Defence (General) Regulations 1939, reg 18B(1)(1A)(4). **Budd v Anderson, Morrison and Williamson** [1943] 2 452, KBD.

Member of organisation subject to foreign influence or control—

Validity of order—Grounds for belief of Home Secretary—Sufficiency of statements in order—Re-arrest of person arrested under invalid order—Habeas Corpus Act 1679, s 6—Habeas Corpus Act 1816, s 3—Defence (General) Regulations 1939, reg 18B(1A). **R v Home Secretary, ex parte Budd** [1942] 1 373, CA.

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False imprisonment—Validity of order—Order made in respect of a number of persons—Jurisdiction of court to review order—Defence (General) Regulations 1939, reg 18B. **Stuart v Anderson and Morrison** [1941] 2 665, KBD.

False imprisonment—Validity of order—Sufficiency of affidavit by Home Secretary stating bona fide belief—Sufficiency of return to writ of habeas corpus—Habeas Corpus Act 1816, ss 3, 4—Defence (General) Regulations 1939, reg 18b—RSC Ord 59. **Greene v Secretary of State for Home Affairs** [1941] 3 388, HL.

EMERGENCY LEGISLATION (cont)

Detention under defence regulations (cont)—

Person of hostile associations (cont)—

Onus of proof—Claim for damages for false imprisonment—Defence (General) Regulations 1939, reg 18B. *Liversidge v Anderson* [1941] 3 338, HL.

Treatment of detained persons—

Effect of instructions issued by Secretary of State and of Prisons Rules 1933—Whether actionable rights conferred on detained persons. *Arbon v Anderson* [1943] 1 154, KBD.

Discovery in aid of execution—

Examination as to means—

Jurisdiction to make order for examination while suspension order is operative—Party entitled to enforce the judgment—Courts (Emergency Powers) Act 1939, s 1—RSC Ord 42, r 32. *Brown v Stafford* [1944] 1 172, CA.

Leave of court—Whether leave of court required before proceedings with examination—Courts (Emergency Powers) Act 1939, s 1—RSC Ord 42, r 32. *Galbraith & McKenna v McKenna & McKenna* [1940] 4 303, ChD. *Fagot v Gaches* [1942] 2 476, CA.

Distress—

Distress damage feasant—

Leave to exercise remedy—Whether leave of court required—Courts (Emergency Powers) Act 1939, s 1(2)(a)(i). *Watkinson v Hollington* [1943] 2 573, CA.

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Debtor able to pay in full all creditors other than landlord and rating authority—Discretion of court—Order for part-payment of arrears of rent—Courts (Emergency Powers) Act 1939, s 1. *Metropolitan Properties Co Ltd v Purdy* [1940] 1 188, CA.

Effect of emergency legislation—

Overriding effect—

Possible inconsistency with special statutes immaterial—Emergency Powers (Defence) Act 1939, s 1(4)—Industrial Disputes Order 1951 (S 1 1951 No 1376), art 1. *R v Industrial Disputes Tribunal, ex parte East Anglian Trustee Savings Bank* [1954] 2 730, QBD.

Essential work. *See* Essential work.

Evacuation area—

Mortgaged property—

Appointment of receiver in respect of interest in arrear—Defence (Evacuated Areas) Regulations 1940 (S R & O 1940 No 1209). *Re Bikker* [1940] 4 449, ChD.

Recovery of rent—

Limitation of action—When time begins to run—Liabilities (War-Time Adjustment) Act 1941, s 3(1) (2)—Liabilities (War-Time Adjustment) Act 1944, s 2(2)—Defence (Evacuated Areas) Regulations 1940 (S R & O 1940 No 1209) (as amended by S R & O 1945 No 1453), reg 4(1), reg 4A(1)—Limitation Act 1939, s 17. *Bell v Gosden* [1950] 1 266, CA.

Gas—

Supply—

Gas company cutting off supply—Realisation of security—Whether leave of court necessary—South Metropolitan Gas, Light and Coke Company Act 1842, ss 159, 161—Courts (Emergency Powers) Act 1939, s 1(2)(a) (iv). *Perry v South Metropolitan Gas Co* [1940] 1 591, ChD.

Hire-purchase—

Hirer in arrear with instalments—

Agreement to surrender car—Whether leave of court required—Claim for damages by hirer—Defence of volenti non fit injuria—Courts (Emergency Powers) Act 1939, s 1(2). *Bowmaker Ltd v Tabor* [1941] 2 72, CA.

Machine tools—

Conversion of goods by hirers—Claim by owners for damages—Owner's property in goods originally obtained in contravention of controlled price order—Whether illegality vitiated hire-purchase agreement—Public policy—Defence (General) Regulations 1939, regs 55, 98—Control of Machine Tools (No 3) Order 1940 (S R & O 1940 No 1374)—Control of Machine Tools (No 5) Order 1940 (S R & O 1940 No 1784). *Bowmakers Ltd v Barnet Instruments Ltd* [1944] 2 579, CA.

Taking possession of property—

Leave to exercise remedy—Car sold by hirer in breach of agreement—Car released by owners to purchaser on payment of amount due under agreement—Courts (Emergency Powers) Act 1943, s 1(2)(a)(ii). *Chatterton v Maclean* [1951] 1 761, KBD.

Leave to exercise remedy—Determination of hire-purchase agreement by hirer—No pressure by owner—Real bargain—Remedy—Courts (Emergency Powers) Act 1939, s 1(2)(a)(ii)—Liabilities (War-Time Adjustment) Act 1941, s 26(2). *Smart Bros Ltd v Ross* [1942] 2 282, HL.

Income tax—

Compensation deemed to be rent—

Requisitioned property—Rent payable under a lease—Compensation (Defence) Act 1939, s 2. *Mellows (Inspector of Taxes) v Buxton Palace Hotels Ltd, Faupel (Inspector of Taxes) v Executors of Hayward* [1944] 1 223, CA.

Industrial assurance—

Contribution covering sickness and death benefits—

Whether benefit exceeds £50—Inclusion of funeral expenses on death of wife—Industrial Assurance and Friendly Societies (Emergency Protection from Forfeiture) Act 1940. *Chessler v The Hebrew United Lodge No 22 of the Grand Order of Israel and Shield of David Registered Friendly Society* [1942] 2 333, KBD.

Landlord and tenant—

Action for possession and rent—

Leave to proceed—Tenancy determined by notice to quit—Whether leave to proceed necessary—Courts (Emergency Powers) Act 1939, s 1(2)(a)(iii). *Whitstable Urban District Council v Tritton* [1941] 3 405, CA.

EMERGENCY LEGISLATION (cont)

Landlord and tenant (cont)—

Action for possession and rent (cont)—

Order in effect reducing rent payable—Other trade creditors being paid in full—Discretion of court—Courts (Emergency Powers) Act 1939, s 1. **Blanket v Palmer** [1940] 1 524, CA.

Lease granted before war assigned after outbreak of war—

Whether assignment constituted new contract of tenancy—Courts (Emergency Powers) Act 1939, s 1(1), (2). **Humberstone Estates Ltd v Allen** [1941] 2 100, CA.

Rent owing by lessee—

Notice to sub-lessees to pay rent to head-lessors—Whether notice can be served without leave of the court—Taking of possession of any property—Law of Distress Amendment Act 1908, s 6—Courts (Emergency Powers) Act 1939, s 1(2). **Wallrock v Equity and Law Life Assurance Society** [1942] 1 510, CA.

Leave to enforce judgment or order—

Counter-notice—

Time for—Courts (Emergency Powers)(Consolidation) Rules 1940 (S R & O 1940 No 408), r 8. **Fishmongers' Co v Donington Finance Co Ltd** [1941] 1 137, CA.

Execution on judgment—

Application at trial—Judgment for sum of money and costs—Separate application after costs taxed—Courts (Emergency Powers) Act 1939, s 1(1), (4)—Courts (Emergency Powers) Rules 1939 (S R & O 1939 No 995), rr 9, 10. **Skelt v Norwich Benefit Building Society** [1940] 1 245, KBD.

Discretion of court—Order for possession—Landlord liable to pay £350 per annum under head lease—Tenant's interest mortgaged—Mortgage supported by life policy—Mortgagee not party to application—Whether any provision made for payment to mortgagee—Unable immediately to do so—Whether tenant must show ultimate ability to pay—Courts (Emergency Powers) Act 1939, s 1(4). **Brandon v Reidy** [1940] 2 474, CA.

Discretion of court—Principles on which discretion exercised—Existence of other debts—Courts (Emergency Powers) Act 1939, s 1. **A v B** [1939] 4 169, CA.

Execution suspended provided £10 paid on 1st February 1940, and £10 per month thereafter—

Meaning of 'thereafter'. **Re Judgment Debtor (No 266 of 1940)** [1940] 2 303, CA.

Judgment for arrears of income tax—

Crown—Whether Courts (Emergency Powers) Act 1939 binding on Crown—Courts (Emergency Powers) Act 1939, s 1(1). **Attorney-General v Hancock** [1940] 1 32, KBD.

Judgment for stated sum—

Refusal of relief against execution—Leave to appeal—Right to stay of execution—Courts (Emergency Powers) Act 1939, s 1(1). **Metropolitan Real and General Property Trust Ltd v Slaters and Bodega Ltd** [1941] 1 310, CA.

Leave given in High Court—

Application to file bankruptcy petition in county court—'Appropriate court'—Courts (Emergency Powers) Act 1939, s 1(1), (2)(a)—Courts (Emergency Powers) Rules 1939 (S R & O 1939 No 995), rr 2, 4. **Re A Debtor, ex parte Dunn Trust Ltd** [1939] 4 337, ChD.

Rent of business premises—

Loss in partnership business attributable to war—No evidence as to private means of debtor—Information required by court—Courts (Emergency Powers) Act 1939, s 1(4). **Landau v Huberman** [1940] 2 66, CA.

Local government—

Remuneration of officers—

Power of local authority to contract to make up remuneration up to peace-time level—Discretion of local authority—Local Government Staffs (War Services) Act 1939, s 1(1) (2). **National Assn of Local Government Officers v Bolton Corp'n** [1942] 2 425, HL.

Resolution of local authority to pay 75 per cent of difference between employee's war service pay and civil remuneration—Whether compensation payable for abolition of office to be deducted from amount payable under resolution—'Remuneration'—Local Government Act 1933, ss 150, 305, Sch IV, paras 3, 10—Local Government Staffs (War Services) Act 1939, s 1(1), (2)—Old Age and Widow's Pensions Act 1940, s 17(1), (3). **James Lally v Durham County Council** [1945] 1 311, CA.

Mortgage—

Application for leave to appoint a receiver—

Assignment of equity of redemption—No covenant between mortgagee and assignee of equity of redemption—Courts (Emergency Powers) Act 1939, s 1(4). **Re Leicester Temperance and General Permanent Building Society's Application** [1942] 2 36, CA.

Assignment of equity of redemption—No person liable to perform obligation—Application to be made ex parte—Practice as to costs—Courts (Emergency Powers) Act 1939, s 1(1), (4). **Re Woolwich Equitable Building Society's Application (T Haywood)** [1942] 1 284, ChD.

Mortgagor nominee of third party—Addition of third party as respondent to application—Person 'liable to perform the obligation'—Courts (Emergency Powers) Act 1939, s 1(4). **Re Royal Mutual Building Society's Application (Turner)** [1942] 1 578, ChD.

No necessity for leave—No person liable to perform the obligation—Collateral security without personal covenant—Courts (Emergency Powers) Act 1939, s 1(4). **Franklin v Midland Bank Ltd** [1941] 2 135, ChD.

No necessity for leave—194130299 No person liable to perform the obligation—Trustee in bankruptcy of mortgagor—Courts (Emergency Powers) Act 1939, s 1(4). **Re Midland Bank Ltd's Application** [1941] 3 299, ChD.

Application for leave to proceed—

No person liable under covenant to pay mortgage debt—Owner of equity of redemption to be made respondent to summons—Courts (Emergency Powers) Act 1939, s 1(4). **Re Hearts of Oak Permanent Building Society's Application** [1942] 1 46, ChD.

EMERGENCY LEGISLATION (cont)**Mortgage (cont)—****Application for leave to appoint a receiver—**

Whether mortgagee must give prima facie evidence that power to appoint has arisen—Courts (Emergency Powers) Act 1939, s 1(2)(a). **Re Fraser Taylor's Application** [1941] 3 141, ChD.

Appointment of receiver—

Application for leave to appoint receiver. *See* Mortgage—Application for leave to appoint receiver, *ante*.

Appointment of new receiver to succeed deceased receiver—Lapse of time between death of original receiver and new appointment—Whether leave of court necessary—Law of Property Act 1925, s 109(5)—Courts (Emergency Powers) Act 1939, s 1(2)(a)(ii). **Re White's Mortgage** [1943] 1 399, ChD.

Bankruptcy of mortgagor—Leave of court required both under Law of Property Act 1925 and under Courts (Emergency Powers) Act 1939—Order of application for leave—Law of Property Act 1925, s 110—Courts (Emergency Powers) Act 1939, s 1. **Re Huddersfield Building Society (Alton)** [1940] 3 218, ChD.

Leave of court not obtained—Mortgagor's consent to appointment—Validity of appointment—Courts (Emergency Powers) Act 1939, s 1(2). **Soho Square Syndicate Ltd v E Pollard & Co Ltd** [1940] 2 601, ChD.

Mortgaged property producing sufficient rent to provide for mortgage interest—Court under no duty to secure equality among secured creditors—Courts (Emergency Powers) Act 1939, s 1. **Pritchard-Jones v Le Vay** [1941] 3 455, CA.

Bankruptcy of mortgagor—

Trustee respondent to application—'Unable immediately' to perform obligation—Courts (Emergency Powers) Act 1943, ss 1(2) (4), 4(3). **Re Legal Charge, dated Nov 26, 1937** [1949] 1 477, ChD.

Enforcing security—

Non-compliance with covenant to insure against war damage—Relief—Landlord and Tenant (War Damage)(Amendment) Act 1941, s 11. **Re Moorgate Estates Ltd** [1942] 2 522, ChD.

Foreclosure order absolute—

Leave—Whether leave necessary for writ of possession—Courts (Emergency Powers) Act 1939, s 1(2)(b)—Possession of Mortgaged Land (Emergency Powers) Act 1939. **Wood v Smallpiece** [1942] 1 252, CA.

Foreclosure proceedings—

Leave to commence—Parties to application—Inability to pay due to war—Onus of proof—Courts (Emergency Powers) Act 1939, s 1(2)(b), (4). **Tomley v Gower and McAdam** [1939] 4 460, ChD.

Meaning of mortgage money—

Interest due on mortgage—Whether including interest—Possession of Mortgaged Land (Emergency Provisions) Act 1939. **Russell v Weinreb** [1943] 1 296, ChD.

Notice requiring payment of mortgage moneys—

Application by mortgagees to exercise power of sale—Application made before expiration of 3 months from service of notice—Law of Property Act 1925, s 103—Courts (Emergency Powers) Act 1939, s 1. **Re Royal Bank of Scotland** [1940] 3 476, ChD.

Purchase of equity of redemption by mortgagee—

Whether mortgagee can take possession of property without leave of court—Courts (Emergency Powers) Act 1939, s 1. **Sun Life Assurance Society v Relton** [1942] 2 94, ChD.

Realisation of security—

Exercise of remedy—Mortgage by wife to secure joint banking account of herself and her husband—Bankruptcy of wife—Husband allowed by trustee to reside and carry on business on mortgaged property—Death of wife—Husband appointed executor—Sale of property by mortgagee—Sale alleged to be at under-value—Right of husband to complain of sale—Right of husband and wife to be made respondents to mortgagee's application for leave to realise security—'Person affected'—Courts (Emergency Powers) Act 1943, s 1(2)(a)(v), s 4(3), (4), s 7—Courts (Emergency Powers) Rules 1943 (S R & O 1943 No 1113), r 20(1), (2), (3). **Jarrett v Barclays Bank Ltd, Nash v Jarrett** [1947] 1 72, CA.

Immediately unable to pay mortgage debt—Whether mortgagor can be asked to sell mortgaged property which is his home. **Re Chalfont and District Permanent Building Society** [1941] 3 41, ChD.

Service of summons—Attaching copy to dwelling-house—Courts (Emergency Powers) (Consolidation) Rules 1940 (S R & O 1940 No 408), r 15(5). **Citizens Permanent Building Society v Englefield** [1942] 2 424, ChD.

Sale—

Collateral mortgage—No obligation to pay mortgage debt—'Person liable... to perform the obligation'—Courts (Emergency Powers)(Scotland) Act 1939, s 1(2), (3). **Tritonia Ltd v Equity and Law Life Assurance Society** [1943] 2 401, HL.

Motor vehicle—**Immobilisation—**

Civil defence vehicle—Private car used partly for civil defence purposes—Motor Vehicles (Control) Order 1940 (S R & O 1940 No 1055), art 1(1), (3). **Wyles v Banfield** [1941] 2 791, KBD.

Restriction of journeys—

Vehicle hired for journey of more than 15 miles by road—'Inner radius'—Motor Fuel (Hire Service) Order 1941 (S R & O 1941 No 1745), art 2(b). **Langley v Wilson** [1943] 2 213, KBD.

National registration—**Identity card—**

Right of police to require production—National Registration Act 1939, s 6(4). **Willcock v Muckle** [1951] 2 367, KBD.

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Offence—

Act preparatory to the commission of offence under Defence Regulations—

Liability of master for act of servant—Sale of meat at excessive price—Defence (General) Regulations 1939, reg 55AB, 90(1). **Gardner v Akeroyd** [1952] 2 306, QBD.

Offence by limited company—

Proceedings against director—Director not duly appointed—Defence (General) Regulations 1939, reg 91. **Dean v Hiesler** [1942] 2 340, KBD.

Offence under Defence (General) Regulations—

Exception to general provision—Onus of proof—Summary Jurisdiction Act 1848, s 14—

Summary Jurisdiction Act 1879, s 39(2)—Defence (General) Regulations 1939, reg 55—

Limitation of Supplies (Miscellaneous) (No 5) Order 1940 (S R & O 1940 No 2031)—

Limitation of Supplies (Miscellaneous) (No 11) Order 1941 (S R & O 1941 No 700). **Buckman v Button** [1943] 2 82, KBD.

Giving false information—Necessity for statement that specific charge under Defence

(General) Regulations pending—Defence (General) Regulations 1939, reg 82(2). **Smith v Barkley** [1943] 2 788, KBD.

Offence under temporary statute—

Offence committed during currency of statute—Prosecution and conviction after expiry—

Effect of expiry on operation 'as respects things previously done'. **Wicks v Director of Public Prosecutions** [1947] 1 205, HL.

Seaman—

Charge under the Defence (General) Regulations 1939—Ship's log-book—Entry not brought

to man's notice as provided by the Merchant Shipping Act 1894—Whether log-book

admissible as evidence of charge—Defence (General) Regulations 1939, reg 47A—

Merchant Shipping Act 1894, ss 228, 239, 695. **Robinson v Robson** [1943] 1 511, KBD.

Power to make regulations—

Power to appoint controller of business—

Validity of regulation—Powers of controller—Direction to company to increase overdraft at

bank—Emergency Powers (Defence) Act 1939, s 1—Emergency Powers (Defence) Act

1940, s 1—Defence (General) Regulations 1939, reg 55(1), (4). **John Fowler & Co (Leeds)**

Ltd v Duncan and Crabtree [1941] 2 577, ChD.

Power to make regulations authorising taking possession or control of undertaking—

Regulation authorising carrying on of undertaking—Ultra vires—Emergency Powers (Defence)

Act 1939, s 1—Defence (General) Regulations 1939, reg 55(4). **E H Jones (Machine Tools)**

Ltd v Farrell and Muirsmith [1940] 3 608, ChD.

Regulation extending suspension of trademark rights to British subjects—

Validity—Emergency Powers (Defence) Act 1939, s 1—Patents, Designs, Copyright and Trade

Marks (Emergency) Act 1939, s 3—Defence (General) Regulations, 1939, reg 60E. **R v**

Comptroller-General of Patents, ex parte Bayer Products Ltd [1941] 2 677, CA.

Powers of police. *See* **Police** (Powers)—Powers derived from emergency legislation).

Proceedings commenced before coming into force of Courts (Emergency Powers) Act 1939—

Proceedings for foreclosure—

Taking 'any step in any such proceedings'—Leave of court—Courts (Emergency Powers) Act

1939, s 1(2)(b). **Moorgate Estates Ltd v Trower and Barstow** [1940] 1 195, ChD.

Rates—

Property damaged by enemy action—

Whether distinction to be drawn between applications for issue of warrant and leave to

levy—Courts (Emergency Powers) Act 1939, s 1(2)(a)—Courts (Emergency Powers)

(Consolidation) Rules 1940 (S R & O 1940 No 408). **Stepney Borough Council v Woolf**

[1943] 1 64, KBD.

Rationing. *See* **Rationing**.

Re-entry of property—

Leave to re-enter property—

Service occupier—Failure to deliver up on termination of employment—Courts (Emergency

Powers) Act 1939, s 1. **Butcher v Poole Corp** [1942] 2 572, CA.

Registration of premises—

Application for registration after commencement of proceedings by landlord to recover

possession—

Whether Defence (General) Regulations 1939, reg 68CB, having retrospective effect.

Ouzman v Kennedy [1947] 1 99, CA.

Dwelling—

Living accommodation—Premises let for business purposes—Previous occupation as

residence—Defence (General) Regulations 1939, reg 68CB(1). **Oken v Perraton** [1947] 2

286, KBD.

Requisition. *See* **Requisition**.

Sale of food—

False labelling—

Conspiracy—Proceedings begun more than six months from date of commission of offence—

Defence (General) Regulations 1939, regs 90(1), 93(2)—Defence (Sale of Food) Regulations

1943 (S R & O 1943 No 1553), regs 1(1), 4. **D P MacDonald & Sons Ltd v Sharpe** [1947]

1 271, KBD.

Sale of land—

Failure to complete—

Application for leave to forfeit deposit and to re-enter—Onus of proof—Courts (Emergency

Powers) Act 1939, s 1. **Re Griffiths, Re Davies' Contract** [1940] 1 528, CA.

EMERGENCY LEGISLATION (cont)

Sale of land (cont)—

Recovery of deposit—

Statement by vendor to requisitioning authority that he was prepared to accept requisition notice as owner and that he intended to reside on the property—Whether requisition notice effective for the purpose of exercising power to enter into possession of property—Repudiation of contract by purchaser—Whether purchaser entitled to recover deposit—Law of Property Act 1925, s 49(2)—Defence (General) Regulations 1939, reg 51. **James Macara Ltd v Barclay** [1944] 2 589, CA.

Settlement of action—

Settlement after commencement of Act of action commenced before commencement of Act—

Agreed sum to be paid by instalments with liberty to sign judgment on default—'Judge's order if necessary'—Default in payment of instalment—Judgment for balance of claim—Whether leave of court necessary to proceed to execution (Emergency Powers) Act 1939, s 1(1)(b). **Page v Skelt** [1940] 2 419, CA.

Specific performance—

Order for specific performance—

Failure of purchaser to obey order—Application by vendors to forfeit deposit—Courts (Emergency Powers) Act 1939, s 1(1), (2)(a)(iv). **John Barker & Co Ltd v Littman** [1941] 2 537, CA.

Taking possession of property—

Judgment for delivery up of chattel to which plaintiff contractually entitled—

Issue of writ of delivery—Whether leave of court necessary before obtaining judgment and issue of writ—Courts (Emergency Powers) Act 1939, s 1(2)(a). **S and A Services Ltd v Dickson** [1940] 3 98, CA.

Purchaser in possession of property contracted to be sold—

Order for specific performance—Failure of purchaser to obey order—Application by vendors for possession of property—Courts (Emergency Powers) Act 1939, s 1(1). **Broadstairs Picture House Ltd v Littman** [1940] 3 419, ChD.

Trading with the enemy. *See* **Trading with the enemy**.

EMERGENCY POWERS

Crown—

Whether bound by statute. *See* **Statute** (Crown—Whether bound by statute—Emergency powers).

EMERGENCY PROCEDURE

Industrial action. *See* **Industrial relations** (Industrial action—Emergency procedure).

EMIGRATION

Gift for the promotion of—

Whether charitable purpose. *See* **Charity** (Benefit to community—Emigration).

EMOLUMENTS

Income tax. *See* **Income tax** (Emoluments from office or employment).

EMPLOYEE

Administration of fund for benefit of—

Rule against perpetuities. *See* **Rule against perpetuities** (Remoteness—Scheme for administration of fund for benefit of employees of company).

Carried in motor vehicle by reason of or in pursuance of a contract of employment. *See* **Motor insurance** (Compulsory insurance against third party risks—Person carried by reason of or in pursuance of a contract of employment).

Duty of employee. *See* **Master and servant** (Duty of servant).

Foreign—

Safe system of working. *See* **Safe system of working** (Reasonable care not to expose employee to unnecessary risk—Untrained foreign labourer with poor knowledge of English).

Will—

Specific donees. *See* **Will** (Gift—Specific donees—Employee 'if in my service at the time of my death').

EMPLOYER

Agreement with unions. *See* **Trade union** (Collective agreement—Joint negotiating committee of employer and unions).

Duty of employer. *See* **Master and servant** (Duty of master).

Liability—

False trade description—

Defence. *See* **Trade description** (Defence to proceedings—Reasonable precautions and due diligence to avoid commission of offence).

Motor insurance—

Compulsory insurance against third party risks—

Liabilities required to be covered. *See* **Motor insurance** (Compulsory insurance against third party risks—Liabilities required to be covered—Employer).

EMPLOYER'S LIABILITY

Exclusion of employer's liability—

Common employment—

Vicarious liability. *See* **Vicarious liability** (Common employment—Provision excluding employer's liability).

Generally. *See* **Master and servant** (Liability of master).

Insurance. *See* **Insurance** (Employer's liability insurance).

Statutory duty. *See* **Statutory duty** (Employer's breach of duty to workman).

EMPLOYMENT

Act within course of employment—

Scope of employment—

Vicarious liability. *See* **Vicarious liability** (Master and servant—Act within course of employment).

Agency—

Licence—

London. *See* **London** (Employment agencies—Licensing).

Collective bargaining. *See* **Industrial relations** (Collective bargaining).

Compensation—

Dock workers—

Refusal of licence to employ registered dock workers. *See* **Licence** (Dock workers—Licence to employ registered dock workers—Refusal of licence—Compensation for refusal).

Conditions—

Shop assistant—

Statutory half holiday. *See* **Shop** (Conditions of employment—Statutory half holiday for shop assistants).

Continuity—

Change of employer—

Apprenticeship—Apprentice serving different masters—Apprenticeship deed providing for transfer to different employers—Apprenticeship treated as single apprenticeship notwithstanding transfer—Whether apprentice in continuous employment for purposes of redundancy payment—Contracts of Employment Act 1963, Sch 1, para 10(1)—Redundancy Payments Act 1965, ss 1(1) and 8(2). *Lee v Barry High Ltd* [1970] 3 1040, CA.

Employment by the one employer—Meaning of 'the one employer'—Same employer—Employee employed by two employers for part of period—Employee employed by only one of two employers for remainder of period—Whether employed by 'the one employer' throughout period—Contracts of Employment Act 1972, Sch 1, para 9(1). *Harold Fielding Ltd v Mansi* [1974] 1 1035, NIRC.

Employee of company taken into employment of another company which at that time associated company of first mentioned company—Period of employment at that time count as period of employment with associated company—'Company'—'Associated company'—Transfer from electricity board to Central Electricity Generating Board—Boards not associated companies—'Absent from work'—National agreement providing for carrying over certain benefits on transfer—Whether continuous employment—Contracts of Employment Act 1963, Sch 1, paras 5(1)(c), 10A—Redundancy Payments Act 1965, s 48(4). *Southern Electricity Board v Collins* [1969] 2 1166, QBD.

Partnership—Employment by partnership—Change in partners—Period of employment at time of change to count as period of employment with partners after change—Meaning of 'change in the partners'—Two partners—One of two partners leaving—Other partner remaining as sole proprietor—Whether 'a change in the partners'—Contracts of Employment Act 1972, Sch 1, para 9(5). *Harold Fielding Ltd v Mansi* [1974] 1 1035, NIRC.

Disruption of continuity—

Strike—Continuity not broken where employee takes part in strike—Dismissal of employee whilst on strike—Employee re-engaged and returning to work after termination of strike—Whether employee continuing to be on strike after dismissal—Whether continuity of employment broken—Contracts of Employment Act 1963, Sch 1, paras 7(2), 11. *Bloomfield v Springfield Hosiery Finishing Co Ltd* [1972] 1 609, NIRC.

Temporary cessation of work—Cessation of work—Whether cessation refers to employee's work or employer's work—Redundancy payment—Contracts of Employment Act 1963, Sch 1, para 5(1)(b). *Fitzgerald v Hall Russell & Co Ltd* [1969] 3 1140, HL.

Temporary cessation of work—Employee taking part in strike—Strikers given notice of dismissal on account of failure to return to work—Strike ending—Strikers allowed to apply for re-employment—Some strikers taken on immediately—Employee not re-engaged immediately as work not available for him—Employee re-engaged after lapse of 16 days—Whether absence from work on account of dismissal or on account of temporary cessation of work—Whether temporary cessation of work on account of strike in which employee taking part—Contracts of Employment Act 1963, Sch 1, para 5(1)(b) (3). *Clarke Chapman-John Thompson Ltd v Walters* [1972] 1 614, NIRC.

Temporary cessation of work—Employee working on shifts—Employee ill—Employers terminating employee's contract—Employers willing to re-engage employee—Employers offering employee work on different shift—Employers informing employee he could rejoin his former shift if he waited approximately one week—Employee electing to wait and rejoin old shift—Whether employee's absence from work during waiting period on account of temporary cessation of work—Contracts of Employment Act 1972, Sch 1, para 5(1)(b). *Kolatsis v Rockware Glass Ltd* [1974] 3 555, NIRC.

Temporary cessation of work—Rivetter in service of ship-repairers for 40 years with occasional breaks—Work of spasmodic nature, temporary dismissals and re-engagements—Last break in claimant's service for 31 days—Whether a temporary cessation of work which counted as a period of employment by reason of Contracts of Employment Act 1963, Sch 1, para 5(1)(b)—Redundancy Payments Act 1965, s 1(1), Sch 1, para 1(1). *Hunter v Smith's Dock Co Ltd* [1968] 2 81, QBD.

Period of continuous employment—

Calculation—Continuous employment for a period of not less than 26 weeks ending with the effective date of termination—Weeks—First week of employment beginning on Tuesday—Employment ending on Monday 25 weeks later—Whether employee entitled to count days in first and last weeks up to succeeding Saturday as separate weeks of employment—Whether week ending on a date later than the effective date of termination—Contracts of Employment Act 1972, Sch 1, paras 4, 11—Trade Union and Labour Relations Act 1974, Sch 1, paras 10, 30. *Coulson v City of London Polytechnic* [1976] 3 234, EAT.

EMPLOYMENT (cont)

Continuity (cont)—

Presumption as to continuity—

Change of employer—Change not effecting break in continuity of employment—Transfer of trade business or undertaking—Whether presumption as to continuity applicable where change of employer during period of employment—Redundancy Payments Act 1965, s 9(2)(a)—Contracts of Employment Act 1972, Sch 1, para 9(2). **Evenden v Guildford City Association Football Club Ltd** [1975] 3 269, CA.

Rebuttal of presumption—Agreement disabling employer from rebutting presumption—Change of employer during period of employment—Undertaking by new employer that employee's service with former employer should be regarded as unbroken—Employee subsequently dismissed by new employer by reason of redundancy—Employee claiming redundancy payment calculated on basis of period including period of service with former employer—Whether new employer precluded from adducing evidence that continuity of employment broken by change of employer—Redundancy Payments Act 1965, s 9(2)(a). **Evenden v Guildford City Association Football Club Ltd** [1975] 3 269, CA.

Transfer of trade, business or undertaking—

Employee in trade, business or undertaking at time of transfer—Dismissal of employee by transferors on transfer taking place—Employee entering new contract of employment with transferors—New contract containing different provisions as to capacity and place of work—Employee subsequently dismissed by transferees by reason of redundancy—Dismissed after lapse of requisite period of employment with transferees to qualify for redundancy payment—Computation of amount of payment—Whether period of employment with transferors to be taken into account—Contracts of Employment Act 1963, Sch 1, para 10(2)—Redundancy Payments Act 1965, ss 1(1), 3(2), 13(2), Sch 1, para 1(1). **Lord Advocate v De Rosa** [1974] 2 849, HL.

Employment by transferor immediately before transfer—Transfer of business of company—Receiver of company appointed by debenture holders—Receiver carrying on business and employees continuing in employment—Subsequent resolution to wind up company—Liquidator appointed—Employees thereafter in employment of receiver—Business of company subsequently transferred to new employers—Employees continuing employment with new employers—Employees dismissed nine months later by reason of redundancy—Whether employees employed by transferor of business immediately before transfer—Whether employees entitled to redundancy payments from new employers—Contracts of Employment Act 1963, Sch 1, para 10(2)—Redundancy Payments Act 1965, s 8(2). **Deaway Trading Ltd v Calverley** [1973] 3 776, NIRC.

Test for ascertaining whether transaction a transfer—Contracts of Employment Act 1963, Sch 1, para 10(2)—Redundancy Payments Act 1965, s 1. **Kenmir Ltd v Frizzell** [1968] 1 414, QBD.

Test for ascertaining whether transaction a transfer—Change of employers consequent on sale of factory premises—Claimants employed for many years by previous employers—Previous employers were manufacturers who sold their factory premises to the present employers who bought the factory to convert it into units for leasing—Claimants dismissed from employment after 101 weeks with present employers—Whether transfer of trade by previous employers to present employers—'Activity'—Whether prior employment could be included in reckoning period of continuous employment—Contracts of Employment Act 1963, Sch 1, para 10(2)—Redundancy Payments Act 1965, s 8(1), (2), s 13(1), s 25(1). **Dallow Industrial Properties Ltd v Else** [1967] 2 30, QBD.

Test for ascertaining whether transaction a transfer—Change of employers consequent on sale of factory premises—Employees continuing to be engaged in same type of work at factory and subject to same conditions of service—No change in employees' working environment—Sale of factory not including transfer of goodwill, assignment of book debts or work in progress—No restrictions on trading by vendors—Vendors carrying on business elsewhere—Vendors engaged in manufacture of diesel engines—Purchasers engaged in manufacture of spinning machines, compressors and steam turbines—Test whether transaction affecting employee's working environment not appropriate—Production unit acquired by purchasers not used to carry on any trade or business of vendors—Vendors' business transferred elsewhere—Sale not constituting a transfer of business—Contracts of Employment Act 1963, Sch 1, para 10(2). **Woodhouse v Peter Brotherhood Ltd** [1972] 3 91, CA.

Test for ascertaining whether transaction a transfer—Contracts of Employment Act 1963, Sch 1, para 10(2)—Redundancy Payments Act 1965, s 1. **Kenmir Ltd v Frizzell** [1968] 1 414, QBD.

Contract of service—

Copyright—

Work made in course of author's employment under a contract of service. *See* Copyright (Ownership—Work made in course of author's employment under a contract of service).

Generally. *See* Master and servant (Contract of service).

Meaning in industrial injuries legislation. *See* Industrial injury (Insurable employment—Employment under contract of service).

Proper law. *See* Conflict of laws (Contract—Proper law of contract—Contract of employment).

Teacher. *See* Education (Teacher—Contract of service).

Termination—

Termination on appointment of receiver—Circumstances in which appointment operating to terminate contract. *See* Company (Receiver—Appointment by debenture-holder—Appointment as agent of company—Effect—Termination of employee's contract of service).

Contributory negligence—

Workman and fellow employee. *See* Negligence (Contributory negligence—Workman and fellow employee).

EMPLOYMENT (cont)

Crown—

Income tax—

Office or employment under the Crown. *See* **Income tax** (Office or employment under the Crown).

Dangerous employment—

Safe system of working. *See* **Safe system of working** (Dangerous employment).

Dismissal—

Crown servant. *See* **Crown** (Crown servant—Dismissal at pleasure by Crown).

Dismissal at pleasure—

Crown servant. *See* **Crown** (Crown servant—Dismissal at pleasure by Crown).

Dismissal in consequence of injury—

Effect on award of damages for personal injury. *See* **Damages** (Personal injury—Dismissal from work in consequence of injury—Dismissal following award at trial).

Hospital staff. *See* **National Health Service** (Hospital—Staff—Terms and conditions of service—Dismissal).

Natural justice. *See* **Natural justice** (Master and servant—Dismissal of servant).

Redundancy. *See* **Redundancy** (Dismissal by reason of redundancy).

Redundancy or unfair dismissal—

Practice where doubt to which dismissal attributable. *See* **Industrial relations** (Practice—Claim for redundancy payment or compensation for unfair dismissal).

Reinstatement—

Essential work. *See* **Essential work** (Termination of employment—Subsequent direction for reinstatement of employee).

Bias of tribunal inquiring into dismissal. *See* **Tribunal** (Membership—Bias—Inquiry into dismissal).

Trade union official. *See* **Trade union** (Official—Dismissal—Elected officer).

Unfair dismissal. *See* **Unfair dismissal**.

Disruption of continuity of employment. *See* **Continuity**—Disruption of continuity, *ante*.

Dock. *See* **Dock**.

Dock—

Generally. *See* **Dock**.

Dock labour scheme—

Application—

Dock work—First piling of timber in importer's yards—First piling subsequent to piling of timber in storage yard within dock area after unloading from ship—Timber carried by lorries from storage area to importers' yards in vicinity of port but outside area of dock estates—Whether first piling of timber in yards 'dock work'—Whether timber 'cargo' on arrival at yards—Whether yards within 'port'—Dock Workers (Regulation of Employment) Act 1946, s 6—Docks and Harbours Act 1966, ss 1, 58—Dock Workers (Regulation of Employment) (Amendment) Order 1967 (S I 1967 No 1252), Sch 2, cl 1(3), App 1. **National Dock Labour Board v John Bland & Co Ltd** [1971] 2 779, HL.

Dock work—Work ordinarily performed by dock workers of classes or description to which scheme applies—Work in connection with 'cargo'—Unloading of iron ore from ship's holds by crane on jetty—Ore deposited from cranes on to conveyor belt—Conveyor belt transporting ore from jetty direct to consignee's stock yard—What if any operations in connection with removal of ore from hold of ship to stock yard constituting 'dock work'—Dock Workers (Regulation of Employment)(Amendment) Order 1967 (S I 1967 No 1252), Sch 2, cl 1(3), 2(1). **National Dock Labour Board v British Steel Corp** [1973] 1 305, HL.

Port—Port of Port Talbot—Meaning—'All the Dock Estate'—New harbour and jetty built outside area of original dock estate—Whether part of the dock estate—Dock Workers (Regulation of Employment)(Amendment) Order 1967 (S I 1967 No 1252), Sch 2, App 1. **National Dock Labour Board v British Steel Corp** [1973] 1 305, HL.

Dock Labour Board—

Disciplinary functions—Delegation—Power to dismiss registered dock workers—Delegation of power by local board—Dismissal of worker—Action for declaration of invalidity of dismissal and damages—Validity of dismissal—Whether damages sufficient remedy—Dock Workers (Regulation of Employment) Order 1947 (S R & O 1947 No 1189), cl 16(2)(c). **Vine v National Dock Labour Board** [1956] 3 939, HL.

Disciplinary functions—Delegation—Power to suspend registered dock worker—Delegation of power by local board—Suspension of workers—Action for declaration of invalidity of suspension—Validity of suspension—Dock Workers (Regulation of Employment) Order 1947 (S R & O 1947 No 1189), Sch, cl 5(3), cl 16(2)(b). **Barnard v National Dock Labour Board** [1953] 1 1113, CA.

Emoluments—

Income tax. *See* **Income tax** (Emoluments from office or employment).

Employee—

Reputation—

Slander. *See* **Libel and slander** (Slander actionable per se—Employee).

Employer and employee. *See* **Master and servant**.

Employer's liability insurance. *See* **Insurance** (Employer's liability insurance).

Essential work. *See* **Essential work**.

Factory. *See* **Factory**.

Income tax—

Emoluments from employment. *See* **Income tax** (Emoluments from office or employment).

Industrial Court. *See* **Industrial Court**.

Industrial injury. *See* **Industrial injury**.

Industrial relations. *See* **Industrial relations**.

Industrial training. *See* **Industrial training**.

EMPLOYMENT (cont)

Libel—

Privilege—

Employee's claim for unemployment benefit—Communication from employer. *See* **Libel and slander** (Privilege—Unemployment insurance claim—Communication to labour exchange).

Publication to employee. *See* **Libel and slander** (Qualified privilege—Duty and interest—Publication to clerical staff for purpose of preparing document).

Loss of employment—

Compensation—

Income tax. *See* **Income tax** (Pension—Compensation—Loss of employment).

Iron and steel industry—Denationalisation. *See* **Iron and steel industry** (Compensation—Denationalisation—Loss of employment).

Local government officer. *See* **Local government** (Officer—Compensation for loss of employment).

National Health Service officer. *See* **National Health Service** (Officer—Compensation for loss of employment).

National health insurance. *See* **National health insurance** (Employment).

National insurance. *See* **National insurance**.

Nationals of EEC member states—

Freedom of movement. *See* **Immigration** (Workers—Freedom of movement—Nationals of member states of European Economic Community).

Part-time—

National insurance. *See* **National insurance** (Employed person).

Redundancy. *See* **Redundancy**.

Regulation—

Dock labour scheme—

Generally. *See* **Dock labour scheme**, *ante*.

Licence to employ registered dock workers. *See* **Licence** (Dock workers).

Restraint of trade—

Agreement. *See* **Restraint of trade by agreement**.

Selective employment tax. *See* **Selective employment tax**.

Termination—

Essential work. *See* **Essential work** (Termination of employment).

Trade dispute. *See* **Trade dispute**.

Trade union—

Generally. *See* **Trade union**.

Membership and activities. *See* **Industrial relations** (Trade union membership and activities).

Unemployment insurance. *See* **Unemployment insurance**.

Unfair dismissal. *See* **Unfair dismissal**.

Unfair industrial practice. *See* **Industrial relations** (Unfair industrial practice).

Vicarious liability. *See* **Vicarious liability** (Master and servant).

Written particulars of terms—

Delivery to employee—

Effect. *See* **Estoppel** (Conduct—Employment—Written particulars of terms of employment given to claimant in accordance with statute).

ENCLOSED PREMISES

Found on enclosed premises—

Vagrancy charge. *See* **Criminal law** (Vagrancy—Found in enclosed premises for an unlawful purpose).

ENCOURAGEMENT

Crime—

Principal in second degree. *See* **Criminal law** (Principal in second degree—Encouragement).

ENCROACHMENT

Tenant—

Encroachment by tenant. *See* **Landlord and tenant** (Encroachment by tenant).

ENEMY

Alien—

Action for false imprisonment against Home Secretary—

Statement of claim containing arguable point. *See* **Statement of Claim** (Striking out—Action for false imprisonment brought by enemy aliens against Home Secretary).

Administration of estate on intestacy. *See* **Intestacy** (Grant of administration—Estate of enemy alien).

Deprivation of nationality. *See* **Nationality** (Enemy alien—Deprivation of nationality).

Forfeiture of lease. *See* **Landlord and tenant** (Forfeiture of lease—Lessee enemy alien abroad).

Generally. *See* **Alien** (Enemy alien).

Naturalisation during war. *See* **Nationality** (Enemy alien—Naturalisation during war).

Copyright—

Grant to non-enemy subject of licence to exercise copyright owned by enemy. *See* **Copyright** (Licence—Grant to non-enemy subject licence to exercise copyright owned by enemy).

Enemy property—

Financial agreement between Great Britain and ex-enemy Power—

Action by ex-enemy Power to enforce agreement—Competence—Financial Agreement, 17th April 1947 (Treaty Series, No 31 (1947), Annex to No 6), arts 1, 2, 5. **Republic of Italy v Hambros Bank Ltd** [1950] 1 430, ChD.

ENEMY (cont)

Enemy property (cont)—

German enemy property—

Claim in respect of 'German enemy debt'—Sum due in respect of obligation incurred—'Sum due'—Lease to German national—Covenant to repair—Breach of covenant—Claim for damages—Whether claim for unliquidated damages could rank as a German enemy debt—Distribution of German Enemy Property Act 1949, s 8(1)(a). *Re A Claim by Collbran (decd)* [1956] 1 310, ChD.

Claim in respect of 'German enemy debt'—Sum due in respect of obligation incurred—Loan agreement in 1924—Proper law of contract German—Debt extinguished under German moratorium law on payment to Konversionskasse—Decision of administrator as to effect of payment—Whether effect a question of law or of fact—Whether claimant entitled to payment—Distribution of German Enemy Property Act 1949, s 8(1)—Distribution of German Enemy Property (No 2) Order 1951 (S 1 1951 No 1899), art 7(2). *Re Helbert Wagg & Co Ltd, Re Prudential Assurance Co Ltd* [1956] 1 129, ChD.

Principal—

Ratification. *See Agent* (Ratification—Validity—Foreign principal becoming enemy alien by enemy occupation during war).

Property—

Custody. *See Trading with the enemy* (Custody of enemy property).

Generally. *See Enemy property, ante.*

Trade mark—

Assignment by Custodian of Enemy Property—Whether effective. *See Trade mark* (Assignment—Restriction on assignment—Exclusive rights—Enemy property).

Trading with the enemy. *See Trading with the enemy.*

ENFORCEMENT

Affiliation order. *See Affiliation* (Affiliation order—Enforcement).

Arbitration award. *See Arbitration* (Award—Enforcement).

Judgment for possession—

Landlord and tenant. *See Landlord and tenant* (Recovery of possession—Judgment for possession—Enforcement).

Lien—

Sale. *See Lien* (Enforcement—Sale).

Notice—

Planning control. *See Town and country planning* (Enforcement notice).

Proceedings—

Legal aid certificate—

Scope of certificate. *See Legal aid* (Certificate—Scope of certificate—Enforcement proceedings).

ENFRANCHISEMENT

Lease. *See Landlord and tenant* (Leasehold enfranchisement).

ENGAGED COUPLE

Transaction—

Undue influence. *See Equity* (Undue influence—Presumption of undue influence—Engaged couple).

ENGINE

Calculated to inflict grievous bodily harm. *See Criminal law* (Trap—Setting engine calculated to inflict grievous bodily harm).

ENGINEER

Duty to exercise reasonable skill and care—

Steps to be taken to fulfil duty. *See Negligence* (Professional person—Duty to exercise reasonable skill and care—Steps to be taken to fulfil duty depending on circumstances—Consultant engineers).

ENGINEERING

Industrial training—

Levy. *See Industrial training* (Levy—Activities of industry—Engineering industry).

ENTAIL

Variation of trusts by the court. *See Variation of trusts* (Benefit—Settled estaters—Appointing person to executor disentailing deed).

ENTAILED INTEREST

Solicitor—

Negligence—

Failure to advise disentailment. *See Solicitor* (Negligence—Damages—Tenant in tail—Failure to advise disentailment).

Will—

Construction—

Revocatory clause. *See Will* (Construction—Revocatory clause—entailed interest).

Specific bequests. *See Will* (Gift—Specific bequests—Entailed interest).

ENTERTAINING EXPENSES

Deduction for tax purposes. *See Income tax* (Deduction in computing profits—Expenses wholly and exclusively laid out for purpose of trade—Entertaining expenses).

ENTERTAINMENT

Cinema. *See Cinema.*

Entertainment duty. *See Entertainment duty.*

ENTERTAINMENT (cont)

Fun-fair—

Obligation to obtain licence—

Local Act requiring licence for 'theatre or other place of public entertainment'—Whether fun-fair 'place of public entertainment'—*Barrow-in-Furness Corporation Act 1868*, s 166—*Barrow-in-Furness Corporation Extension and Amendment Act 1872*, s 33. *Allen v Emmerson* [1944] 1 344, KBD.

Music and dancing licence—

Application for Sunday licence—

Jurisdiction of licensing justices to entertain application—Applicant in possession of licence permitting use of premises on weekdays for music and dancing—Application for use also on Sundays—No charge made for dancing—Whether powers of justices overridden by Sunday Observance Act 1780, s 1—Public Health Acts Amendment Act 1890, s 51. *Jeffrey v Evans* [1964] 1 536, QBD.

Conditions—

Power to impose conditions—Valid conditions must be such as relate to the provision of the entertainment on the premises, but not be in the nature of restrictions in rem on the premises—Restriction imposed in licence on artistes, other than vocalists, being permitted to perform in premises—Entertainer invited members of audience to read from a card—No element of music in entertainment—'Vocalist'—Whether restriction contravened—Whether imposition of restriction valid in relation to entertainment provided—Public Health Acts Amendment Act 1890, s 51, paras 1, 2, 9. *Whitehead v Haines* [1964] 2 530, QBD.

London—

Club—Invitation to public to fill in application form and see stage show on payment for membership—Applicants, so applying, admitted as guests of committee of club—Whether members of the public—Disorderly Houses Act 1751, s 2—London County Council (General Powers) Act 1915, s 16—London County Council (General Powers Act 1935, s 55. *Panama (Piccadilly) Ltd v Newberry* [1962] 1 769, QBD.

Proprietary club—

Public dancing and music—Whether condition precedent to grant of licence that music and dancing public—Public Health Acts Amendment Act 1890, s 51(1), (2). *Beynon v Caerphilly Lower Licensing Justices* [1970] 1 618, QBD.

Public dancing and music—

Public—When entertainment is 'public'—Public Health Acts Amendment Act 1890, s 51. *Beynon v Caerphilly Lower Licensing Justices* [1970] 1 618, QBD.

Registered club—

Public dancing and music—Club applying for special order of licensing exemption for social evenings with entertainment—Guests of members of bona fide club not members of public—Whether public dancing or music licence necessary—Public Health Acts Amendment Act 1890, s 51—Licensing Act 1964, s 74(4). *Severn View Social Club and Institute Ltd v Chepstow Licensing Justices* [1968] 3 289, QBD.

Renewal of licence—

Application for renewal—Jurisdiction of licensing justices—New conditions—Justices imposing conditions on the renewal of licence—Whether justices having jurisdiction to impose conditions—Public Health Acts Amendment Act 1890, s 51. *Marsden v Birmingham Licensing Justices* [1975] 3 517, Crown Ct, Birmingham.

Refusal of licensing justices to renew—Appeal—Whether appeal lies to quarter sessions—Whether licensing justices a court of summary jurisdiction—Public Health Act 1936, s 301. *R v East Riding Quarter Sessions, ex parte Newton* [1967] 3 118, CA.

Sunday—

Restrictions. *See* Sunday observance (Restrictions on Sunday entertainment).

ENTERTAINMENT DUTY

Exemption—

Entertainments provided by non-profit making bodies—

Recitation—Music hall or other variety entertainment—Humorous 'patter' with music—Light musical concert—Performance dominated by variety performer—Whether exempt from duty—Finance Act 1946, s 8(1)—Finance Act 1952, s 3(1). *Eastbourne Corp v Comrs of Customs and Excise* [1954] 1 62, ChD.

Payment for admission to entertainment—

Entertainment—

Restaurant in converted theatre—Elaborate revue during meals—Minimum charge—Whether duty chargeable—Finance (New Duties) Act 1916, s 1. *Attorney-General v London Casino Ltd* [1937] 3 858, KBD.

Payment by means of lump sum—

Lump sum paid for the right of admission to a series of entertainments—'Lump sum'—Book of tickets for season's football matches—Sale at price equal to total of prices for individual tickets—Whether 'lump sum' payment—Finance (New Duties) Act 1916, s 1(4). *Comrs of Customs and Excise v Queen's Park Rangers Football and Athletic Club Ltd* [1952] 2 575, QBD.

ENTICEMENT

Religious society—

Girl of sixteen becoming member of society of her own free will—

Girl leaving home without parents' consent—Father entitled to services of his children during infancy—Harbouring. *Lough v Ward* [1945] 2 338, KBD.

ENTRY

Enforcement notice. *See* Town and country planning (Enforcement notice—Entry consequent on steps required by notice not being taken).

Execution of civil process by bailiff. *See* County court (Execution—Bailiff—Entry).

Forcible. *See* Criminal law (Forcible entry and detainer).

Right of entry—

Drainage board. *See* Land drainage (Drainage board—Right of entry on land).

ENTRY (cont)

Right of entry (cont)—

Gas board. *See* **Gas** (Gas board—Powers of entry for purposes of inspection).

Land—

Breach of covenant. *See* **Land** (Estates or interests capable of subsisting at law—Rights of entry exercisable over or in respect of a legal term of years absolute—Right of entry on breach of covenant).National insurance inspector. *See* **National insurance (Inspector—Power to enter premises liable to inspection)**.

United Kingdom—

Non-patrial. *See* **Immigration** (Leave—Non-patrial—Right of entry).**ENVELOPE**

Will—

Execution—

Signature on separate document. *See* **Will** (Execution—Signature on separate document—Envelope).**EPILEPSY**

Injury—

Epilepsy following injury—

Risk of future attacks—Damages. *See* **Damages** (Personal injury—Future risk—Risk of future attacks of epilepsy).**EQUIPMENT**

Safety—

Safe system of working. *See* **Safe system of working** (Safety of equipment).Weights and measures. *See* **Weights and measures** (Weighing and measuring equipment for use for trade).**EQUITABLE ASSIGNMENT**

Consideration—

Absence of consideration—

Validity—Need to be complete and perfect. *Re* **McArdle (decd)** [1951] 1 905, CA.

Copyright—

Prospective ownership of copyright. *See* **Copyright** (Assignment—Equitable assignment of future contingent rights).

Investments—

Voluntary settlement of investments for benefit of settlor's daughter after death of settlor—

Investments held by settlor and two sons as trustees for settlor—Sons appointed trustees of settlement—Recital in settlement that settlor had transferred investments to trustees of settlement—No transfer executed—Legal estate outstanding in sons after settlor's death—Whether investments subject to trusts of settlement. *Re* **Wale (decd)** [1956] 3 280, ChD.

Nomination—

Nomination under pension scheme—

Power to appoint nominee to receive contributions in event of employee's death before entitlement to pension—Power exercised by letter authorising alteration to original nomination form—Power testamentary in character—Whether nomination an assignment—Whether exercise of power effective as an equitable assignment. *Re* **Danish Bacon Co Ltd Staff Pension Fund** [1971] 1 486, ChD.Option. *See* **Option** (Assignment).**EQUITABLE EASEMENT***See* **Easement** (Equitable easement).**EQUITABLE ESTOPPEL**

Right arising out of estoppel—

Registration as land charge. *See* **Land charge** (Equitable estoppel).**EQUITABLE MORTGAGE***See* **Mortgage** (Equitable mortgage).**EQUITY**

Account—

Account on footing of wilful default—

Personal representatives. *See* **Executor and administrator** (Account—Account on footing of wilful default).

Acquiescence—

Equitable defence. *See* **Acquiescence** (Equitable defence).

Breach of confidence—

Damages—

Inquiry—Scope—Whether inquiry limited to particulars of breaches pleaded and proved. *Churchill Gear Machines Ltd v National Broach and Machine Co* [1966] 3 923, HL.Use of information obtained in confidence—Basis of assessing damages. *Seager v Copydex Ltd* (No 2). [1969] 2 718, CA.Use of information obtained in confidence—Springboard for activities detrimental to informant—Unpatented device disclosed by inventor as alternative in course of negotiation for marketing his patented device—Patented device already on sale by inventor's firm—Information acquired by defendant company partly private and partly available to public—Application by defendant company for patent, and device sold by them *Seager v Copydex Ltd* [1967] 2 415, CA.

EQUITY (cont)

Breach of confidence (cont)—

Defence—

Public interest in publication—Scientology—Courses of instruction in cult of Scientology—Undertaking not to impart information acquired on course—Courses containing material of such a nature that desirable in public interest that information should be made public. **Hubbard v Vosper** [1972] 1 1023, CA.

Injunction—

Account of profits—Delivery up. **Peter Pan Manufacturing Corpn v Corsets Silhouette Ltd** [1963] 3 402, ChD.

Form of order—Knowledge acquired by works manager in conduct of plaintiffs' flock printing plant—Memory of particular features and skill in manipulating flock printing plant—No express contractual covenant against disclosing trade secrets, etc.—Whether injunction should be granted against putting such knowledge at disposal of new employer, as distinct from making improper use of or disclosing any documentary material. **Printers and Finishers Ltd v Holloway** [1964] 3 731, ChD.

Information obtained by director of company—Information as to names and addresses of company's selling agents—Director removed from office and setting up business in competition—Director soliciting certain of company's agents to leave company and enter his business—Director able to do so by use of information as to identity of agents obtained whilst director of company—Whether information confidential—Whether company entitled to injunction restraining director from soliciting agents. **Baker v Gibbons** [1972] 2 75, ChD.

Innocent third party—Possibility of acquiring information in breach of confidence—Electrician employed by third party visiting plaintiffs' electrical testing room—Whether injunction should be granted against employer innocent in matter of employee's visit to plaintiffs' testing room. **Printers and Finishers Ltd v Holloway** [1964] 3 731, ChD.

Secrets that have become public knowledge not restrainable by injunction—Ancillary secrets must be proved in evidence to exist if injunction to be granted against their disclosure—Confidential knowledge of former employee regarding machine—Patent for machine granted—Specification disclosing publicly essentials of machine—No evidence of existence of ancillary secrets—Injunction against former employee disclosing confidential information concerning machine discharged. **O Mustad & Son v S Allcock & Co Ltd and Dosen** [1963] 3 416, HL.

Secrets that have become public knowledge not restrainable by injunction—Disclosure by publication of patent specification relating to foreign invention—Disclosure not by person to whom duty of confidence was owed—Whether injunction would be granted against breach of confidence by English inventor of similar, but subsequent, invention. **Cranleigh Precision Engineering Ltd v Bryant** [1964] 3 289, QBD.

Marital communications—

Protection for secrets concerning private life—Apprehended publication of newspaper articles by spouse, who had obtained divorce, disclosing confidential communications during marriage—No question of property involved—Confidences prior to breakdown of marriage—Immorality of other spouse leading to divorce not nullifying court's protection for prior confidences—Publication by plaintiff of other confidential matter concerning other spouse's private married life no bar to relief—Interlocutory injunction granted. **Margaret, Duchess of Argyll (Feme Sole) v Duke of Argyll**. [1965] 1 611, ChD.

Report by public relations consultant to client—

Threatened publication of report by defendants who obtained copy of report—Right of consultant to prevent publication. **Fraser v Evans** [1969] 1 8, CA.

Charge—

Creation of equitable charge—

Expenditure on land of another—Invitation by lessee to another person to expend money in building on part of the land leased on faith of assurance that he should have interest in that part of the land—Whether equitable charge created. **Chalmers v Pardoe** [1963] 3 552, PC.

Confidence—

Breach of confidence. *See* Breach of confidence, *ante*.

Documents disclosed on discovery. *See* Discovery (Production of documents—Confidence).

County court—

Jurisdiction. *See* County court (Jurisdiction—Equity jurisdiction).

Damages—

Interest—

Equitable jurisdiction. *See* Interest (Damages—Award of interest—Equitable jurisdiction).

Disposition of equitable interest on trust—

Writing—

Disposition—Option—Beneficial interest in option under resulting trust—Exercise of option—Effect—Option held on resulting trust for settlor—Option to purchase shares—Option held by trustees of settlor's family settlement—Exercise of option by trustees—Intention of settlor and trustees that shares should be held on trusts of settlement—Funds of settlement used to purchase shares—Declaration of trust by trustees—Whether extinction of resulting trust of option and creation of trust of shares 'a disposition of an equitable interest'—Law of Property Act 1925, s 53(1)(c). **Re Vandervell's Trusts (No 2)** [1974] 3 205, CA.

Transfer of legal interest of bare trustee of shares in a company—Beneficial owner intending gift of shares—Whether need for separate written transfer of equitable interest—Law of Property Act 1925, s 53(1)(c). **Vandervell v Inland Revenue Comrs** [1967] 1 1, HL.

Transfer of legal interest of bare trustee of shares in a company—Two or more interconnected documents—Whether satisfying requirement of writing—Law of Property Act 1925, s 53(1)(c). **Re Danish Bacon Co Ltd Staff Pension Fund** [1971] 1 486, ChD.

Duress—

Contract. *See* Contract (Duress).

EQUITY (cont)

Duty to account—

Purchaser of goods—

Property remaining in vendor—Sub-sales—Proceeds of sub-sales. *See* **Sale of goods** (Passing of property—Vendor retaining property in goods—Duty of purchaser to account for proceeds of sub-sales).

Election—

Application of doctrine of election to will—

Agreement for valuable consideration to devise testatrix' house to sister—House devised in testatrix' will, made before the agreement, as part of residue—Share of residue thereby bequeathed to sister—Will unaltered at testatrix' death—Sister subsequently granted specific performance of agreement—Whether sister put to election—Wills Act 1837, s 24. **Re Edwards (decd)** [1957] 2 495, CA.

Conflict of laws—Testator domiciled in South Africa and subject to South African law regarding community of property between husband and wife—Will made in England—Purported disposition of joint property—Indication on face of will that testator contemplated application of English law—Residuary bequest—Doctrine of election applicable. **Re Allen's Estate** [1945] 2 264, ChD.

Construction of bequest—Ostensible property of testator bequeathed—Residuary bequest—Bequest to wife of all testator's personal and household goods and effects and of all the remainder of his property—Testator domiciled in Denmark at time of marriage and in England at his death—Whether widow bound to elect between benefits conferred by will and Danish law of community of assets. **Re Mengel's Will Trusts** [1962] 2 490, ChD.

Gift by testatrix of two freehold houses to plaintiff and of residue to defendant—Testatrix having only life interest in the houses—Defendant entitled, on death of testatrix, to a half share of the beneficial interest in the houses—Whether defendant put to his election. **Re Dicey (Decd)** [1956] 3 696, CA.

Two claims under marriage settlement—One claim statute-barred, but satisfied by legacy in will—Other claim ignored by will. **Re Fletcher's Settlement Trusts** [1936] 2 236, ChD.

Election against will—

Effect—Protected life interest—Liability to compensate disappointed beneficiaries—Election by giving rise to liability to compensate effecting forfeiture of protected life interest—Election an act whereby beneficiary would have been deprived of income or part thereof if income had belonged to him absolutely—Trustee Act 1925, s 33. **Re Gordon's Will Trusts** [1976] 2 577, ChD.

Equality is equity—

Purchase of house as home—

Family enterprise. *See* **Trust and trustee** (Constructive trust—Purchase of house as home—Family enterprise).

Unmarried couple—

Joint contributions to home. *See* **Trust and trustee** (Constructive trust—Unmarried couple—Contributions by woman to joint home).

Equitable int&rest—

Registration as land charge—

Requisition. *See* **Land charge** (Equitable easement—Right or privilege over or affecting land being an equitable interest—Requisition).

Equitable interest—

Disposition. *See* Disposition of equitable interest or trust, *ante*.

Registration as land charge—

Requisition. *See* **Land charge** (Equitable easement—Right or privilege over or affecting land being an equitable easement—Requisition).

Right of re-entry—

Registration. *See* **Land charge** (Estate contract—Option to purchase, right of pre-emption or other like right).

Equitable lien. *See* **Lien** (Equitable lien).Equitable mortgage. *See* **Mortgage** (Equitable mortgage).

Equitable remedies—

Admiralty action in rem. *See* **Admiralty** (Jurisdiction—Action in rem—Claim for equitable relief).

Equitable redmedies—

Enforcement of rights—

Licence to occupy land. *See* **Licence** (Licence to occupy land—Contractual licence—Enforcement of rights by licensor).

Equity of redemption—

Clog on equity of redemption. *See* **Mortgage** (Clog on equity of redemption).

Limitation of action. *See* **Mortgage** (Equity of redemption).

Equity of redemption. *See* **Mortgage** (Equity of redemption).

Estoppel—

Acquiescence in expenditure being made in reliance on right over land of another. *See* **Acquiescence** (Estoppel).

Equitable estoppel. *See* **Estoppel** (Promissory estoppel).

Right arising out of estoppel—

Registration as land charge. *See* **Land charge** (Equitable estoppel).

Expenditure on land of another—

Estoppel. *See* **Estoppel** (Conduct—Allowing expenditure by another on land).

Fiduciary duty—

Company director. *See* **Company** (Director—Duty—Good faith).

EQUITY (cont)**Fiduciary duty (cont)—**

Duty not to profit from position of trust—

Society—Officer—Special arrangement displacing fiduciary duty—Incorporated society—Secretary undertaking to publish newspaper containing society's news—Society undertaking to guarantee purchase by members of 2,000 copies at 1s per copy for six months—Newspaper property of secretary—Secretary undertaking risk of financial loss—Whether secretary under duty to account to society for profits of newspaper—Whether special arrangement displacing fiduciary duty. **New Zealand Netherlands Society 'Oranje' Inc v Kuys** [1973] 2 1222, PC.

Vendor and purchaser. *See* **Sale of land** (Vendor—Fiduciary duty to purchaser).

Forfeiture—

Lease—

Relief. *See* **Landlord and tenant** (Relief against forfeiture).

Relief—

Hiring of chattels—Machines leased to plaintiff—Plaintiff defaulted in paying rent—Defendant gave notice to determine agreement—Plaintiff issued originating summons claiming to be relieved from forfeiture of its interest in machines—Motion by defendant to strike out summons—Affidavit on behalf of plaintiff showing plaintiff not ready to discharge arrears of rent—Summons struck out—R S C Ord 18, r 19. **Barton, Thompson & Co Ltd v Stapling Machines Co** [1966] 2 222, ChD.

Jurisdiction of court—Breach of covenant—Covenant other than for payment of money—Circumstances in which relief will be granted—Assignment of leasehold interest in part of premises—Covenant for benefit or retained premises—Right of re-entry for breach of covenant—Covenant as to maintenance of boundary fence and support of retained building—Jurisdiction to grant relief—Exercise of jurisdiction. **Shiloh Spinners Ltd v Harding** [1973] 1 90, HL.

Jurisdiction of court—Jurisdiction to vary previous order granting relief—Relief by way of extension of time for payment—Sale of land—Purchase price payable by instalments—Provision for rescission of contract and forfeiture of sums paid on failure of purchaser to pay instalments in due time—Purchaser failing to pay instalment—Action by vendor for possession—Order granting purchaser extension of time for payment—Application by purchaser for further extension of time—Whether court having jurisdiction to grant further extension—Whether jurisdiction limited to cases of forfeiture for non-payment of rent. **Starside Properties Ltd v Mustapha** [1974] 2 567, CA.

General equitable charge—

Estate agent's commission charged on purchase money—

Vacation of entry in register. *See* **Land charge** (Vacation of entry in register—General equitable charge—Entry of general equitable charge for estate agents' commission charged on purchase money).

Land charge. *See* **Land charge** (General equitable charge—Charge on land).

Injunction. *See* Injunction.**Jurisdiction—**

Suspension of possession order. *See* **Land** (Summary proceedings for possession—Suspension of possession order).

Laches—

Cases where special promptitude required—

Constructive trust—Business—Promptitude necessary in pursuing remedy against a constructive trustee in relation to such an asset as a business. **Re Jarvis (decd)** [1958] 2 336, ChD.

Defence—

Availability—Where period provided by Limitation Act 1939. **Re Pauling's Settlement Trusts** [1963] 3 1, CA.

Money—

Following trust money—

Trust money mixed with trustee's own. *See* **Trust and trustee** (Breach of trust—Mixing trust moneys with trustee's own money).

Ne exeat regno—

Writ—

Condition on which writ issued—Debtors Act 1869, s 6. **Felton v Callis** [1968] 3 673, QB.

Penalty—

Relief against penalty—

Contract for sale of land—Purchase price payable by instalments—Retention of moneys paid upon default by purchaser. **Mussen v Van Diemen's Land Co** [1938] 1 210, ChD.

Priority—

Mortgage—

Equitable interest. *See* **Mortgage** (Equitable interest).

Matrimonial home. *See* **Mortgage** (Equitable interest—Priority—Husband and wife's joint purchase of matrimonial home).

Profit from trust. *See* **Trust and trustee** (Profit from trust).

Purchase of trust property by trustee. *See* **Executor and administrator** (Duty to beneficiaries—Purchase by executor of asset of estate).

Rectification—

Deed. *See* **Deed** (Rectification).

Restrictive covenant affecting land. *See* **Restrictive covenant affecting land**.

Set-off—

Cross-claim—

Equitable right of set-off. *See* **Set-off** (Cross-claim—Equitable right of set-off).

Specific performance. *See* **Specific performance**.

Transfer of proceedings from High Court to county court—

Jurisdiction. *See* **County court** (Transfer of action—Transfer from High Court Jurisdiction—Equity proceedings).

EQUITY (cont)

Unconscionable bargain—

Expectant heir—

Relief—Bills of exchange given by reversioner for small consideration—Sale of reversion—Subsequent renewal of bills from time to time—Loss of right to application of equitable doctrine. *Levin v Roth* [1950] 1 698, CA.

Undue influence—

Duress—

Contract. *See* **Contract** (Duress).

Inequality of bargaining power—

Assignment of copyright—Validity—Circumstances in which assignment invalid—Agreement to assign unenforceable because of inequality of bargaining power—Relationship between parties—Composer of music and business manager—Manager procuring composer to enter into agreement—Composer not receiving independent advice—Terms of agreement manifestly unfair—Agreement requiring composer to assign to manager for nominal sum copyright in all compositions for period of ten years—Whether assignment valid. *Clifford Davis Management Ltd v WEA Records Ltd* [1975] 1 237, CA.

Presumption of undue influence—

Banker and customer—Bank seeking to protect interest at expense of customer—Customer relying on bank's advice—Fiduciary duty of bank—Duty to advise customer to obtain independent advice—Company formed by customer's son—Company in financial difficulties—Bank requiring customer to execute charge on house and guarantee as condition of continuing overdraft facilities for company—House customer's sole asset—Charge for full value of house—Bank failing to advise customer to obtain independent advice on company's affairs—Whether charge and guarantee liable to be set aside. *Lloyds Bank Ltd v Bundy* [1974] 3 757, CA.

Doctor and patient—Voluntary conveyance—Setting aside at instance of patient. *Williams v Johnson* [1937] 4 34, PC.

Engaged couple—Elderly parties—Waiver by bride of statutory rights to estate of intended husband in consideration of promise to pay lump sum on his death—No independent advice—Insufficient information as to intended husband's fortune, etc.—Inadequacy of lump sum—Transaction set aside. *Zamet v Hyman* [1961] 3 933, CA.

Mental hospital and patient—Gift by patient to private independent mental hospital—Sanctioning of gift by Court of Protection—Presumption of undue influence from relationship of parties—Patient's desire to make gift—Relevance of patient's wishes in absence of evidence rebutting presumption—Whether patient might have been expected to provide such gift if mental disorder and influence terminated—Mental Health Act 1959, s 103(1)(d). *Re C M G* [1970] 2 740, Court of Protection.

Parent and child—Voluntary settlement by unmarried girl shortly after coming of age—Parental influence—No independent advice—Whether settlement to be set aside. *Bullock v Lloyds Bank Ltd* [1954] 3 726, ChD.

Secretary/companion—Employment of secretary/companion by donor—Donor 84 years of age—Gifts totalling £27,000 in 47 years—Position of trust and confidence—Donor's total dependence on donee—Requirements to raise presumption of undue influence—Rebuttal of presumption—Consideration of evidence as whole—Whether full, free and informed thought about gifts. *Re Craig (decd)* [1970] 2 390, ChD.

Voluntary settlement. *See* **Settlement** (Voluntary settlement—Validity—Undue influence).

ESCAPE

Autrefois convict. *See* **Criminal law** (Autrefois convict—Escape from prison).

Fire—

Escape to adjoining premises. *See* **Negligence** (Fire—Escape to adjoining premises).

Prisoners—

Liability of custodian for acts of prisoners. *See* **Negligence** (Duty to take care—Custody of prisoners—Liability for acts of prisoners).

ESCROW

See **Deed** (Escrow).

ESSENTIAL WORK

Absence from work—

Reference to appropriate committee—

Certificate that no appropriate committee existed—Whether opinion of national service officer conclusive—Defence (General) Regulations 1939, reg 58A—Essential Work (General Provisions) (Amendment) Order 1942, (S R & O 1942, No 583), art 6A. *Conway v Stocks* [1943] 2 226, KBD.

Breach of discipline—

Right to suspend workman from his work—

Right if suspension in accordance with the conditions of his service—Engineer—Employment prior to operation of Essential Work Order—Recognised practice of employers to suspend workman without pay for breach of discipline—Suspension implied term of contract of service—Practice recognised by the order—In accordance with the conditions of his service—Suspension remaining part of employers' right—Essential Work (General Provisions) (No 2) Order 1942, (S R & O 1942, No 1594), art 4(3). *Marshall v English Electric Co Ltd* [1945] 1 653, CA.

Direction to perform work—

Non-compliance—

Magistrates' power to consider reasonableness of direction—Defence (General) Regulations 1939, regs 58A, 92. *Horton v Owen* [1943] 1 159, KBD.

ESSENTIAL WORK (cont)

Termination of employment—

Date of termination of employment—

Permission given to dismiss employee—Appeal—Cancellation of permission—Claim for wages for intervening period—Right of employee to wages during intervening period—Essential Work (General Provisions) Order 1941, (S R & O 1941 No 302 cl 5(3)). **Docker v Standard Telephones and Cables Ltd** [1942] 2 643, CA.

Subsequent direction for reinstatement of employee—

Reinstatement—Authorised dismissal of employee—Subsequent direction to re-instate—No work available—Employee paid wages but not given work—Whether employment 'reinstatement'—Defence (General) Regulations 1939, reg 58A para 4(A)(a)—Essential Work (General Provision) Order 1942, (S R & O 1942 No 371) arts 4(1) 5(3). **Hodge v Ultra Electric Ltd** [1943] 1 681, KBD.

Reinstatement—Dismissal of employee for alleged serious misconduct—Direction to reinstate—Employee paid wages but not given work—Whether reinstated—Defence (General) Regulations 1939, reg 58A—Essential Work (General provisions) (No 2) Order 1942, (S R & O 1942, No 1594), art 5. **Jackson v Fisher's Foils Ltd** [1944] 1 421, KBD.

Reinstatement—Dismissal of employee for alleged serious misconduct—Direction to reinstate—Employee paid wages and offered similar employment at another colliery—Whether reinstated—Defence (General) Regulations 1939, reg 58A—Essential Work (Coalmining Industry) Order 1943 (S R & O 1943 No 505), art 5(3). **Powell Duffryn Ltd v Rhodes** [1946] 1 666, KBD.

Validity of direction—Dismissal of employee for alleged serious misconduct—Direction to reinstate—Instruction from Ministry ordering national service officer always to direct reinstatement in certain cases—No exercise of discretion by national service officer—Direction to reinstate invalid—Rules Publication Act 1893—Emergency Powers (Defence) Act 1939, s 1—Defence (General) Regulations 1939, reg 58A—Essential Work (General Provisions) (No 2) Order 1942, (S R & O 1942 No 1594, as amended by S R & O 1943 No 1075 and S R & O 1944 No 815). **Simms Motor Units Ltd v Minister of Labour and National Service** [1946] 2 201, KBD.

Termination without permission of national service officer—

Offence—Appointment of supervisor—Supervisor subsequently directed to other duties in the same department at the same rate of pay—Whether alteration of work equivalent to termination of employment—Whether offence committed—Essential Work (General Provisions) (No 2) Order 1942 (S R & O 1942 No 1594), art 4(1)(a). **Adrema Ltd v Jenkinson** [1945] 2 29, KBD.

Rights of the parties under contract of employment—Acceptance by workman of work with a different employer provided by the manpower board—Right of workman to wages up to time of new employment—Essential Work (General Provisions) Order 1942 (S R & O 1942 No 371). **George v Mitchell and King** [1943] 1 233, CA.

Specified person employed at building undertaking at scheduled site—'Specified person'—Essential Work (Building and Civil Engineering) Order 1942, (S R & O 1942 No 2044) art 8/4. **McMorran v A E Marrison (Contractors) Ltd** [1944] 2 448, KBD.

Termination with permission of national service officer—

Wages due—Calculation—'Normal working hours'—Lodging allowance—Essential Work (Building and Civil Engineering) Order, 1942 (S R & O 1942 No 2044), art 4(10), as substituted by Essential Work (Building and Civil Engineering) Order, 1944 (S R & O 1944 No 1435), art 3. **Henderson v Rock Asphalt Co Ltd** [1946] 2 571, CA.

Wages—

Employee in scheduled undertaking—

Railway fireman—Transfer to lower grade in accordance with contract of employment—Claim to wages at original rate—Effect of Essential Work (General Provisions) (No 2) Order 1942 (S R & O 1942 No 1594), art 4(1). **Duffield v Great Western Ry Co** [1947] 2 636, CA.

Obligation to pay—

Exception—Holiday recognised as such—Scheduled undertaking closed for stocktaking—Claim for wages—Whether period closed—Holiday 'recognised as such'—Essential Work (General Provisions) (No 2) Order 1942 (S R & O 1942 No 1594), arts 1(2), 4(1)(d), (4). **Nolan v Riley (Coventry) Ltd, Weigham v Same** [1945] 2 8, CA.

Exception—Holiday recognised as such—Scheduled undertaking closed on day recommended to be a holiday by Ministry of Labour—Claim for wages—Whether period closed—'Holiday'—Essential Work (Building and Civil Engineering) Order 1942 (S R & O 1942 No 2044). **Cummins v Holloway Bros (London) Ltd** [1944] 1 296, CA.

Obligation where work not available for workman in usual occupation—Head fireman—Bona fide re-arrangement of duties by employer—Refusal to work as ordinary fireman—Whether refusal reasonable—Essential Work (Coalmining Industry) Order 1943 (S R & O 1943 No 505), art 4(1)(d). **Wassell v West Cannock Colliery Co Ltd** [1947] 1 106, CA.

ESTATE

Administration of deceased person's estate. *See* Administration of estates.

Land—

Estates capable of subsisting at law. *See* Land (Estates or interests capable of subsisting at law).

ESTATE AGENT

Authority—

Authority to delegate—

Implied authority—Appointment of sub-agent—Duties requiring personal skill and competence—Agent instructed to find purchaser of property—Agent not expressly authorised to appoint sub-agent—Agent giving particulars of property to another firm of estate agents—Other firm introducing purchaser—Whether agents having implied authority to appoint other firm as sub-agents—Whether agents entitled to commission on sale. **McCann (John) & Co (a firm) v Pow** [1975] 1 129, CA.

ESTATE AGENT (cont)

Authority (cont)—

Authority to receive deposit—

Capacity in which pre-contract deposit received by estate agent. *See* Deposit—Deposit prior to contract—Capacity in which deposit received by estate agent, *post*.

Deposit prior to contract—Loss of deposit—Implied authority of agent to receive deposit—Implied authority incidental to express authority as agent of vendor—Liability of vendor for loss of deposit—Estate agent authorised by vendor to introduce prospective purchasers—No express agreement as to deposit—Estate agent receiving deposit from purchaser on agreement to purchase—Vendor having no knowledge of receipt of deposit—Estate agent holding deposit pending completion—No contract entered into—Purchaser deciding not to go ahead with purchase—Loss of deposit through insolvency of estate agent—Whether estate agent holding deposit as agent of vendor—Whether vendor liable to refund deposit to purchaser. **Burt v Claude Cousins & Co Ltd** [1971] 2 611, CA.

Deposit prior to contract—Ostensible authority—Whether estate agent has ostensible authority to take a deposit as agent for the vendor. **Ryan v Pilkington** [1959] 1 689, CA.

Authority to sell—

Memorandum of sale signed by estate agents in firm's name—No express words to show that contracting for principal—Right of purchaser to maintain action for specific performance against principal—Sufficiency of memorandum. **Davies v Sweet** [1962] 1 92, CA.

Sale at stated price—Authority to make particular contract. **Wragg v Lovett** [1948] 2 968, CA.

Commission—

Agent instructed to 'find someone to buy' house—

Agreement to purchase 'subject to formal contract'—Vendor withdrawing instructions to agent—Whether agent entitled to commission. **McCallum v Hicks** [1950] 1 864, CA.

Agent instructed to introduce purchaser for property at specified price or obtain offer—

Inability of vendor to make title after agreement for sale executed—Whether default such as to entitle agent to commission—Whether vendor impliedly promised agent that he would be able to make good title. **Blake & Co v Sohn** [1969] 3 123, QBD.

Agent prevented from earning commission—

Duty of vendor not to prevent agent earning commission—Failure to claim specific performance or damages from defaulting purchaser. **Boots v E Christopher & Co** [1951] 2 1045, CA.

Introduction of willing purchaser—Withdrawal by vendor without reasonable cause—Damages in lieu of commission—Matters to be considered in assessing damages. **George Trollope & Sons v Caplan** [1936] 2 842, CA.

Sole agent—Sale effected through another agent after termination of his authority—Damages—Assessment of damages. **Hampton & Sons v George** [1939] 3 627, KBD.

Wilful default of principal—Just excuse. **Way & Waller Ltd v Verrall** [1939] 3 533, KBD.

Agreement—

Agreement to pay commission on introduction of person able to purchase property—Ability to pay. **Dennis Reed Ltd v Nicholls** [1948] 2 914, KBD.

Agreement to pay commission on sale of property—

Agreement for sale subject to deposit being paid within ten days—Failure to pay deposit—Repudiation by vendor—Whether commission payable. **Musson v Moxley** [1936] 1 64, KBD.

Contract giving estate agent charge on deposit and purchase moneys for commission—

Registration as land charge. *See* Land charge (General equitable charge—Charge on land—Estate agents' contract giving charge on deposit and purchase moneys for their commission).

Contract made on Sunday—

Sunday observance—Contract to effect sale of land on commission entered into on Sunday—Validity—Sunday Observance Act 1677, s 1. **Gregory v Fearn** [1953] 2 559, CA.

Entitlement—

Agreement to pay commission if a 'prospective purchaser' signed agreement to purchase and if vendor signed agreement to sell—Vendor's and purchaser's agreements expressed to be subject to contract—Both agreements signed—Purchaser unable to complete until mortgage obtained—Property sold to another person within ten days of agreements being signed—Whether estate agent entitled to commission. **Drewery v Ware-Lane** [1960] 3 529, CA.

Agreement to pay commission if person enters into 'legally binding contract to purchase'—Sale of leasehold premises and business—Deposit received by agents—Lessors not satisfied with purchaser's references—Purchase refusing to furnish further references—Question of return of deposit compromised—Whether agent entitled to commission. **Scheggia v Gradwell** [1963] 3 114, CA.

Agreement to pay commission 'in the event of business resulting'—Need for conclusion of binding contract—Prospective purchaser of property introduced—Contract for sale subject to purchaser's 'being able to arrange a mortgage'. **Murdoch Lownie Ltd v Newman** [1949] 2 783, KBD.

Agreement to pay commission on completion of sale of property—Willing purchaser found—Justification of refusal to complete—Transaction carried through by sale of shares in company and not by sale of company's property. **Luxor (Eastbourne) Ltd (in liquidation) v Cooper** [1941] 1 33, HL.

Agreement to pay commission on finding a purchaser—Purchaser—Instructions to find purchaser and to apply deposit paid by purchaser, on signing of contract, towards payment of commission—Proposed purchaser introduced by agent—Contract signed and deposit paid to agent—Proposed purchaser unable to complete—Agent not entitled to commission. **Poole v Clarke & Co** [1945] 2 445, KBD.

Agreement to pay commission on finding a purchaser—Purchaser—Purchaser bound by law to purchase. **Fowler v Bratt** [1950] 1 662, CA.

ESTATE AGENT (cont)

Commission (cont)—

Entitlement (cont)—

Agreement to pay commission on introduction of a person 'prepared to enter into a contract to purchase'—Introduction of person willing to sign contract if he could sell his own property and obtain finance for purchase. **A L Wilkinson Ltd v Brown** [1966] 1 509, CA.

Agreement to pay commission on introduction of a person 'ready, able and willing' to purchase at price acceptable to vendor—Introduction of person willing to purchase on terms agreed by vendor—Prospective purchaser's offer accepted by vendor—Draft contract prepared by vendor's solicitors and approved by purchaser's solicitors—Contract engrossed and signed by purchaser—Vendor thereafter refusing to proceed with contract—Whether estate agents entitled to commission. **Christie Owen & Davies v Rapacioli** [1974] 2 311, CA.

Agreement to pay commission on introduction of a 'purchaser able and willing to complete'—Able and willing purchaser found—Vendor's refusal to complete—Whether commission payable. **E H Bennett and Partners v Millett** [1948] 2 929, KBD.

Agreement to pay commission on introduction of 'party prepared to purchase'—Willing purchaser found—Vendor's refusal to complete—Whether commission payable. **Giddys v Horsfall** [1947] 1 460, KBD.

Agreement to pay commission on introduction of 'person able ready and will to purchase'—Option to purchase property given to third party before introduction—Agent not notified of withdrawal of property from market. **E P Nelson & Co v Rolfe** [1949] 2 584, CA.

Agreement to pay commission on introduction of person prepared to enter into a contract to purchase on terms to which the vendor may assent—Person prepared to enter into a contract to purchase on terms to which the vendor may assent. **Ackroyd & Sons v Hasan** [1960] 2 254, CA.

Agreement to pay commission on introduction of person 'ready, able and willing to purchase'—Introduction of potential purchaser—Withdrawal by purchaser before completion. **Dennis Reed Ltd v Goody** [1950] 1 919, CA.

Agreement to pay commission on introduction of person 'willing and able to purchase'—Person willing to purchase 'subject to satisfactory survey'—Subject to contract. **Graham and Scott (Southgate) Ltd v Oxlade** [1950] 1 856, CA.

Agreement to pay commission on introduction of person willing to sign a document capable of becoming a contract to purchase—Misrepresentation as to effect of written clause governing commission—Introduction of person who signed a contract subject to landlord granting licence to assign lease—Licence refused—Whether agent entitled to commission. **Jaques v Lloyd D George & Partners Ltd** [1968] 2 187, CA.

Agreement to pay commission on introduction of prospective tenant—Effective cause—Contract to let premises—Prospective tenant—Communication by him to second prospective tenant—Chain of causation—Novus actus interveniens. **Coles v Enoch** [1939] 3 327, CA.

Agreement to pay commission on introduction of purchaser—Effective cause—Introduction of purchaser—Purchaser unable to raise purchase price—Agency terminated by agreement—Sale subsequently effected to same purchaser—Agent's right to commission. **Jack Windle Ltd v Brierley** [1952] 1 398, Assizes.

Agreement to pay commission on introduction of purchaser—'Purchaser'—Agent finding client willing to purchase at agreed price—Vendor refusing to sell. **Jones v Lowe** [1945] 1 194, KBD.

Agreement to pay commission on introduction of purchaser—Sale of property—Vendor withdrawing from contract—Bargain too favourable to purchaser—Bargain previously agreed to by vendor—Vendor's mortgagee refusing to agree to bargain—Remuneration of agent—Damages—Assessment of damages. **Ronald Bampton & Partners v D Garner & Sons Ltd** [1937] 3 438, KBD.

Agreement to pay commission on introduction of tenant willing to pay rent in advance—Tenant found only willing to pay rent in arrear—Tenant at first accepted by landlord but finally rejected—Whether original contract varied—Right of agent to commission. **Harrods Ltd v Gensea** [1938] 4 493, CA.

Agreement to pay commission on purchaser entering into binding contract—'Binding contract'—Contract signed but rescinded before completion owing to innocent misrepresentation—Whether estate agent entitled to commission. **Peter Long & Partners v Burns** [1956] 3 207, CA.

Agreement to pay commission on purchaser signing legally binding contract—Contract signed, but purchaser unable to complete—Whether commission payable. **Midgley Estates Ltd v Hand** [1952] 1 1394, CA.

Agreement to pay commission on sale of shares in hotel company—Hotel mortgaged by company—Whether commission payable on full value of hotel. **Way & Waller Ltd v Ryde** [1944] 1 9, CA.

Agreement to pay commission on 'securing an offer'—Offer subject to contract. **Bennett, Walden & Co v Wood** [1950] 2 134, CA.

Agreement to pay commission 'should the owner withdraw after having accepted an offer to purchase by a person able and willing to enter into a formal contract'—Sale of business agreed by vendor and purchaser to be subject to contract—Refusal of vendor to complete—Whether commission payable. **Christie Owen & Davies Ltd v Stockton** [1953] 2 1149, QBD.

Agreement to pay share of commission on introduction of willing buyer—Willing buyer found—Property sold to another person—Claim to share of commission. **Davis v George Trollope & Sons** [1943] 1 501, CA.

Illegal commission—

Payment in consideration of supplying addresses of houses to let—Accommodation Agencies Act 1953, s 1(1)(b). **McInnes v Clarke** [1955] 1 346, QBD.

ESTATE AGENT (cont)

Commission (cont)—

Illegal commission (cont)—

Payment in consideration of supplying particulars of property—Agreement by tenant to pay commission in consideration of agent supplying him with particulars of flat—No part of commission demanded or paid in advance—Accommodation Agencies Act 1953, s 1(1)(b). **Crouch & Lees (a firm) v Haridas** [1971] 3 172, CA.

Payment in consideration of supplying particulars of property—Payment when client takes tenancy of property—Agreement by client to make payment if agent finds acceptable accommodation and client takes tenancy—Agreement by tenant to make payment in advance—Money paid returnable if no suitable accommodation found or no tenancy taken by client—Whether an offence to demand or accept such payments—Accommodation Agencies Act 1953, s 1(1)(b). **Saunders v Soper** [1974] 3 1025, HL.

Registration as general equitable charge—

Vacation of entry. *See* **Land charge** (Vacation of entry in register—General equitable Charge—Entry of general equitable charge for estate agents' commission charged on purchase money).

Sale of land by court. *See* **Sale of land** (Sale by court).

Contract—

Contract giving estate agents charge on deposit and purchase moneys for their commission—

Registration as land charge. *See* **Land charge** (General equitable charge—Charge on land—Estate agents' contract giving charge on deposit and purchase moneys for their commission).

Deposit—

Authority to receive deposit. *See* **Authority**—Authority to receive deposit, *ante*.

Deposit prior to contract—

Capacity in which deposit received by estate agent—Loss of deposit—Liability of vendor to depositor—Authority of estate agent as agent of vendor—Knowledge of vendor that estate agent receiving deposits from prospective purchasers—Estate agent not expressly authorised to receive deposits as vendor's agent—Receipt for deposit given by estate agent in own name—Receipt containing no reference to vendor and no indication of capacity in which estate agent receiving deposit—Deposit lost following disappearance of estate agent—Whether estate agent having received deposit as agent of the vendor—Whether vendor liable to depositor for loss of deposit. **Sorrell v Finch** [1976] 2 371, HL.

Interest—

Liability to account—Contract for sale of land—Deposit prior to contract—Deposit paid by prospective purchaser of property pending negotiation of contract—Deposit held by estate agents as stakeholders—Agents paying deposit into deposit account with bank—Prospective purchaser deciding not to proceed with purchase—Estate agents returning deposit to prospective purchaser—Interest earned on deposit while held by agents—Whether agents liable to account for interest. **Potters (a firm) v Loppert** [1973] 1 658, ChD.

Loss of deposit—Liability of vendor for agent's default—Personal liability of agent—Judgment obtained against agent—Estate agent receiving deposit from prospective purchaser of house—Vendor having no knowledge of receipt of deposit—Agent receiving deposit 'as stakeholder' pending negotiation of contract—Purchaser deciding not to proceed—Agent failing to return deposit to purchaser on request—Purchaser obtaining judgment against agent—Judgment unsatisfied—Whether purchaser debarred from pursuing claim against vendor by reason of judgment against agent. **Barrington v Lee** [1971] 3 1231, CA.

Recovery—

Agreement to pay commission on introduction of person 'able to purchase'—Sale of leasehold premises and business—Deposit received by agents—Lessor's refusal of consent to assignment—Deposit retained by agents as commission—Action by purchaser against vendors and agents for deposit—Costs awarded against agents. **Dellafiora v Lester, Lester v Adrian Barr & Co Ltd** [1962] 3 393, CA.

Sale of land arranged by estate agent employed by vendor—Sale subject to contract—Deposit paid by potential purchaser to estate agent—No express terms agreed regarding capacity in which deposit received—No contract entered into—Purchaser resiling from transaction—Insolvency of estate agent—Whether deposit received as agent of vendor—Whether vendor liable to refund deposit to purchaser. **Goding v Frazer** [1966] 3 234, QBD.

Illegal commission. *See* **Commission**—Illegal commission, *ante*.

Negligence—

Duty to exercise reasonable skill and care. *See* **Negligence** (Professional person—Duty to exercise reasonable skill and care—Estate agent).

Estate agent handling sale of building site on behalf of mortgagee exercising power of sale—

Site with planning permission for development with flats—Planning permission also for development with houses—Estate agent unaware of permission for flats—Advertisements of sale mentioning permission for houses only—Estate agent subsequently apprised of permission for flats—Estate agent allowing sale to go ahead without further advertisement of permission for flats. **Cuckmere Brick Co Ltd v Mutual Finance Ltd** [1971] 2 633, CA.

Preparation of documents etc—

Unqualified person. *See* **Solicitor** (Unqualified person—Preparation of documents etc—Estate agent).

Remuneration—

Sale of land by court. *See* **Sale of land** (Sale by court).

Restriction on practising—

Employee's agreement. *See* **Restraint of trade by agreement** (Master and servant—Estate agent's clerk and negotiator in charge of branch office).

Sunday trading. *See* **Sunday observance** (Prohibition on transaction of business by tradesman etc. on Sunday—Tradesman—Estate agent).

ESTATE CONTRACT

Land charge—

Option to purchase. *See* **Option** (Option to purchase—Land charge—Registration as estate contract).

Option—

Renewal of lease—

Registration as estate contract. *See* **Landlord and tenant** (Renewal of lease—Option—Registration as estate contract).

Registration as land charge. *See* **Land charge** (Estate contract).

Right of pre-emption—

Registration as estate contract. *See* **Land charge** (Registration—Obligation affecting land—Obligation binding on successors in title—Right of pre-emption).

ESTATE DUTY

Accountability—

Beneficiary absolutely entitled to settled funds—

Subject to two successive life interests—Whether beneficiary an accountable person—Finance Act 1894, s 8(4). *Re Latham (decd)* [1961] 3 903, ChD.

Trustees—

Determination of life interest—Life tenant appointing fund to be held on trusts of second settlement—Release of life interest—Death of life tenant within five years—Meaning of 'settlement'—Liability of trustees of head settlement—Finance Act 1950, s 44(1)(4). *Re Joynson's Will Trusts* [1954] 2 294, ChD.

Former trustees—Finance Act 1894, s 8(4)—Finance Act 1940, s 43(2)—Finance Act 1950, s 44. *Re Pauling's Settlement* [1963] 1 857, ChD.

Aggregation—

Accumulations—

Settlement—Accumulation of interest during life of settlor—Accumulations to form part of settled fund—Finance Act 1894, s 4. *Attorney-General v Dickinson and Baron* [1937] 2 485, KBD.

Advances—

Subsequent determination of life interest within five years—Property to be included in property passing—Sums advanced out of capital of settled estate—Finance Act 1940, s 43(1)(a), as amended by Finance Act 1950, s 43(1), Sch 7, Part 1—Finance Act 1894, s 16(3), as substituted by Finance Act 1954, s 33(1). *Dunn v Inland Revenue Comrs* [1961] 2 275, ChD.

Property in which deceased had an interest—

Insurance policy—Policy of assurance assigned to trustees during deceased's lifetime in trust for payment of death duties—Deceased's interest in proceeds of policy—Whether 'an estate by itself'—Finance Act 1894, ss 2(1)(d), 4. *Tennant v Lord Advocate (on behalf of Inland Revenue Comrs)* [1939] 1 672, HL.

Insurance policy—Policy subject to trust—Beneficial interest of assured—Exclusion—Policy expressed to be for benefit of assured's wife and sons—Beneficial interest in policy in event of wife and sons predeceasing assured—Whether policy to be held in trust for benefit of estate of one or other of beneficiaries—Whether assured effectively excluded from benefit of policy—Married Women's Policies of Assurance (Scotland) Act 1880, s 2—Finance Act 1894, s 4. *Barclay's Trustee v Inland Revenue Comrs* [1975] 1 168, HL.

Settled property—

Settled property or other property—Deceased life tenant of share of funds settled by a will was entitled at his death also to the reversion of half the share by reason of his son's intestacy and to the reversion of the other half by virtue of the will of his deceased wife—Whether property passing on deceased's death was settled property or excepted as other property from the statutory definition—Finance Act 1894, s 16(3), as substituted by Finance Act 1954, s 33(1). *Rivington v Inland Revenue Comrs* [1963] 3 69, ChD.

Allowance—

Continuing annuity—

Annuity to wife for life under separation deed—Liability representing annuity to be deducted from principal value of husband's estate—Method of valuation of liability. *Westminster Bank Ltd v Inland Revenue Comrs* [1954] 1 240, ChD.

Double taxation—

Canadian succession duty—Legacies given 'free of legacy duty and all other death duties'—Allowance of amount of Canadian succession duty against estate duty—Benefit of allowance—Double Taxation Relief (Estate Duty) (Canada) Order 1946 (S R & O 1946 No 1884), art V. *Re Goetze (decd)* [1953] 1 76, CA.

Canadian succession duty—South African succession duty—Benefit of allowance—Person bearing the estate duty—Amount of allowance where differing rates of foreign duty chargeable. *Re Cunliffe-Owen (decd)* [1951] 2 220, ChD.

South African estate duty—United States of America federal estate tax—Canadian succession duty—Ontario succession duty—Benefit of allowance. *Re Sebba (decd)* [1958] 3 393, ChD.

New Zealand. *See* **New Zealand** (Estate duty—Allowance).

Valuation. *See* **Valuation**—Allowances, *post*.

Annuity—

New Zealand. *See* **New Zealand** (Estate duty—Annuity).

Appeal—

Procedure—

Condition of appealing from the decision of commissioner—Hong Kong. *See* **Hong Kong** (Estate duty—Appeal from commissioner's decision).

Australia. *See* **Australia** (Estate duty).

Collection of duty from trustees after determination of life interest. *See* **Accountability**—Trustees—Determination of life interest, *ante*.

ESTATE DUTY (cont)

Company—

Transfer to company—

Benefits from company—Transfer by direction of tenant for life—Exercise of general power of appointment—Fiduciary capacity—Transfer of securities and equitable interests forming part of settled fund—Transfer of settled land—Subscription for shares—Loans to deceased by company—Finance Act 1940, ss 46(1), 47(1)(2), 58(2)(4)(5). **St Aubyn (L M) v Attorney-General** [No 2] [1951] 2 473, HL.

Debt—

Full consideration—

Disposition in favour of relatives—Disposition in favour of class including relatives and others—Date of ascertainment of objects—Extinguishment of liability of deceased—Finance Act 1940, s 44(1). **Re Leven (Earl) (decd)** [1954] 3 81, ChD.

Deduction of debts—

Reimbursement—

Duty leviable on termination of life interest—Duty leviable on death of life tenant of trust funds settled by Canadian settlement—Succeeding life tenant domiciled in England accountable but did not pay duty—Whether amount of duty a debt allowable against second life tenant's free estate—Whether there was a right to reimbursement—Finance Act 1894, ss 7(1)(b), 9(6), 20(2). **Re Latham (decd)** [1961] 3 903, ChD.

Determination of life interest—

Allotment of fully paid shares—

Life tenant releasing life interest in the shares in favour of remaindermen—Trustees renouncing shares in favour of remaindermen—Death of life tenant within five years—Liability to duty—Finance Act 1940, s 43(1)(a), as amended by Finance Act 1950, s 43. **Pye-Smith v Inland Revenue Comrs** [1958] 2 785, ChD.

Annuity given by will—

Disposition of annuity—Agreement by annuitant to release of residuary estate and substitution of covenanted annuity as security—Finance Act 1940, s 43(1). **Re Beit's Will Trusts** [1951] 2 1002, CA.

Appointment—

Property to be included in property passing—£25,000 appointed to trustees of second settlement—Life interest released in £25,000—Investments and cash transferred to appointees—Finance Act 1940, s 43(1), as amended by Finance Act 1950, s 43, Sch VII. **Re Joynton's Will Trusts** [1954] 2 294, ChD.

Discretionary trust—

Accumulation of surplus income—Advancement determining discretionary trust in sums advanced—Meaning of 'interest' and of 'interest in possession'—Objects of discretionary trust not entitled individually or collectively to receive the whole or part of trust income—Whether any determination of interest rendering estate duty leviable on sums advanced—Finance Act 1894, s 2(1)(b)—Finance Act 1940, s 43(1), as amended by Finance Act 1950, s 43(1), Sch 7, Pt 1. **Gartside v Inland Revenue Comrs** [1968] 1 121, HL.

Accumulation of surplus income—Exhaustive discretionary trust—Obligation of trustees to distribute whole income—Meaning of 'interest' and of 'interest in possession'—Objects of discretionary trust not entitled individually or collectively to receive the whole or part of trust income—Whether any determination of interest rendering estate duty leviable on the trust fund—Finance Act 1940, s 43(1), as amended by Finance Act 1950, s 43, Sch 7, Pt 1. **Sainsbury v Inland Revenue Comrs** [1969] 3 919, ChD.

Variation—Discretionary trust for class limited to cease on death of widow—Variation by order of court extending period of trust until death of widow or twenty-one years from date of order, whichever was longer—Death of widow within three years after order—Whether order operated to determine interest of class—Whether estate duty chargeable on trust fund on death of widow—Finance Act 1940, s 43(1), as amended by Finance Act 1950, s 43, Sch 7, Pt 1. **Re Holmden's Settlement Trusts** [1968] 1 148, HL.

Enlargement by assignment of income for fixed period—

Whether life interest determined. *See* Passing of property—Enlargement of life interest—Assignment of income—Life interest in trust fund expressed to be enlarged by assignment by reversioners of income for fixed period, *post*.

Exclusion of deceased from benefit—

Exclusion by contract or otherwise—'Property in which the interest subsisted'—Transfer of assets of settlement to company for cash payable partly by instalments—Trustees transferring some cash and title to instalments to life tenant absolutely—Trustees and life tenant purchasing shares of company—Extinguishment of life tenant's interest in assets remaining settled—Application of 'statutory hypothesis'—Finance Act 1940, ss 43(1)(2), 56(1)(2). **St Aubyn (L M) v Attorney-General** [No 2] [1951] 2 473, HL.

Successive dispositions of life interest—

Transfer of life interest to company—Transfer of assets by company to new company—Life interest merging with reversion by virtue of ultimate disposition by new company—Life tenant owning all issued capital of new company at date of ultimate disposition—Exclusion of benefit to 'person who had interest'—Guarantee of payment of annuity—Finance Act 1940, ss 43(1)(2), 56(1)(2). **Attorney-General v St Aubyn (Sir John Molesworth)** [1950] 1 79, CA.

Variation of trust—

Discretionary trust for class limited to cease on death of widow—Variation by order of court extending period of trust until death of widow or twenty-one years from date of order, whichever was longer—Death of widow within three years after order—Whether order operated to determine interest of class—Whether estate duty chargeable on trust fund on death of widow—Whether a collective class under a discretionary trust can have an interest in possession for estate duty purposes—Finance Act 1940, s 43(1), as amended by Finance Act 1950, s 43, Sch 7, Pt 1. **Re Holmden's Settlement Trusts** [1966] 2 661, CA.

Direction in will as to payment. *See* Administration of estates (Estate duty—Direction for payment in testator's will).

ESTATE DUTY (cont)**Disclaimer—****Legacy to husband—**

Husband disclaiming—Residue given to husband for life—Whether duty payable on disclaimed gift on death of husband. **Re Parsons** [1942] 2 496, CA.

Legacy to wife—

Wife disclaiming—Wife dying within five years after disclaimer—Whether duty payable on property disclaimed—Finance Act 1940, s 45(2). **Re Stratton's Deed or Disclaimer** [1957] 2 594, CA.

Discretionary trust—**Collective class—**

Whether can have interest in possession. *See* Determination of life interest—Variation of trust—Discretionary trust for class limited to cease on death of widow, *ante*.

Exhaustive discretionary trust—

Discretionary trust of income in favour of husband and wife during specified trust period—Death of husband during period—Wife recipient of all income both before and after death of husband—Whether duty payable on whole fund on husband's death—Finance Act 1894, ss 1, 2(1)(b). **Re Weir's Settlement** [1970] 1 297, CA.

Dutiable estate—

New South Wales. *See* **New South Wales** (Death duty—Dutiable estate).

Estate settled by statute and non-alienable—**Redemption of statutory pension—**

Money paid into court—Investment in freehold property—Deed of re-settlement—Estate disentailed—Trust for sale—Conversion—Whether freehold property settled by statute—'Lands or chattels'—5 and 6 Anne (c 3)(Dukedom of Marlborough)—5 and 6 Anne (c 4) (Marlborough pension)—19 and 20 Victoria (c 59)(Charge of Marlborough pension on Consolidation Fund)—Consolidation Fund (Permanent Charges Redemption) Act 1873—Finance Act 1894, ss 1, 5(5)—Settled Land Act 1925, s 75. **Duke of Marlborough v Attorney-General** [1945] 1 165, CA.

Exemption—**Death on war service—**

Property of common soldier—Member of the Home Guard killed while undergoing course of instruction—Finance Act 1894, s 8(1)—Stamp Act 1815, Sch, Pt III—Army Act 1881, ss 176, 190—Defence (Local Defence Volunteers) Regulations 1940 (S R & O 1940 No 748), reg 2(3), as amended by S R & O 1940 No 1383. **Blyth v Lord Advocate (on behalf of Inland Revenue Comrs)** [1944] 2 375, HL.

Remission of duties—Apportionment of remitted duty—Finance Act 1900, s 14—Death Duties (Killed in War) Act 1914, s 1—Finance Act 1918, s 44—Finance Act 1924, s 38. **Re Joel** [1943] 2 263, CA.

Government securities—

Beneficial ownership of persons neither domiciled nor ordinarily resident in United Kingdom—Life tenant under settlement domiciled and ordinarily resident in United Kingdom—Remaindermen domiciled and ordinarily resident outside United Kingdom—Exemption on death of life tenant—Finance (No 2) Act 1915, s 47—Finance (No 2) Act 1931, s 22(1). **Re Smith's Settlement Trusts** [1951] 1 146, ChD.

Foreign property—Proceeds of sale of land in New South Wales—Proceeds invested in war loan—'Ordinarily resident in United Kingdom'—Lunacy Act 1890, s 123—Finance (No 2) Act 1915, s 47. **Re Mackenzie** [1940] 4 310, ChD.

Interest as holder of an office—

Share of income of residuary estate given to trustee for life while a trustee—Death of trustee—Whether capital of share exempted from liability to duty—Finance Act 1894, ss 1, 2(1)(b). **Public Trustee v Inland Revenue Comrs** [1960] 1 1, HL.

Marriage settlement—

Discretionary trusts in favour of class—Inclusion of persons not within the marriage consideration—Whether liable to estate duty—Finance (1909-10) Act 1910, s 59(2). **Inland Revenue Comrs v Lord Rennell** [1963] 1 803, HL.

Settlement expressed to be made in consideration of marriage of settlor's grandson—Settlor's desire to benefit family and avoid heavy estate duty—Grandson after his marriage settling substantial part of property comprised in first settlement on discretionary trusts for benefit of children and remoter issue other than himself—Whether first settlement 'made in consideration of marriage'—Whether purpose or motive of settlor relevant—Finance (1909-10) Act 1910, s 59(2). **Re Park (decd)** (No 2) [1972] 1 394, CA.

Pictures and objects of artistic interest—

Bequest of exempted chattels 'free of duty'—Incidence of duty payable on future sale—Finance Act 1930, s 40. **Re Bedford (Duke) (decd)** [1960] 3 756, ChD.

Subsequent sale—Duty chargeable on net proceeds of sale—Finance Act 1930, s 40. **Tyser v Attorney-General** [1938] 1 657, ChD.

Property situate out of Great Britain—

Ship—Ship situate within jurisdiction but registered abroad—Testator dying domiciled in Australia—Testator owner of yacht—Yacht berthed in England—Yacht registered in Jersey—Executors required to obtain probate and registration in Jersey in order to perfect title to yacht—Whether yacht to be treated as 'situate out of Great Britain' for estate duty purposes—Finance Act 1949, s 28(2). **Trustees Executors and Agency Co Ltd v Inland Revenue Comrs** [1973] 1 563, ChD.

Time for ascertaining locality of assets—Life interest in trust fund expressed to be enlarged by assignment by reversions of income for fixed period—Gift of shares in English company, made by renunciation of allotment letter within five years of death—Donor domiciled in Canada—Shares registered in donees' names before her death—Whether time for ascertaining locality of property for which exemption was claimed was date of gift or date of death—Finance Act 1949, s 28(2). **Re Kettle's Gift** [1968] 3 88, ChD.

ESTATE DUTY (cont)

Exemption (cont)—

Property which has borne duty on death of spouse—

Derivative settlement—Marriage settlement followed by derivative settlement by widow of defensible, but otherwise absolute, interests in settled estates—Estate duty paid on death of husband on settled estates comprised in marriage settlement—Death of widow—Passing of property settled by derivative settlement—Whether exemption 'in respect of' estate duty on settled estates extended to duty on the passing of the defensible interest on the widow's death—Finance Act 1894, s 5(2). **Inland Revenue Comrs v Coutts & Co** [1963] 2 722, HL.

Legacy to husband—Husband disclaiming—Residue given to husband for life—Whether duty payable on disclaimed gift on death of husband—'Competent to dispose'—Finance Act 1894, s 5(2), s 22(2)(a)—Finance Act 1914, s 14. **Re Parsons** [1942] 2 496, CA.

Property on which duty already paid—Testator domiciled in Northern Ireland—Annuity given to widow—Property locally situate in Northern Ireland at testator's death and duty paid there—Part of property locally situate in England at widow's death—Liability to duty—Whether exemption still applicable—Finance Act 1894, ss 2(1)(b), 5(2)—Finance Act 1914, s 14—Government of Ireland Act 1920, ss 8, 61—Government of Ireland (Adaptation of Taxing Acts) Order 1922 (S R & O 1922 No 80). **Skinner v Attorney-General** [1939] 3 787, HL.

Settled property—Interest in expectancy—Duty paid on interest in expectancy on death of first spouse—Whether prior payment of duty on interest in expectancy qualifying for relief as payment in respect of settled property on death of surviving spouse—Finance Act 1894, s 5(2)—Finance (1909-10) Act 1910, s 55—Finance Act 1914, s 14, proviso (a). **Bunbury v Inland Revenue Comrs** [1972] 1 343, ChD.

Purchase—

Property passing by reason of purchase—Annuity bequeathed to wife on condition that she devised one moiety of fund to which she was entitled at time of husband's death to trustees of her will to be held on same trusts as husband's residue—Acceptance of conditional bequest in 1937—Disposition by widow of reversionary interest in moiety fund constituted by such acceptance—Disposition in favour of her relatives—Estate duty exigible as on a gift to them by the disposition—Finance Act 1894, s 2(1)(c), s 3(1)—Finance Act 1940, s 44(1), (1A) substituted by Finance Act 1950, s 46—Finance Act 1944, s 40. **Re Harmsworth (decd)** [1967] 2 249, CA.

Property passing by reason of purchase—Resettlement—Life tenant receiving payments out of capital and bringing in policies of life assurance—Finance Act 1894, s 3(1). **Childs Trustee Co v Inland Revenue Comrs** [1960] 2 209, ChD.

Settled property—

Hong Kong. *See* **Hong Kong** (Estate duty—Exemption—Settled property).

Transaction for money consideration—

Annuity—Substitution of smaller annuity secured by deed of compromise—Whether 'granted for full consideration in money's worth'—Finance Act 1894, ss 2, 3(1). **Attorney-General v Gretton and Shrimpton** [1943] 2 759, KBD, [1944] 1 624, CA, [1945] 1 628, HL.

Gift—

Death within seven years of making gift—

Death caused by negligence of another—Claim for damages—Whether wife entitled to recover amount of duty payable as damages. *See* **Fatal accident** (Damages—Estate duty liability)—Gifts by deceased to wife and son—Deceased killed within seven years of making of gifts).

Gift inter vivos—

Date when made—

Cheque—Cheques drawn more than three years, but presented less than three years, before death. **Re Owen (decd)** [1949] 1 901, ChD.

Direction to company to allot shares to donee. **Letts v Inland Revenue Comrs** [1956] 3 588, ChD.

Shares in company—Shares transferred before relevant date—Transfers registered after that date. **Re Rose (decd)** [1952] 1 1217, CA.

Death within seven years of making gift—

Death caused by negligence of another—Claim for damages—Whether surviving spouse entitled to recover amount of duty payable as damages. *See* **Fatal accident** (Damages—Estate duty liability)—Gifts by deceased to wife and son—Deceased killed within seven years of making of gifts).

Deduction of debts—

Debts exceeding amount of free estate—Whether deduction allowed against gifts inter vivos. **Re Barnes** [1938] 4 870, CA.

Exclusion of donor—

Donee placing donor in control of income—Whether bona fide possession and enjoyment retained by donee to the entire exclusion of the donor—New South Wales Stamp Duties Act 1920-1940, s 102(2)(d). **Comr of Stamp Duties of the State of New South Wales v Permanent Trustee Co of New South Wales Ltd** [1956] 2 512, PC.

Gift and lease back—Gift of land by deceased to son—Lease of land granted by son to deceased—Transactions carried into effect without any consultation with son—Son merely asked to sign appropriate documents—Whether son charged with an equitable obligation to grant lease—Whether subject-matter of gift the fee simple in possession of the property or merely the reversion expectant on the lease—Whether gift a gift of property to the exclusion of the donor—Customs and Inland Revenue Act 1881, s 38(2) as amended by the Customs and Inland Revenue Act 1889, s 11(1)—Finance Act 1894, s 2(1)(c). **Nichols v Inland Revenue Comrs** [1973] 3 632, ChD.

Partnership agreement—Gift of property by deceased to son without reservation qualification or condition—Partnership agreement between deceased and his sons—Deceased manager of partnership stock—Whether bona fide possession and enjoyment retained by son to the entire exclusion of deceased—New South Wales Stamp Duties Act 1920—1956, s 102(2)(d). [1958] 2 623, PC.

ESTATE DUTY (cont)

Gift inter vivos (cont)—

Exemption—

Marriage settlement. *See* Exemption—Marriage settlement, *ante*.

Property situate out of Great Britain. *See* Exemption—Property situate out of Great Britain, *ante*.

Liability to duty—

Indemnity—Gift of land—Subsequent sale of land given—Indemnity against liability to duty.

Manning v Turner [1956] 3 641, Lancaster Chancery Court.

Ordinary shares—

Bonus issue—Gift of ordinary shares—Issue of bonus shares to ordinary shareholder on capitalisation of reserves—Whether estate duty payable in respect of bonus shares—Customs and Inland Revenue Act 1881, s 38(2)—Customs and Inland Revenue Act 1889, s 11(1)—Finance Act 1894, ss 1, 2(1)(c), 7(5), 22(1)(f)—Finance (1909-10) Act 1910, s 59(1). **Attorney-General v Oldham** [1940] 3 450, CA.

Settlement—

Property taken—Proposal for assurance on life of settlor made by trustee—Premium on policy paid by settlor to assurance company—Policy issued to, and in the name of, the trustee of the settlement made by the settlor, which settled the policy on trusts—Whether property taken under the settlor's disposition operating as a gift inter vivos was the amount of the premium or the policy—Customs and Inland Revenue Act 1881, s 38(2)(a) as amended by Customs and Inland Revenue Act 1889, s 11(1)—Finance Act 1894, s 2(1)(c). **Ralli Brothers Trustee Co Ltd v Inland Revenue Comrs** [1967] 3 811, ChD.

Sum settled in trust—

Shares bought by trustees—Whether 'property taken'—Customs and Inland Revenue Act 1881, s 38(2)(a) (as amended by Customs and Inland Revenue Act 1889, s 11(1)—Finance Act 1894, s 2(1)(c). **Sneddon v Lord Advocate** [1954] 1 255, HL.

Valuation. *See* Valuation—Gift inter vivos, *post*.

Hong Kong. *See* Hong Kong (Estate duty).

Incidence—

Advantage enjoyed by settlor—

Trust for benefit of deceased and his children as tenants in common in equal shares—Benefit to deceased—Deceased remunerated for management of trust property—Children's shares applied for maintenance and education—New South Wales Stamp Duties Act 1920-1940, s 102(2)(d). **Oakes v New South Wales Comr of Stamp Duties** [1953] 2 1563, PC.

Appointment—

Property passing under appointment—Appointment of sum free of all deductions except income tax and surtax. **Re Smith-Bosanquet** [1940] 3 519, ChD.

Bequests free of all death duties—

Will—Bequests in cl 2 to cl 13 made 'free of all death duties whether payable by my estate or the beneficiaries thereon' such duties being payable out of the residuary estate—Bequests by cl 2 of 860 shares in a company to eight named persons and after their deaths to their next of kin—Bequests by cl 2 of life interests in 140 shares in same company to seven named persons, with gifts over to an individual and his sons—Residuary legatees were the eight persons who were given life interests in the 860 shares—Deaths of five of the eight named persons and two of the seven named persons—Whether estate duty payable on deaths of tenants for life of settled legacies payable out of corpus of legacies or out of residue. **Re Embleton's Will Trusts** [1965]

Cesser of annuity—

Death of annuitant—Bequest of annuity to annuitant and on her death to her daughters—How burden of duty to be borne—Finance Act 1894, ss 2(1)(b), 7(7), 8(4), 9(1), 14(1). **Re Cassel's Will Trusts (No 2)** [1946] 1 704, ChD.

Death of annuitant—Bequest of annuity to annuitant and on his death to his wife—How burden of duty to be borne—Finance Act 1894, ss 2(1)(b), 14(1). **Re Weigall's Will Trusts** [1956] 2 312, ChD.

Devise—

Exoneration of specific devisee—All death duties directed to be paid out of residue of testator's estate—Devise of named estate without reference to payment of duties—Legacies given free of all duties—Whether specific devisee liable to bear the due proportion of estate duty or whether exonerated by terms of the direction. **Re Phuler's Will Trusts** [1964] 2 948, ChD, **Re Neeld (decd)** [1964] 2 952, CA.

Direction by testator to pay legacies out of reversion—

Reversion falling in after testator's death—Whether estate duty apportionable between pecuniary and residuary legatees—Finance Act 1894, s 8(4). **Re Fuch's Will Trusts** [1944] 1 338, ChD.

Duty payable on death of tenant for life—

Payment out of capital of legacy or residue. **Re Shepherd** [1948] 2 932, ChD.

Foreign duties—

Direction to pay debts and expenses out of residue—Canadian succession duty—Ontario succession duty—Whether cost of getting in Canadian estate. **Re Sebba (decd)** [1958] 3 393, ChD.

Insufficient residuary estate in Great Britain to pay duty—

Assets by which deficiency should be borne—Personal property in Australia and in England specifically bequeathed to different donees—Australian duties paid on Australian property—By what assets deficiency should be borne—Australian assets not liable—English duty should be borne by legacies and specific bequests—Administration of Estates Act 1925, ss 34(3), 53(3), Sch 1, para 6. **Re Buesst's Will Trusts** [1963] 1 280, ChD.

Legacy payable in part out of Australian assets—

Liability to bear proportion of estate duty paid in respect of Australian assets. **Re Nesbitt's Will Trusts** [1953] 1 936, ChD.

ESTATE DUTY (cont)

Incidence (cont)—

Pecuniary legacies—

Contingent reversionary legacies charged on a testator's landed estates—Testator gave legacies to his three daughters which fell into possession on the death of the second life tenant of estates settled by his will—Whether rateable proportion of estate duty on the death of the first life tenant recoverable from legatees—Meaning of 'entitled' in the Finance Act 1894, s 14(1). **Re Maryon-Wilson's Will Trusts** [1967] 3 636, ChD.

Deferred legacies—Deferred legacies bequeathed 'free of duty' by will of testatrix dying before 1949—Legacies on death of tenant for life out of residuary estate—Aggregation of residuary estate with life tenant's estate on his death in 1960—Whether deferred legacies should bear rateable proportion of estate duty payable on life tenant's death. **Re Paterson's Will Trusts** [1963] 1 114, ChD.

Deferred legacies—Duty payable on deaths of successive tenants for life—Deferred legacies payable out of ultimate residue given 'free of duty'—Whether deferred legacies should bear rateable proportion of duty—Finance Act 1894, s 8(4), ss 9(1), 14(1). **Re McNeill (decd)** [1957] 3 508, CA.

Portions—

Death of life tenant—Portions charged by will on property reversionary at date of testator's death—Duty exigible on death of life tenant—Liability of portioners to be charged with duty—Finance Act 1894, s 14(1). **Re Keele Estates** [1952] 2 164, CA.

Property not passing to executor as such—

Apportionment of duty—Provision to the contrary—Meaning—Finance Act 1894, s 14(1). **Re Keele Estates** [1952] 2 164, CA.

Death of life tenant—Assignment by life tenant and reversionary life tenant of one-third of income to contingent reversioner of one-third of trust fund—Estate duty levied only in respect of other two-thirds of trust fund—Whether duty rateably borne by whole estate—Finance Act 1894, s 9(1). **Re Boulton's Will Trusts** [1960] 1 533, CA.

Real property—Direction in will to pay 'all duties arising by reason of my death' out of residue—Devise to widow of life interest in freehold property—Gift not expressed to be free of duty—Remuneration to executor expressed to be 'free from duties' and specific legacies 'free of all duties'—Freehold property falling into residue on widow's death—Whether devise of freehold property to bear estate duty referable to it. **Re Williams (decd)** [1974] 1 787, ChD.

Recovery of duty from person entitled to sum charged on property—Jointure—Appointment of jointure to be paid without any deduction—Whether a disposition containing a provision to the contrary within Finance Act 1894, s 14(1). **Re Lonsdale's Will Trusts** [1959] 3 679, CA.

Recovery of duty from person entitled to sum charged on property—Jointures—Appointments of jointures to full amounts—Supplemental deed executed subsequently providing for payment of jointures free of all death duties—Whether jointures payable subject to deduction for estate duty—Finance Act 1894, s 14(1). **Re Paulet's Will Trusts** [1967] 1 854, ChD.

Real property—

Contrary intention—Australian federal estate duty—New South Wales probate duty—'Expenses incident to the execution of the preceding trusts'—'Debts'—'Testamentary expenses'—Whether testamentary direction to pay these showed intention to exonerate realty from death duty. **Re Mathews's Will Trusts** [1961] 3 869, ChD.

Option to purchase given by will—Proportion of duty to be borne by purchaser—Law of Property Act 1925, s 16(1)(5)—Administration of Estates Act 1925, s 36(1)(9). **Re Lander (decd)** [1951] 1 622, ChD.

Property settled by will—Direction that 'all devises...shall be enjoyed free of death duties'—Payment out of property in respect of which charged. **Re Howell (decd)** [1952] 1 363, ChD.

Testamentary direction for payment of duty. *See* **Administration of estates** (Estate duty).

Testamentary expenses—

Legacy payable out of residue being proceeds of conversion of realty and personalty—Liability of legacy to bear proportion of estate duty attributable to real estate—Testamentary expenses to be paid out of residue—Law of Property Act 1925, s 16(1)(5)—Administration of Estates Act 1925, ss 2(1), 53(3). **Re Owers** [1940] 4 225, CA.

Interest in expectancy—

Option to defer payment of duty—

Option exercised—Subsequent purchase of interest by tenant for life—Trust fund handed over to tenant for life—When 'the interest falls into possession'—Property liable to duty—Finance Act 1894, s 7(6). **Fry v Inland Revenue Comrs** [1958] 3 90, CA.

Valuation. *See* Valuation—Interest in expectancy, *post*.

Locality of assets—

Settlement—

Proceeds of sale—Investments in England representing proceeds of sale of land in Eire—Whether investments notionally land in Eire for fiscal purposes—Settled Land Act 1882, s 22(5)—Finance Act 1894, s 2(2)—Irish Free State Constitution Act 1922 (Session 2), Sch I, art 73. **Middleton (Earl) v Cottesloe** [1949] 1 841, HL.

Passing of property—

Annuity—

Continuing annuity—Annuity given to J H for life and then to her children—Whether duty on death of J H payable on actuarial value of annuity or on capital value of proportion of residuary estate required to produce annuity—Finance Act 1894, ss 1, 2(1)(b). **Re Harris's Will Trusts** [1966] 1 677, ChD.

Continuing annuity—Bequest of annuity to three persons during joint lives and life of survivor equally—One half of annuity passing to last survivor—Finance Act 1894, ss 1, 2(1)(b), 7(7)(b). **Re Tapp (decd)** [1959] 1 705, CA.

ESTATE DUTY (cont)

Passing of property (cont)—

Cesser of annuity—

Allowance—Cesser of wife's annuity on husband's death—Wife becoming entitled to whole income of trust fund—Allowance for annuity—Finance Act 1894, s 5(3)(as amended by Finance Act 1938, s 48). **Re Lambton's Marriage Settlement** [1952] 2 201, CA.

Cesser of life interest—

Continuing annuity to spouse—Child entitled absolutely subject to annuity—Allowance for annuity—Finance Act 1894, ss 1, 2(1)(b). **Re Longbourne's Marriage Settlement** [1952] 2 933, ChD.

Change in beneficial interest or possession of property on death of person contingently entitled to distributions—

Accumulations—Direction by testator to accumulate up to £8,000 and then invest in land—Land to be entailed on fixed date—Periodical distributions under Scottish law of entail—Finance Act 1894, s 1. **Haldane v Eckford** [1948] 2 622, CA.

Change in measure of income entitlement—

Discretionary trust—Different groups of discretionary beneficiaries entitled under marriage settlement before and after settlor's death and different measure of income to be paid or applied for their benefit before and after his death—Finance Act 1894, s 1. **General Accident Fire and Life Assurance Corpn Ltd v Inland Revenue Comrs** [1963] 3 259, CA.

Description of property—

Statutory descriptions not mutually exclusive—Settlor a trustee of settlement—Property not included under s 2(3) but included under s 1 or s 2(1)(b)—Whether duty exigible—Finance Act 1894, s 2(3). **Doughty v Inland Revenue Comrs** [1963] 2 228, ChD.

Discretionary trust—

Death of one object—Other objects surviving—Discretionary trust of income in favour of husband and wife during specified period—Death of husband during period—Wife recipient of all income before and after death of husband—Whether duty payable on whole fund on husband's death—Finance Act 1894, ss 1, 2(1)(b). **Re Weir's Settlement** [1970] 1 297, CA.

Life interest in favour of discretionary class during testator's daughter's lifetime created by his will—Reversion on her death on trust for her three children—Her son assigned to trustees of will as from date of deed income of his reversionary one-third share for a term of seven years or the lifetime of his mother, whichever was longer—Beneficial trusts were on same discretionary trusts as were existing—Whether estate duty payable on one-third share—Finance Act 1894, ss 1, 2(1)(b). **Public Trustee v Inland Revenue Comrs** [1966] 1 76, HL.

Replaced after death—Whether discretionary trust replaced on settlor's death by entitlement to definite benefit—Finance Act 1894, s 1, s 2(1)(b). **Doughty v Inland Revenue Comrs** [1963] 3 848, CA.

Enlargement of life interest—

Assignment of income—Life interest in trust fund expressed to be enlarged by assignment by reversioners of income for fixed period—Death of life tenant before period expired—Whether estate duty payable in respect of principal value of trust fund or only in respect of limited interest in income under assignment—Change of beneficial interest necessary for notional passing of property under s 2(1)(b)—Finance Act 1894, ss 1, 2(1)(b), 22(1)(f)—Finance Act 1940, s 43(1)(a)(as amended by Finance Act 1950, s 43(1)). **Ralli Brothers Ltd v Inland Revenue Comrs** [1966] 1 65, HL.

Foreign property—

Immovable property—English will—Trust for sale—Death of life tenant—Proper law of disposition—Finance Act 1949, s 28(2). **Philipson-Stow v Inland Revenue Comrs** [1960] 3 814, HL.

Movable property—Proper law—Law from which validity of disposition stems—Trust fund including dollar securities passing on death of tenant for life—Testator domiciled out of Great Britain—Whether estate duty payable in respect of dollar securities—Finance Act 1949, s 28(2). **Re Levick's Will Trusts** [1963] 1 95, ChD.

Partnership—

Options of surviving partners to purchase deceased's interest—Price to be ascertained excluding goodwill—Whether deceased's interest in goodwill passes or is deemed to pass—Finance Act 1894, ss 1, 2(1)(b). **Perpetual Executors and Trustees Assn of Australia Ltd v Australia (Commonwealth) Comrs of Taxation** [1954] 1 339, PC.

Policy of assurance—

Money to be received under policy of settlor's life made subject to referential trusts by marriage settlement—Whether referential trusts conferred interests in policy during life time of settlor—Whether policy passed on his death—Finance Act 1894, s 1. **General Accident Fire and Life Assurance Corpn Ltd v Inland Revenue Comrs** [1963] 3 259, CA.

Property deemed to pass on death. *See* Property deemed to pass on death, *post*.

Settled property—

Derivative settlement—Income arising under settlement for limited period subjected by deed and order of the court to same trusts as would arise on termination of the limited interest—Whether capital of trust fund or income for remainder of limited interest passed on death of beneficiary during the limited period—Finance Act 1894, ss 1, 2(1)(b). **Midland Bank Executor and Trustee Co Ltd v Inland Revenue Comrs** [1959] 1 180, CA.

Derivative settlement—To what 'settled property' reference should be made. **Inland Revenue Comrs v Coutts & Co** [1963] 2 521, HL.

Discretionary trusts of income before and after death of deceased—Whether property passed on death—Finance Act 1894, ss 1, 2(1)(b), 7(7). **Burrell v Attorney-General** [1936] 3 758, HL.

Purchase of contingent life estate—Settlement on discretionary trusts—Life estate falling into possession—Finance Act 1894, s 1. **Scott v Inland Revenue Comrs** [1936] 3 752, HL.

ESTATE DUTY (cont)

Practice—

Agreed statement of points of law—

Settlement before master—Administration of Justice (Miscellaneous Provisions) Act 1933, s 3. **Philipson-Stow v Inland Revenue Comrs** [1959] 3 879, CA.

Disputed claim—

Crown proceeding by originating summons—Whether proper procedure where accountability not admitted—Crown's appeal against striking out of proceedings compromised—Proceedings on appeal stayed on agreed terms—Crown Proceedings Act 1947, s 14. **Re Park (decd)** [1970] 2 248, CA.

Property deemed to pass on death—

Accumulations—

Fund—Liability to duty—Life tenant's income during settlor's life if below stated amount to be made up to that amount out of accumulations—Income of accumulations to go to life tenant upon death of settlor—Liability to duty on death of settlor—Aggregation—Finance Act 1894, ss 1, 2(1)(d), 4. **Re Hodson's Settlement** [1939] 1 196, CA.

Annuity—

Beneficial interest—Income to be accumulated during life of deceased, followed by settlement of fund taking effect on death—Interest in property passing—Finance Act 1894, ss 1, 2(1)(d), 4. **Westminster Bank Ltd v Attorney-General** [1939] 2 72, CA.

Beneficial interest arising—Annuity payable during life of settlor out of each year's income—Annuity of same amount payable after settlor's death but then charged on appropriated fund—Surplus income payable to four persons during life of settlor—Those persons absolutely entitled to capital and income subject to annuity after settlor's death—Finance Act 1894, s 2(1)(d). **Re Parkes' Settlement Trusts** [1956] 1 833, CA.

Cesser on death—To Mrs E J an annuity of £5,000 and after her death an annuity of £5,000 to her two daughters, C and N, and to the survivor of them—Cesser of annuity on Mrs J's death and springing-up of a new annuity—Finance Act 1894, ss 1, 2(1)(b). **Re Cassel's Will Trusts** [1946] 1 32, ChD.

Interest arising on death—Annuity payable from death of annuitant's father—Payment under deed made between annuitant's father and covenants—Succession duty—Disposition of property—Whether annuitant 'beneficially entitled'—Succession Duty Act 1853, s 2—Finance Act 1894, s 2(1)(d). **Re Miller's Agreement** [1947] 2 78, ChD.

Purchase from trustees of son's marriage settlement—Liability on annuitant's death—Finance Act 1894, ss 2(1)(c), 3(1)—Finance Act 1940, s 44(1). **Re Earl Fitzwilliam's Agreement** [1950] 1 191, ChD.

Beneficial interest—

Extent of beneficial interest arising—Gifts of income and capital of fund—Income of trust fund during life of settlor to be divided equally among her children—Capital of trust fund to be divided among them on her death—All children surviving settlor—Extent of beneficial interest arising or accruing on settlor's death—Finance Act 1894, s 2(1)(d). **Parker v Lord Advocate (on behalf of Inland Revenue Comrs)** [1960] 1 20, HL.

Interest for joint lives—Life interest given by father's settlement to his son for joint lives of the father and the son—If son survived father, son absolutely entitled—If son predeceased father, on trust for class A—Assignment by son to settlement trustees of all son's interests under settlement on trust giving son life interest and absolute interest to substantially the same class as under previous settlement—Assignment revocable by son with consent of trustees—Death of father in lifetime of son—Whether beneficial interest arising or accruing on father's death—Finance Act 1894, s 2(1)(d). **Morgan v Inland Revenue Comrs** [1963] 1 481, CA.

Pension—Widow—Interest provided by deceased by arrangement with employer—Pension payable to deceased and on his death to his widow—Finance Act 1894, ss 1, 2(1)(d). **Re Payton (decd)** [1951] 2 425, CA.

Continuing annuity—

Husband and wife—Annuity given to husband and in the case of his predeceasing his wife the same annual sum given to her—Whether gift of single continuing annuity or of two separate annuities—Finance Act 1894, ss 1, 2(1)(b). **Re Weigall's Will Trusts** [1956] 2 312, ChD.

Joint lives—Bequest of annuity for joint lives and life of survivor—Property passing on death of first of beneficiaries to die—Finance Act 1894, ss 1, 2(1)(b). **Re Duke of Norfolk's Will Trusts** [1950] 1 664, CA.

Insurance policy—

Marriage settlement—Policy brought into marriage settlement on behalf of husband—Intention shown to exclude husband from benefit in policy during his life—Beneficiaries to be determined at maturity of policy—Husband having protected life interest in husband's fund—Trust for accumulation of any income prior to maturity date of the policy implied. **Re Midwood's Settlement** [1967] 3 291, ChD.

Policies of assurance brought into resettlement by tenant for life—Trustees directed to invest proceeds on maturity—Trust fund held for tenant for life during his lifetime and thereafter for another for life—Liability of policy moneys to estate duty on death of tenant for life—Finance Act 1894, s 1, s 2(1)(b)(d). **Childs Trustee Co v Inland Revenue Comrs** [1960] 2 209, ChD.

Policies of assurance effected for benefit of assured's wife if she should survive him for more than one month—Single premium policies effected under Married Women's Property Act 1882, s 11—Interests provided by assured—Wife survived assured by more than one month—Whether beneficial interest in policies arose on assured's death—Change from defeasible to indefeasible interest at end of month—No difference in value of interest before and after change—Whether interest in expectancy could include an interest, whether defeasible or not, in possession—Finance Act 1894, ss 2(1)(d), 22(1)(1)—Finance Act 1934, s 28. **Re Kilpatrick's Policies Trusts** [1966] 2 149, CA.

ESTATE DUTY (cont)

Property deemed to pass on death (cont)—

Insurance policy (cont)—

Policy kept up for donee—Donee—Child taking interest under ante-nuptial settlement of parents—Interest accruing or arising—Accruing or arising on death of assured—Contemporaneous assignment of policy and other property—Subsequent premiums paid by assignee—Finance Act 1894, s 2(1)(c)—Finance Act 1939, s 30(1). *D'Avigdor-Goldsmid v Inland Revenue Comrs* [1953] 1 403, HL.

Policy kept up for donee—Kept up—Premiums paid by deceased—Policy settled on son of deceased after payment of first premium—Policy fully paid up since 1916—Mortgage to insurance company—'Money received'—Deduction for mortgage debt by insurance company—Customs and Inland Revenue Act 1889, s 11(1)—Finance Act 1894, s 2(1)(c). *Re Hodge's Policy* [1957] 3 584, CA.

Policy kept up for donee—Policy partially kept up for donee's benefit—Proportion of proceeds of policy on which estate duty payable—Customs and Inland Revenue Act 1889, s 11(1)—Finance Act 1894, ss 1, 2(1)(c). *Lord Advocate v Inzievar Estates Ltd* [1938] 2 424, HL.

Policy wholly kept up by settlor—Money received under policy of assurance—'Effectuated' by deceased—'Wholly kept up...for... a donee'—Payment of initial premiums by third party—Commutation of premiums—Policy for the benefit of donee and the deceased—Customs and Inland Revenue Act 1889, s 11(1)—Finance Act 1894, s 2(1)(c). *Re Oakes (decd)* [1950] 2 851, ChD.

Premiums paid by trustees of settlement—Death of assured—Cesser of payment of premiums—Claim on capital needed to produce premiums—Cessation of 'interest' in property—Interest of remaindermen—Finance Act 1894, s 2(1)(b), s 7(7). *Coutts & Co v Inland Revenue Comrs* [1953] 1 418, HL.

Settlement inter vivos of policies on life of settlor—Income to be accumulated for specified period—Life interest in trust fund—Proceeds of policies falling in on settlor's death—Whether life interest in possession if no income during life of settlor—Finance Act 1894, s 2(1)(d). *Westminster Bank Ltd v Inland Revenue Comrs* [1957] 2 745, HL.

Transfer of policies of assurance to trustees—Separate fund provided for payment of premiums—Appointment—Death of assured—Whether policies kept up for donee's benefit—Customs and Inland Revenue Act 1881, s 38—Customs and Inland Revenue Act 1889, s 11—Finance Act 1894, ss 2(1)(c), 7(7). *Barclays Bank Ltd v Attorney-General (on behalf of His Majesty)* [1944] 2 208, HL.

Interest ceasing on death—

Change of beneficial interest necessary if estate duty to be exigible—Finance Act 1894, s 2(1)(b). *Ralli Brothers Ltd v Inland Revenue Comrs* [1966] 1 65, HL.

Interest in possession—

Contingent interest—Entitlement to income—Gift of testator's residuary estate to F J—Date of vesting postponed until F J should attain the age of 25—Gift over in the event of F J's death under the age of 25—F J entitled to income after attaining the age of 21—Death of F J at age of 23—'Interest in possession'—Finance Act 1894, ss 2(1)(b), 5(3)—Trustee Act 1925, s 31(1)(ii). *Re Jones* [1946] 2 281, ChD.

Payment of duty—

Release of charge—Tenant for life paying duty—Release of charge for duty paid—Whether sum representing duty part of estate of tenant for life passing on her death—Finance Act 1894, ss 5(2), 9(1)(6), 22(2)—Finance Act 1914, s 14. *Re Hall* [1942] 1 10, CA.

Pension—

Pension to widow of employee—Discretion of trustees—'Property'—'Beneficial interest'—'Purchased or provided'—Finance Act 1894, s 2(1)(d). *Re J Bibby & Sons Ltd, Pensions Trust Deed* [1952] 2 483, ChD.

Power—

Power enabling trustees to raise and pay share subject to discretionary trust—Arising of power not a passing of property. *Public Trustee v Inland Revenue Comrs* [1966] 1 76, HL.

Property comprised in a settlement—

Settlement—More than one instrument—Will and statute—Testator's disposition of residuary estate declared void—Residuary estate held on statutory trusts for testator's next-of-kin—Trust for testator's four brothers and one sister—One brother dying—Duty claimed on one-fifth of residuary estate to which brother entitled as a beneficiary under the settlement—Whether settlement limited to testator's will—Whether brother a beneficiary under a 'settlement'—Finance Act 1894, ss 2(1)(b)(i)(as substituted by the Finance Act 1969, s 36(2)(b)), 22(1)(i)(as amended by the Finance Act 1969, s 36(5))—Settled Land Act 1925, s 1(1). *Re Buttle's Will Trust* [1976] 3 289, ChD.

Rates of estate duty—

Plant and machinery used in business—

Partnership—Death of partner—Partnership dissolved by death—Application of reduced rates—Finance Act 1954, s 28(1). *Burdett-Coutts v Inland Revenue Comrs* [1960] 3 153, ChD.

Recovery of rateable part of duty from chargee. *See* Incidence—Property not passing to executor as such—Recovery of duty from person entitled to sum charged on property, *ante*.

Repayment of duty overpaid—

Interest on excess—

Date from which interest is ordered—Discretion of court—Finance Act 1894, s 10(3). *Re Harmsworth (decd)* [1966] 3 309, ChD.

Sale of land—

Defect in title—

Contingent liability to estate duty. *See* Sale of land (Rescission of contract)—Defect in title—Contingent liability to estate duty).

Settlement. *See* Settlement (Estate duty).

ESTATE DUTY (cont)

Settlement with reservation—

Irrevocable voluntary settlement—

Family arrangement—Interest reserved to settlor—Customs and Inland Revenue Act 1889, s 11—Finance Act 1894, ss 1, 2(1)(c), 3(1)(2). **Attorney-General v Kitchin** [1941] 2 735, CA.

Pre-nuptial settlement by husband—

Provision for application of settled income to household expenses—Income used by wife for personal purposes only—Husband's acquiescence in settled income for wife's personal purposes—Husband's life interest in settlement reserved—Customs and Inland Revenue Act 1889, s 38—Customs and Inland Revenue Act 1889, s 11—Finance Act 1894, ss 1, 2(1)(c). **Re Cochrane** [1945] 1 660 CA.

Revocation—

Power of revocation with consent of trustees—Discretion of trustees to withhold consent absolute—Whether donee of power, being settlor, was competent to dispose of property—Estate and Succession Duties Act 1941 (Laws of Barbados No 16 of 1941), s 3(a). **Comr of Estate and Succession Duties v Bowring** [1960] 3 188, PC.

Settled property—

Bona fide possession and enjoyment assumed by donee—Entire exclusion of deceased—Gift to son to be transferred on attainment of 21, son being maintained out of income—Stamp Duties Act (Australia) 1920 (No 47 of 1920), s 102(2)(d). **Comr for Stamp Duties of New South Wales v Perpetual Trustee Co Ltd** [1943] 1 525, PC.

Valuation—

Allowances—

Debts incurred by deceased—Debts incurred bona fide for full consideration in money or money's worth wholly for deceased's own use and benefit—Consideration for deceased's own use and benefit—Deceased having borrowed substantial sum from bank—Borrowing in order to purchase policies of assurance on her life for benefit of residuary legatees—Borrowing by way of a bona fide commercial transaction involving no element of bounty or gift to bank—Whether debt incurred for full consideration wholly for deceased's own use and benefit—Whether debt deductible in determining value of deceased's estate—Finance Act 1894, s 7(1)(a). **Re Whitfield's Estate** [1976] 1 807, CA.

Debts incurred by deceased—

Debts incurred bona fide for full consideration in money or money's worth wholly for deceased's own use and benefit—Consideration for deceased's own use and benefit—Deceased having borrowed substantial sum from bank—Borrowing in order to purchase policies of insurance on her life for benefit of residuary legatees—Consideration for debt wholly what deceased wished to obtain—Whether debt incurred for full consideration wholly for deceased's own use and benefit—Whether debt deductible in determining value of deceased's estate—Finance Act 1894, s 7(1)(a). **Re Whitfield's Estate** [1974] 3 802, ChD.

Deduction of debts. *See* Deduction of debts, *ante*.

Future destination of property—

Restriction on enjoyment of property liable to become effective after death—Settled property—Income of deceased beneficiary liable to be reduced on death of another beneficiary—Finance Act 1894, ss 1, 2(1)(b), 7(5)(7). **Christie v Lord Advocate** [1936] 1 443, HL.

Gift inter vivos—

Value of settled fund increased before death of deceased—Value at date of death value for estate duty purposes—Customs and Inland Revenue Act 1881, ss 38, 39—Customs and Inland Revenue Act 1889, s 11—Finance Act 1894, ss 2(1)(c), 5, 7, 8(4)—Finance (1909-10) Act 1910, s 59. **Re Payne** [1940] 2 115, CA.

Interest in expectancy—

Principal value—Rate of duty—Date by reference to which value to be ascertained—Option to pay duty at date when interest falls into possession—Exercise of option—Rate of duty to be ascertained by reference to value of interest at date of falling into possession—Principal value to which rate to be applied—Whether value at date of deceased's death or date of falling into possession—Finance Act 1894, s 7(5)(6). **Astley v Inland Revenue Comrs** [1975] 3 696, CA.

Landed estate—

Price that the property would fetch if sold in the open market at the deceased's death—Division of large estate into units and notional sale of each unit separately—Such division not an artificial division, but a proper one having regard to reality—Value of estate on the basis of realisation in many separate units substantially higher than its value if sold as a whole—Principal value of estate for estate duty purposes properly estimated on the basis of realisation in many separate units—Finance Act 1894, s 7(5)—Finance (1909-10) Act 1910, s 60(2). **Duke of Buccleuch v Inland Revenue Comrs** [1967] 1 129, HL.

Sale of realty under power in will. *See* **Executor and administrator** (Duty to beneficiaries—Power of sale of realty to one of beneficiaries—Sale to be at estate duty valuation).

Shares in company—

Assets as a going concern—Valuation according to value of company's assets as a going concern. **Attorney-General of Ceylon v Mackie** [1952] 2 775, PC.

Contingent liabilities—Allowance for contingent liabilities—Balancing charge—Liability not existing at date of the death—Finance Act 1894, s 7(5)—Finance Act 1940, s 50(1), s 55—Income Tax Act 1952, s 292. **Winter (Executors of Sir Arthur Munro Sutherland (decd)) v Inland Revenue Comrs** [1961] 3 855, HL.

Control of company—Shares held by deceased in fiduciary capacity—Whether permissible to look beyond company's articles and register—Finance Act 1940, ss 55(1)(3), 58(4)(5). **Barclays Bank Ltd v Inland Revenue Comrs** [1960] 2 817, HL.

Gift inter vivos by way of settlement—Shares notionally passing on settlor's death—Finance Act 1940, s 55(1). **Sanderson v Inland Revenue Comrs** [1956] 1 14, HL.

ESTATE DUTY (cont)

Valuation (cont)—

Shares in company (cont)—

Mode of valuation—Jurisdiction of court to substitute its own discretion for that of commissioner as to mode of valuation—New South Wales Stamp Duties Act 1920-1940, ss 124(4), 127(1)(c). **New South Wales Comr of Stamp Duties v Pearce, Pearce v New South Wales Comr of Stamp Duties** [1954] 1 19, PC.

Price obtainable on sale in open market—Private company—Restrictions on transfer of shares—Shareholder bound to offer shares to director or members at par value—Company properous—Likelihood of public flotation at date of shareholder's death—Information concerning likelihood of public flotation contained in confidential reports known only to board of company—Whether shares to be valued at par value—Whether in assessing value potential bidders should be assumed to have knowledge of content of confidential reports—Finance Act 1894, s 7(5). **Lynall v Inland Revenue Comrs** [1971] 3 914, HL.

Restrictions on alienation—Basis of valuation for estate duty purposes—Finance Act 1894, s 7(5). **Inland Revenue Comrs v Crossman** [1936] 1 762, ChD, **Holt v Inland Revenue Comrs** [1953] 2 1499, ChD.

Valuation according to value of company's assets—Liability of company—Anticipated income tax claim on current profits—Finance Act 1940, ss 50(1), 55 (2). **Re Duffy (decd)** [1948] 2 756, CA.

ESTATE OWNER

Land charge—

Registration in name of estate owner. *See* **Land charge** (Registration—Registration in name of estate owner).

ESTATE TAIL

See **Settlement** (Estate tail).

ESTOPPEL

Acquiescence. *See* **Acquiescence** (Estoppel)

Arbitration—

Party acting on basis arbitrator qualified to act—

Validity of award—Arbitrator not qualified to act—Whether open to party seeking to have award declared invalid to contend that arbitrator not qualified. **Oakland Metal Co Ltd v D Benaim & Co Ltd** [1953] 2 650, QBD.

Res judicata. *See* **Arbitration** (Res judicata).

Arbitration award. *See* **Arbitration** (Award—Interim award—Estoppel).

Assignment of lease. *See* **Landlord and tenant** (Assignment of lease—Estoppel).

Autrefois acquit. *See* **Criminal law** (Autrefois acquit).

Autrefois convict. *See* **Criminal law** (Autrefois convict).

Bank—

Forged cheque—

Paying bank honouring cheque—Estoppel—Implied representation that cheque genuine. *See* **Bank** (Cheque—Forgery—Duty of paying bank—Duty to payee—Paying bank honouring cheque—Estoppel).

Bill of lading—

Condition of cargo—

Receipt as to. *See* **Shipping** (Bill of lading—Receipt as to condition of cargo—Estoppel).

By record—

Issue estoppel. *See* **Issue estoppel, post**.

Res judicata. *See* **Res judicata, post**.

Workmen's compensation—

Recorded agreement for compensation. *See* **Workmen's compensation** (Election of remedy—Receipt of compensation—Recorded agreement for compensation—Benefit of infant—Estoppel by record).

Company—

Authority of director—

Unauthorised agreement made by director—Ignorance of other party to agreement of provision in article—Company not estopped from setting up director's absence of authority. **Rama Corpn Ltd v Proved Tin and General Investments Ltd** [1952] 1 554, KBD.

Debenture-holder's action. *See* **Company** (Debenture-holder's action—Estoppel).

Conduct—

Acceptance of benefit—

Damages—Fatal accident to servant—Acceptance by widow, as administratrix, of death benefit under pension scheme—Damages claimed under Fatal Accidents Acts for benefit of widow and infant children. **Smith v British European Airways Corpn** [1951] 2 737, KBD.

Agent—

Conduct of agent estopping principal—Owner of property entrusting property to care of agent—Conduct of agent leading third party to believe owner had no title to property—Third party acting in reliance on belief to detriment—Finance company—Company letting car on hire-purchase to customer—Custom of trade to register all hire-purchase contracts with information agency—Customer offering car to dealer for sale—On enquiry dealer told by information agency that no hire-purchase contract registered in respect of car—Dealer purchasing car in reliance on answer—Whether finance company estopped from asserting title against dealer. **Moorgate Mercantile Co Ltd v Twitchings** [1975] 3 314, CA.

Allowing expenditure by another on land—

Expenditure on land in expectation of an interest therein—Right to remain in occupation—Son allowed by father to build bungalow on father's land in expectation of using bungalow as his home—Possession of bungalow claimed by trustees of father's will after his death—Son entitled to equity to remain in occupation of bungalow. **Inwards v Baker** [1965] 1 446, CA.

ESTOPPEL (cont)

Conduct (cont)—

Bankruptcy—

Creditors—Assent to deed of assignment—Conveyance of part of debtor's assets on sale by trustee of deed of assignment—Whether creditors estopped from withdrawing assent to deed of assignment. *Re L G Clarke, ex parte The Debtor v S Aston & Son Ltd* [1966] 3 622, ChD.

Breach of contract—

Waiver of breach. *See Contract* (Breach—Waiver—Conduct amounting to waiver).

Conduct leading representee to act to his detriment—

Knowledge that representee intending to act in that way—Right of way—Assurance by representor that he would grant right of way over his land to and from representee's land—Representor constructing gates to allow access to way—Representor doing nothing to indicate intention to retitle from assurance—Representee selling adjoining plot of land without reserving right of way to retained land—Representee believing that he had or would be granted right of way over representor's land—Representor knowing of representee's intention to sell adjoining land but having no knowledge of actual sale—Effect of denial of right of way to deny representee access to retained land—Whether representor estopped from denying that prerepresentee entitled to right of way. *Crabb v Arun District Council* [1975] 3 865, CA.

Employment—

Written particulars of terms of employment given to claimant in accordance with statute—Representation to claimant that he was employee—Employers estopped from denying claimant their employee. *Smith v Blandford Gee Cementation Co Ltd* [1970] 3 154, QBD.

Landowner permitting encroachment—

Erection of building partly on landowner's plot—Building plots—Understanding between owners of two adjoining plots that wall of garage on southern plot should be their boundary—Garage built by owner of northern plot for owner of southern plot—Garage built partly on northern plot—Whether subsequent purchaser of northern plot estopped from claiming trespass. *Hopgood v Brown* [1955] 1 550, CA.

Mistake of law—

Acceptance of obligation in consequence of mistake—Deduction of tax on payment of royalties—Recipient accepting deduction under mistake of law. *Gwyther v Boslymon Quarries Ltd* [1950] 1 384, KBD.

Silence or inactivity—

Breaches of covenant in lease—Option to renew lease 'providing all covenants have been observed'—Trivial breaches of tenant's decoration covenants—Landlord frequently visited premises, but said nothing—Whether landlord estopped from refusing new lease on ground of breaches. *West Country Cleaners (Falmouth) Ltd v Saly* [1966] 3 210, CA.

Duty to speak out—Circumstances in which duty to speak or act arises—Person acting in mistaken belief that another is under a legal obligation—Failure of other to deny existence of obligation—Purchaser entering into agreement with owners' wife for purchase of house—Wife not having owner's authority to make agreement—Owner failing to disclose wife's lack of authority to purchaser—Owner treating purchaser as new owner—Purchaser incurring expenditure on repairs to house—Owner subsequently conveying house to third party—Whether owner under duty to disclose to purchaser wife's lack of authority—Whether failure to make disclosure amounting to representation by conduct. *Spiro v Lintern* [1973] 3 319, CA.

Title to land—Dispute as to title—Party to dispute knowing of earlier proceedings relating to title—Party standing by and taking no part in previous proceedings—Whether party bound by decision in those proceedings. *Nana Ofori Atta II, Omanhene of Akyem Abuakwa v Nana Abu Bonsra II as Adansehene, and as representing the Stool of Adanse* [1957] 3 559, PC.

Corporation—

Ultra vires—

Lease without necessary consent of Minister—Whether corporation can be barred by estoppel from denying validity of ultra vires act. *Rhyl Urban District Council v Rhyl Amusements Ltd* [1959] 1 257, ChD.

Criminal law. *See Criminal law* (Estoppel).

Crown—

Assessment to income tax—

Charitable trusts—Scheme sanctioned by court, the Attorney-General being a party, for establishing charitable trusts—Trusts established not in fact charitable—Whether Crown estopped from denying that trusts charitable for the purposes of assessment to income tax. *Vernon (Trustees of the Employees Fund of William Vernon & Sons Ltd) v Inland Revenue Comrs* [1956] 3 14, ChD.

Deed—

Recital—

Ambiguity—Title—Uncumbered fee simple in possession—Conveyance to purchaser reciting vendors 'seised in uncumbered fee simple in possession'—Whether vendors estopped from relying on existence of lease as against mortgagee of purchaser—Whether lease an 'incumbrance'. *District Bank Ltd v Webb* [1958] 1 126, ChD.

Guarantee—Loan on security of shares of company—Agreement between guarantor and creditor reciting that shares security for loan—Shares not validly issued—Whether recital statement of creditor or guarantor—Whether creditor estopped by terms of recital. *Greer v Kettle, Re Parent Trust & Finance Co Ltd* [1937] 4 396, HL.

Rectifiable deed—

Estoppel not binding where deed open to rectification. *Wilson v Wilson* [1969] 3 945, ChD.

Divorce—

Custody proceedings. *See Divorce* (Custody—Custody proceedings—Evidence not given at hearing of divorce suit—Estoppel).

ESTOPPEL (cont)

Divorce (cont)—

Financial provision—Application.
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Financial provision—

Application. *See* **Divorce** (Financial provision—Application—Application subsequent to petition or answer—Estoppel).

Divorce—Generally. *See* **Divorce** (Estoppel).

Election—

Interest under will—

Interest conditional on execution of interest under another will—Intimation of intention to execute settlement—Intimation given to trustees of both wills—Whether binding election made. *Re Shepherd* [1942] 2 584, ChD.

Enforcement notice—

Appeal against notice. *See* **Town and country planning** (Enforcement notice—Appeal against notice—Estoppel).

Equitable estoppel—

Contract—

Waiver. *See* **Contract** (Breach—Waiver—Conduct amounting to waiver).

Right arising out of estoppel—

Registration as land charge. *See* **Land charg&** (Equitable estoppel).

Estoppel by record—

Issue estoppel. *See* **Issue estoppel, post**.

Res judicata. *See* **Res judicata, post**.

Estoppel in pais—

Estoppel by conduct—

Breach of contract—Waiver of breach. *See* **Contract** (Breach—Waiver—Conduct amounting to waiver).

Estoppel by conduct. *See* **Conduct, ante**.

Estoppel by negligence. *See* **Negligence, post**.

Estoppel by representation. *See* **Representation, post**.

Licensor and licensee—

Ceylon. *See* **Ceylon** (Estoppel—Licensor and licensee).

Husband and wife—

Maintenance—

Discharge of order—Maintenance order discharged by continued residence of wife with husband—Subsequent application by husband for variation of order. *Harris v Harris* [1952] 1 401, KBD.

Variation or discharge of order—Estoppel from applying to vary or discharge maintenance order. *Sternberg v Sternberg* [1963] 3 319, Div.

Issue estoppel—

Arbitration—

Res judicata. *See* **Arbitration** (Res judicata).

Counterclaim—

Action based on decision in administration action—Issue raised in counterclaim not raised in administration action—Order in administration action for account and inquiry as to defendant's indebtedness to estate—Certificate by master of amount due from defendant—Fresh action by judicial trustee of estate to recover amount—Application for summary judgment—Defendant seeking to raise counterclaim in action that certain assets referred to in certificate were partnership assets in which he was interested—Claim not made by him at time of taking account—Defendant debarred from counter-claiming in action on ground of res judicata. *Public Trustee v Kenward* [1967] 2 870, ChD.

Criminal proceedings—

Obstruction of highway—Camping by gipsy on highway—Information alleging offence in December 1965 dismissed—Magistrates not satisfied accused a gipsy—Subsequent information charging a like offence in March 1966—Whether issue estoppel—Whether second information abuse of process of court—Highways Act 1959, s 127(c). *Mills v Cooper* [1967] 2 100, QBD.

Criminal proceedings. *See* **Criminal law** (Estoppel—Issue estoppel).

Foreign judgment—

Issue of want of authority to institute action—Judgment in foreign proceedings that the effective plaintiff was not entitled to represent foreign corporation—Plaintiff authorised issue of writ to bring passing-off action in England in name of foreign corporation—Defendants in English action applied for stay of proceedings on ground of want of authority to issue writ—Whether defendants entitled to succeed on this application on ground that English solicitors estopped by foreign judgment from maintaining that they were duly authorised. *Carl-Zeiss-Stiftung v Rayner and Keeler Ltd (No 2)* [1966] 2 536, HL.

Issue—

Arbitration—Interim award in the form of a special case—Definition of what constitutes an 'issue'. *Fidelitas Shipping Co Ltd v V/O Exportchleb* [1965] 2 4, CA.

Matrimonial proceedings—

County court proceedings—Subsequent proceedings in High Court for determination of property rights—Whether findings in county court binding in subsequent proceedings in High Court. *Razelos v Razelos (No 2)* [1970] 1 386, Div.

Maintenance—Charge of adultery against wife—Same charge dismissed in previous High Court proceedings. *James v James* [1948] 1 214, Div.

Res judicata. *See* **Res judicata, post**.

Scheme for variation of trusts—

Scheme applying to part only of original trust fund—Other part subject to disposition subsequently found to be void—Whether parties to scheme estopped from asserting against trustees that income of other part had been paid to wrong persons. *Spens v Inland Revenue Comrs* [1970] 3 295, ChD.

ESTOPPEL (cont)

Landlord and tenant—

Application of Rent Acts—

Jurisdiction of court to determine whether dwelling-house within Rent Acts—Jurisdiction not ousted by estoppel. **Solle v Butcher** [1949] 2 1107, CA.

Landlord's assumption of applicability of Rent Acts—Subsequent denial. **Langford Property Co Ltd v Goldrich** [1949] 1 402, CA.

Rent restriction—

Standard rent—Contractual tenancy at rent lower than standard rent—Termination of contractual tenancy—Right of landlord to increase rent to amount of standard rent. **Dean v Bruce** [1951] 2 926, CA.

Statutory tenancy—

Conduct of landlord—Acceptance of statutory increases of rent—Claim by landlord against tenant's widow for possession—Allegation that tenant a contractual tenant—Claim and acceptance by landlord from tenant of statutory increases of rent. **Baxter v Eckersley** [1950] 1 139, CA.

Marriage—

Bigamous marriage—

Whether party to bigamous marriage estopped from denying validity of marriage by knowledge of the facts. *See Nullity (Bigamous marriage—Estoppel).*

Negligence—

Cheque signed in blank—

Signed blank crossed 'not negotiable' cheque—Blanks fraudulently filled in by agent—Drawer not estopped from denying authority. **Wilson & Meeson (a firm) v Pickering** [1946] 1 394, CA.

Document mistakenly signed—

Plea of non est factum—Carelessness on part of person signing document—No estoppel—Carelessness precluding person signing document from raising plea of non est factum but not an instance of estoppel by negligence. **Sanders v Anglia Building Society** [1970] 3 961, HL.

Plea of non est factum—Hire-purchase transaction—Indemnity form signed by hirer in belief it was release of his rights as hire-purchaser of same car under another agreement—Carelessness in signing document—Whether grounds for estoppel precluding signer from raising plea of non est factum. **Muskham Finance Ltd v Howard** [1963] 1 81, CA.

Plea of non est factum—Carelessness on part of person signing document—No estoppel—Carelessness precluding person signing document from raising plea of non est factum but not an instance of estoppel by negligence. **Sanders v Anglia Building Society** [1970] 3 961, HL.

Document signed in blank—

Hire-purchase transaction—Documents signed in blank by owner and given to apparently reputable dealer enabling dealer to represent himself to finance company as owner—Dealer authorised only to make inquiries as to raising loan on security of car—Fraudulent sale of car by dealer to finance company—Whether owner estopped as against finance company from denying dealer's authority to sell. **Mercantile Credit Co Ltd v Hamblin** [1964] 3 592, CA.

Hire-purchase transaction—Price—Incorrect price inserted—Hire-purchase agreement for car signed by hirer in blank—Price incorrectly inserted by dealer—Whether hirer could deny agreement as against finance company—Whether doctrine of estoppel by negligence extends only to negotiable instruments. **Campbell Discount Co Ltd v Gall** [1961] 2 104, CA.

Need to establish duty of care in order to found estoppel by negligence—

Hire-purchase agreement—Registration—Practice of finance companies to register agreements with information agency—Function of agency to inform motor car dealers whether car offered to them for sale registered as being subject to hire-purchase agreement—Failure of finance company to register agreement—Car subject to that agreement offered for sale to dealer—Dealer informed by agency that car not registered as being subject to agreement—Dealer purchasing car in reliance on statement—Whether finance company under duty to register agreement—Whether finance company estopped by negligence from asserting title to car against dealer. **Moorgate Mercantile Co Ltd v Twitchings** [1976] 2 641, HL.

Representation as to title—

Delivery of documents of title—Delivery to agent—Sale of motor car—Documents given by owner to agent enabling agent to represent himself as owner—Sale by agent in excess of authority—Subsequent sale by owner—Title to motor car. **Eastern Distributors Ltd v Goldring (Murphy third party)** [1957] 2 525, CA.

Delivery of documents of title—Delivery to prospective purchaser—Hire-purchase—Car—Registration book and car delivered to hire-purchaser before finance company agreed hire-purchase—Sale of car by hire-purchaser—Whether original owner estopped from denying title of innocent purchaser. **Central Newbury Car Auctions Ltd v Unity Finance Ltd (Mercury Motors, third parties)** [1956] 3 905, CA.

Pleading—

Duty to raise plea at trial—

Appeal—Party not entitled to raise plea on appeal. **Sanders (or se Saunders) v Sanders (or se Saunders)** [1952] 2 767, Div.

Promissory estoppel—

Enforcement of contractual right—

Inducing belief that contractual right will not be enforced—Acceptance of debtor's cheque for smaller sum—Whether defence against creditor enforcing legal right. **D & C Builders Ltd v Rees** [1965] 3 837, CA.

ESTOPPEL (cont)**Promissory estoppel—****Ambiguity—**

Variation of contract—Representation in response to request by representee to vary term of contract—Parties not *ad idem*—Request and response understood in different senses by parties—Request and response incapable of constituting variation by agreement—Whether representee entitled to rely on representation in sense understood by him as constituting an estoppel. **Woodhouse A C Israel Cocoa Ltd S A v Nigerian Produce Marketing Co Ltd** [1972] 2 271, HL.

Contractual relationship between representor and representee—Necessity for contractual relationship to found estoppel—
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Contractual relationship between representor and representee—

Necessity for contractual relationship to found estoppel—Representation made prior to contract—Employment—Redundancy—Continuity of employment—Representation by new employer that employee's right to redundancy payment would be respected—Employee entering into contract with new employer in reliance on representation—Whether new employer precluded from denying liability to make redundancy payment based on period of service with former employer. **Evenden v Guildford City Association Football Club Ltd** [1975] 3 269, CA.

Enforcement of contractual right—

Inducing belief that contractual right will not be enforced Acceptance of debtor's cheque for smaller sum—Whether defence against creditor enforcing legal right. **D & C Builders Ltd v Rees** [1965] 3 837, CA.

Future conduct—

Reliance on promise as to future conduct—Lease of flats—Written promise to reduce rent owing to war-time conditions—No consideration—Reduced rent paid—Binding effect of promise—Effect of ending of war-time conditions. **Central London Property Trust Ltd v High Trees House Ltd** (1946) [1956] 1 256, KBD.

Reliance on representation to detriment—

Invention—Exploitation—Representation by licensee that article embodied invention—Payment of royalties—Inventor in reliance on representation not seeking to exploit invention elsewhere—Licence for the exploitation of inventions—Inventor's right to determine licence if royalties less than £2,000 a year—Royalties exceeding that sum paid—Subsequent repudiation of liability for further royalties—Licensee estopped from denying that articles embodied invention. **Lyle-Møller v A Lewis & Co (Westminster) Ltd** [1956] 1 247, CA.

Suspension of payments under hire-purchase agreement—

Contract to pay instalments under agreements for hire-purchase of lorries—Consent of owner to suspension of payment of instalments while lorries withdrawn from hirer's service for repairs—Action by owner claiming instalments due under agreements—Whether principle of promissory estoppel applied to prevent enforcement of claim. **Ajayi v R T Briscoe (Nigeria) Ltd** [1964] 3 556, PC.

Record—**Estoppel by record—**

Issue estoppel. *See* Issue estoppel, *ante*.

Res judicata. *See* Res judicata, *post*.

Representation—**Agent—**

Agent expressly authorised to make representation—Third party acting in reliance on representation to detriment—Finance company—Company letting car on hire-purchase to customer—Custom of trade to register all hire-purchase contracts with information agency—Customer offering to sell car to dealer—On enquiry dealer told by information agency that no hire-purchase contract registered in respect of car—Answer mistaken but not given negligently—Dealer purchasing car in reliance on answer—Whether finance company estopped from asserting title against dealer. **Moorgate Mercantile Co Ltd v Twitchings** [1975] 3 314, CA.

Ambiguity—

Meaning to be given to representation—Representation must be clear and unequivocal to found estoppel—Not sufficient that meaning put on it by representee reasonably appeared to him to be clear and unequivocal—Contract for sale of goods—Price and money of payment expressed in Nigerian pounds—Representation that pounds sterling acceptable to vendors—Whether pounds sterling to be unit of account or payment—Reasonable but incorrect interpretation by representee not sufficient to support estoppel. **Woodhouse A C Israel Cocoa Ltd S A v Nigerian Produce Marketing Co Ltd** [1971] 1 665, CA.

Delivery receipt—

Acknowledgment goods in good condition—Hire-purchase—Delivery receipt acknowledging that goods were in good condition—Whether finance company could maintain that hirer was estopped by having given receipt. **Lowe v Lombank Ltd** [1960] 1 611, CA.

Duty—

Need to prove breach of duty—Bankers' loan to merchants—Secured by pledge of railway receipts for a consignment of goods—Receipts returned to merchants for specific purpose of clearing and storing goods in bank's premises—Further advance fraudulently obtained from second bank by subsequent pledge of the same receipts—Goods disposed of—Claim for conversion by second bank against first bank—First bank not estopped from setting up title to goods as against second bank—First bank not having committed any breach of duty to first bank by returning receipts to merchants. **Mercantile Bank of India Ltd v Central Bank of India Ltd** [1938] 1 52, PC.

ESTOPPEL (cont)

Representation (cont)—

Existing fact—

Need to prove representation of fact—Charterparty—Voyage via Suez Canal—Canal blocked to shipping—On arrival of vessel at loading port ship-owners aware that canal blocked—Notice of readiness to load nevertheless given by vessel and cargo permitted by shipowners to be loaded by charterers' agents—No representation of fact—Promissory estoppel inapplicable. **Société Franco Tunisienne D'Armement v Sidermar SPA** [1960] 2 529, QBD.

Intention—

Representation of future intention not constituting estoppel—Sign affixed to defendant's premises projecting into air space above plaintiff's shop—Plaintiff giving permission—Plaintiff not estopped from subsequently requiring removal of sign. **Kelsen v Imperial Tobacco Co (of Great Britain and Ireland) Ltd** [1957] 2 343, QBD.

Knowledge of falsity—

Representor's knowledge of falsity—Relevance—Belief by representee that representor under legal obligation to representee—Representee acting to detriment on basis of belief—Representor failing to disclose non-existence of obligation—Belief of representor that not entitled to repudiate obligation. **Spiro v Lintern** [1973] 3 319, CA.

Law—

Applicability of statute—Notice of rent increase—Landlord giving notice of increase of rent under ordinance—Notice acted on by tenants—Whether landlord estopped from contending that ordinance was not applicable. **Kai Nam (a firm) v Ma Kam Chan** [1956] 1 783, PC.

Legal relations—

Option—Validity—Option to renew lease—Option void for want of registration—Exercise of option by lessee—Correspondence implying promise by lessors not to rely on invalidity of option—Whether lessor estopped from asserting invalidity of option. **Beesly v Hallwood Estates Ltd** [1961] 1 90, CA.

Loading and stowage of cargo—

Liability of shipowners—Master responsible for stowage of cargo—Charterer's agent representing that cargo safe if stowed in certain manner—Master stowing cargo in accordance with agent's instructions—Damage to cargo resulting from improper stowage—Whether master exempted from liability by agent's representations—Whether charterer estopped from relying on rights under charterparty. **Ismail v Polish Ocean Lines** [1976] 1 902, CA.

Meaning to be given to representation—

Finance company—Representation that motor car not subject to hire-purchase agreement—Representation on behalf of company by information agency—Practice of finance companies to register hire-purchase agreements with agency—Function of agency to inform motor car dealers whether cars offered to them for sale registered as being subject to hire-purchase agreement—Statement by agency in answer to enquiry by dealer that according to records car not subject to agreement—Car in fact subject to agreement with finance company—Agreement not registered—Whether finance company estopped by agency's statement from asserting title to car against dealer. **Moorgate Mercantile Co Ltd v Twitchings** [1976] 2 641, HL.

Mistake—

Public utility company—Compulsory statutory charges—Incorrect accounts rendered—Public Utilities Act, Revised Statutes of New Brunswick 1927, ss 10, 14, 15, 16, 18, 19. **Maritime Electric Co Ltd v General Dairies Ltd** [1937] 1 748, PC.

Statutory discretion of local authority—

Hindering exercise of discretion—Statement by officer of local planning authority that land had existing user right—Purchase of land on faith of statement—Subsequent enforcement notice served by authority calling on purchaser to cease such user—Whether authority estopped from proving that land had not been used for the period required to establish existing user right—Town and Country Planning Act 1947, s 23(1). **Southend-on-Sea Corp'n v Hodgson (Wickford) Ltd** [1961] 2 46, QBD.

Res judicata—

Arbitration. *See* **Arbitration** (Res judicata).

Bankruptcy—

Enquiry under bankruptcy jurisdiction as to dealings on behalf of debtor by solicitor and attorney for debtor—Abortive previous proceedings to compel solicitor to deliver accounts—Whether res judicata—RSC Ord 52, r 25—Bankruptcy Act 1914, s 25(1). **Re A Debtor (No 472 of 1950)** [1958] 1 581, CA.

Binding effect on both parties—

Party setting up estoppel also subject to estoppel for purposes of second claim—Debenture holder's action—Receiver appointed by court—Claim for furniture lent to company—Judgment against claimant—Claim by another claimant—Title of first claimant set up by receiver—Competence of defence. **Remnant v Savoy Estate Ltd** [1949] 2 286, CA.

Cause of action arising out of same facts—

County court proceedings—Lack of jurisdiction—Claim in county court on ground of trespass of defendants, and, alternatively, assignment to them without landlord's consent—Claim in trespass beyond jurisdiction of county court—Election to proceed on alternative ground—Defendants found not to be 'tenants'—Order for possession refused for lack of jurisdiction—Subsequent claim in trespass in High Court. **Rosenfeld v Newman** [1953] 2 885, CA.

Conspiracy—

Allegation that purpose unlawful—Subsequent action alleging means unlawful. **Greenhalgh v Mallard** [1947] 2 255, CA.

ESTOPPEL (cont)**Res judicata (cont)—****Construction of document—**

Settlement—Shares in settled fund—Destination of shares governed by same clause—Construction summons to determine meaning of clause in relation to one share—Subsequent proceedings in relation to other share—Proceedings raising same point of construction as earlier proceedings—Whether parties estopped by determination of court in earlier proceedings. **Re Manly's Will Trusts (No 2)** [1976] 1 673, ChD.

Construction summons—

Date for determining practicability of trust—Bequest of residue on trust to take effect after death of tenant for life—Death of testatrix in 1933 and of tenant for life in 1942—Summons, on death of tenant for life, to determine whether bequest a good and charitable gift and for inquiry into practicability of trust—Order made in 1948 for inquiry as to practicability 'now or at any future time'—Rest of summons ordered to stand over—Amended summons before court—Right to argue that date of testatrix's death material date for estimating practicability. **Re Wright (decd)** [1954] 2 98, CA.

Damages in two cases different—

Cases founded on same facts—Motor cars in collision—One action for personal injuries and other for damage to car. **Johnson v Cartledge and Matthews (Matthews, third party)** [1939] 3 654, Assizes.

Debenture holder's action—

Receiver appointed by court—Claim for furniture lent to company—Judgment against claimant—Claim by another claimant—Title of first claimant set up by receiver—Competence of defence. **Remnant v Savoy Estate Ltd** [1949] 2 286, CA.

Default judgment—

Extent of estoppel—No estoppel against statute—Bills of Sale Enactment—Moneylenders ordinance—Defendant in second action by same plaintiff raising defence that plaintiff was a moneylender and that agreement was void as unregistered bill of sale—Whether estopped by earlier default judgment. **Kok Hoong v Leong Cheong Kwong Mines Ltd** [1964] 1 300, PC.

Different causes of action—

Actions depending on same facts—Action for damage to property and for personal injuries due to collision—Plaintiff in second action third party in first—Plaintiff in second action suing in representative capacity. **Marginson v Blackburn Borough Council** [1939] 1 273, CA.

Actions depending on same facts—Collision between two motorcycles—Driver of one motorcycle, L, and pillion rider on other motorcycle injured—Action by L against other driver—Both found equally to blame—Subsequent action by pillion rider against L—L bringing other driver in as third party—Whether other driver bound by decision in previous action—Law Reform (Married Women and Tortfeasors) Act 1935, s 6(1)(c)(2). **Wood v Luscombe (Wood, Third Party)** [1964] 3 972, Assizes.

Finality of decision—

Interlocutory order—Whether issue fully considered on merits in judicial manner. **Carl-Zeiss-Stiftung v Rayner and Keeler Ltd (No 3)** [1969] 3 897, ChD.

Rating assessment—Decision of local valuation court—Whether decision may give rise to estoppel per rem judicatum. **Society of Medical Officers of Health v Hope (Valuation Officer)** [1960] 1 317, HL.

Findings on matters not directly in issue—

Previous findings on same subject-matter when not directly in issue—Divorce petition by husband based on cruelty—Commissioner holding charge not proved—Future finding that in any case cruelty had been condoned and not revived so that wife not guilty of desertion—Summons by wife before justices for desertion—Whether findings of commissioner operated as estoppel binding justices. **Sanders (or se Saunders) v Sanders (or se Saunders)** [1952] 2 767, Div.

Foreign judgment—

Judgment of domestic effect only. **Carl-Zeiss-Stiftung v Rayner and Keeler Ltd (No 3)** [1969] 3 897, ChD.

Separate causes of action against different defendants—Actions in respect of same damage—Action for damages for negligence—Plaintiff injured in motor car collision in France—Claim brought against French driver in penal proceedings in France—Damages recovered against French driver, but insufficient to compensate plaintiff—Action in High Court against English driver. **Kohnke v Karger** [1951] 2 179, KBD.

Formal record—

Power of court in subsequent proceedings to go behind formal record. **Carl-Zeiss-Stiftung v Rayner and Keeler Ltd (No 3)** [1969] 3 897, ChD.

Fraud—

Letter alleging fraud in earlier proceedings—Action for instalments due under hire-purchase contract—Action before registrar—Letter written to court by defendant alleging agreement obtained by fraud—Judgment for plaintiff—Subsequent action for further instalments—Trial by judge—Whether defendant estopped from raising defence of fraud—Subsequent trial by judge—Allegation of fraud. **Rentit Ltd v Duffield** [1937] 3 117, CA.

Fresh evidence—

Documents—Discovery of documents not available in earlier proceedings. **Carl-Zeiss-Stiftung v Rayner and Keeler Ltd (No 3)** [1969] 3 897, ChD.

Highway—

Determination of disputes—Definitive map. *See Highway* (Definitive map—Determination of disputes by Quarter Sessions—Res judicata).

Income tax assessment. *See Income tax* (Assessment—Res judicata).**Issue not falling for decision in earlier litigation—**

Issue belonging to subject of litigation—Decision of Court of Appeal—Question on administration based on that decision—Decision of Court of Appeal overruled by House of Lords—Reliance by beneficiaries under will on decision of House of Lords. **Re Koenigsberg (decd)** [1949] 1 804, CA.

ESTOPPEL (cont)

Res judicata (cont)—

Judgment after commencement of action in which plea raised—

Same defence in both actions—Architects' actions for fees for work on project subsequently abandoned—Defence that remuneration for abandoned projects excluded by agreement rejected—Second action in respect of another abandoned project—Same defence—Writ in second action issued before decision in first action—Whether defendant estopped in second action from raising at the trial the same defence as in the first action. **Morrison Rose & Partners (a firm) v Hillman** [1961] 2 891, CA.

Judgment in default of defence—

Judgment on one of a series of like debentures—Identity of debentures not pleaded in previous action—Second action relating to another debenture—Whether defendant estopped in second action from raising issue as to construction of debenture. **New Brunswick Ry Co v British and French Trust Corp** [1938] 4 747, HL.

Land registration—

Rectification of register—Decision of land registrar—Construction of conveyance—Construction on application to chief land registrar for rectification of register by expunging note of exception and reservation—Whether decision to cancel note would give rise to res judicata on construction of conveyance. **Re Freehold Land in Dances Way, West Town, Hayling Islands, Hants** [1962] 2 42, CA.

Magistrates' adjudication—

Action for breach of contract—Friendly society—Property—Working men's club—Complaint against steward for withholding or misapplying property—Complaint dismissed—Action commenced by club for payment of deficiency—Whether adjudication of magistrates bar to action in contract—Friendly Societies Act 1896, s 87(3). **Beeches Working-men's Club and Institute Trustees v Scott** [1969] 2 420, CA.

Matrimonial proceedings—

Persistent cruelty—Dismissal of summons—Fresh summons on ground of constructive desertion. **Foster v Foster** [1953] 2 518, Div.

Persistent cruelty—Dismissal of summons—Fresh summons on ground of constructive desertion—Evidence of expulsive words repeated at hearing of fresh summons. **Cooper v Cooper** [1954] 3 358, Div.

Money paid into court—

Same cause of action—Separate proceedings between same parties—Action for negligence in High Court against employers for injury by fellow servant—Proceedings in county court under Employers' Liability Act 1880—Money paid into court in county court proceedings—Plaintiff taking money out in satisfaction of claim—Cause of action in High Court proceedings same—Plaintiff estopped from pursuing High Court proceedings. **Hills v Co-operative Wholesale Society Ltd** [1940] 3 233, CA.

Negligence—

Apportionment of blame—Collision between two motor cars—Apportionment of blame between drivers inter se and as against injured third party—Driver of one car and passenger in that car injured—Action in county court by injured driver against other driver dismissed, injured driver being held solely liable for accident—Subsequent action in High Court by passenger against both drivers—Third-party proceedings against injured driver by other driver—Whether injured driver bound to High Court by decision of county court—Whether county court judge's notes of evidence admissible—Whether cause of action could be based on an estoppel by record—Law Reform (Married Women and Tortfeasors) Act 1935, s 6(1)(c)(2). **Randolph v Tuck** [1961] 1 814, QBD.

Apportionment of blame—Collision between two motor-cycles—Apportionment of blame between two drivers—Finding that both equally to blame—Passenger subsequently suing driver of motor-cycle involved in collision—Driver bringing in driver of other motorcycle involved as third party—Whether estoppel arose from prior finding in subsequent action by passenger—Law Reform (Married Women and Tortfeasors) Act 1935, s 6(1)(e)(2). **Wood v Luscombe (Wood, Third Party)** [1964] 3 972, Assizes.

Apportionment of blame—Judgment after commencement of action in which plea raised—Action in High Court between drivers of two motor vehicles claiming and counterclaiming damages for negligent driving—Subsequent action in county court against both drivers by passenger injured in the accident—Damages awarded to plaintiff in county court action apportioned between drivers of vehicles—Whether parties bound in High Court action by apportionment of responsibility determined in county court action. **Bell v Holmes** [1956] 3 449, Assizes.

Overruled decision—

Decision of Court of Appeal—Decision overruled by House of Lords in subsequent case—Right to reconsideration de novo. **Re Waring (dec'd)** [1948] 1 257, ChD.

Parties bound by decision—

Mutuality—Proceedings by trustees of settled property—Proceedings concerning rights of beneficiaries inter se—Remaindermen not represented in proceedings—Trustee not appointed to represent remaindermen—Order in proceedings not binding on remaindermen—Whether beneficiary who was a party bound by order as against remaindermen. **Blathwayt v Lord Cawley** [1975] 3 625, HL.

Second action by agent of plaintiff in former action—Actions founded on same facts—Issues in actions same—Claim for negligence and defence of contributory negligence—Son driving father's car—Collision with defendant's car—Action by father for damage to car—Action by son for personal injuries—Whether judgment in father's action binding on parties in son's action. **Townsend v Bishop** [1939] 1 805, KBD.

Pleadings—

Matters pleaded in previous proceedings—Matter not in issue in previous proceedings—Probate proceedings—Description of party in pleadings as widow of deceased—Validity of marriage not in issue in first proceedings—Validity of marriage disputed in subsequent proceedings—Whether statement in pleadings founding estoppel. **In the Estate of Park** [1953] 2 408, Prob.

ESTOPPEL (cont)

Res judicata (cont)—

Privy of party to proceedings—

Test of privity relationship. **Carl-Zeiss-Stiftung v Rayner and Keeler Ltd (No 3)** [1969] 3 897, ChD.

Same subject-matter—

Different causes of action—Judgment against one defendant without satisfaction no bar to judgment against another defendant. **B O Morris Ltd v Perrott and Bolton** [1945] 1 567, CA.

Scope of doctrine—

Conclusive only on matter necessary for decision—Test whether appeal lay. **Penn-Texas Corp v Murat-Anstalt (No 2)** [1964] 2 594, CA.

Undisclosed principal—

Action by agent—Discontinuance of action—Subsequent action by principal—Contract for purchase of land entered into by C acting as agent for principal whose identity and existence were unknown to vendor—Action by C for specific performance—C adjudicated bankrupt—Trustee in bankruptcy elected not to proceed with action—Undisclosed principal brought fresh action—Whether defendant could maintain res judicata based on the dismissal of C's action. **Pople v Evans** [1968] 2 743, ChD.

Want of prosecution—

Dismissal of earlier action for want of prosecution—Whether estoppel by record can be founded merely on such dismissal. **Pople v Evans** [1968] 2 743, ChD.

Sale of land—

Rescission of contract. *See* **Sale of land** (Rescission of contract—Estoppel).

Tenancy by estoppel—

Generally. *See* **Landlord and tenant** (Tenancy—Tenancy by estoppel).

Mortgaged property. *See* **Mortgage** (Power of leasing—Tenancy by estoppel).

Ultra vires act—

Minister granting ultra vires tenancy—

Agreement by Minister of Agriculture purporting to grant tenancy of requisitioned land—Granting of lease ultra vires—Whether Minister estopped from denying agreement created tenancy—Defence (General) Regulations 1939, reg 51(1)(2). **Ministry of Agriculture and Fisheries v Matthews** [1949] 2 724, KBD.

Waiver—

Contract—

Waiver as a form of estoppel. *See* **Contract** (Breach—Waiver—Conduct amounting to waiver).

EUROPEAN COURT

References to. *See* **European Economic Community** (Reference to European Court).

EUROPEAN ECONOMIC COMMUNITY

Directives—

Direct application in member states—

Circumstances in which rights conferred by directives enforceable by individuals in courts of member states—Directive imposing unconditional obligation on member states—Directive not requiring further measure for its implementation—Provision of directive imposing limitation on power of states to derogate from fundamental principle of EEC Treaty—Freedom of movement for workers—Measures restricting right to freedom of movement to be based exclusively on personal conduct of individuals concerned—EEC Treaty, art 189—EEC Directive 64/221, art 3(1). **Van Duyn v The Home Office (No 2)** [1975] 3 190, CJEC.

Payment connected with movement of goods, services or capital—

Currency—

Payment in currency of state in which creditor resides—Default in payment—Judgment—English court—Judgment for sum in foreign currency. *See* **Judgment** (Payment of sum of money—Foreign currency—Jurisdiction to order payment of sum expressed in foreign currency—Contract—Currency of contract foreign currency—European Economic Community).

Reference to European Court—

Practice—

Chancery Division—Transmission of judgments of European Court to Chancery Division—Special file—Duplicates of orders referring questions to European Court. **Practice Direction** [1975] 1 992, ChD.

Request for preliminary ruling concerning interpretation of treaty—

Power of national court to refer question it considers necessary to enable it to give judgment—Discretionary power of trial judge—Factors to be considered in deciding whether reference should be made—European Communities Act 1972, s 3(1)—EEC Treaty, art 177. **Bulmer (H P) Ltd v J Bollinger SA** [1974] 2 1226, CA.

Power of national court to refer question it considers necessary to enable it to give judgment—Question relating to free movement of workers within European Economic Community—Member state having power to refuse national of another member state entry on grounds of public policy—Measures taken on grounds of public policy to be based exclusively on personal conduct of individual concerned—Dutch national refused entry into United Kingdom—Dutch national seeking declaration that refusal unlawful—Dutch national alleging refusal on grounds of public policy alone—Home Office alleging refusal based on personal conduct of national—Home Office alleging Dutch national not having any right directly enforceable in United Kingdom courts—After delivery of reply Dutch national seeking reference of questions raised by issues—Whether questions 'questions of interpretation'—Whether decision on them necessary to enable court to give judgment—Whether appropriate time for reference to be made—EEC Treaty, arts 48, 177—EEC Directive 64/221, art 3. **Van Duyn v The Home Office** [1974] 3 178, ChD.

EUROPEAN ECONOMIC COMMUNITY (cont)

Restrictive trade practices—

Validity—

Agreements or decisions affecting trade between member states of community and having object or effect of preventing, restricting or distorting competition—Prohibited agreements null and void—Notification of agreements—Notifiable and non-notifiable agreements—Validity prior to notification or declaration of exemption by Commission—Petrol solus agreement—Agreement by owner of service station with petrol company not to supply motor fuels other than those supplied by petrol company—Whether agreement liable to be prohibited as a restrictive practice affecting trade between member states—Whether agreement notifiable—Whether agreement valid prior to expiry of time limit for notification—EEC Treaty, art 85. **Esso Petroleum Co Ltd v Kingswood Motors (Addlestone) Ltd** [1973] 3 1057, QBD.

Treaty provisions—

Direct application in member states—

Circumstances in which rights conferred by treaty provisions directly enforceable by individuals in courts of member states—European Communities Act 1972, s 2(1). **Application Des Gaz SA v Falks Veritas Ltd** [1974] 3 51, CA.

Circumstances in which rights conferred by treaty provisions directly enforceable by individuals in courts of member states—Provisions imposing precise obligations—Provisions not requiring the adoption of further measures for implementation—Provision establishing freedom of movement for workers—Provision abolishing discrimination based on nationality—Whether rights conferred by provision directly enforceable by individuals in courts of member states—EEC Treaty, art 48(1)(2). **Van Duyn v The Home Office (No 2)** [1975] 3 190, C.JEC.

Workers—

Freedom of movement—

Immigration. *See* **Immigration** (Workers—Freedom of movement—Nationals of member states of European Economic Community).

EVICTION

Characteristics—

Landlord and tenant. *See* **Landlord and tenant** (Eviction—Characteristics of act of eviction).

Judgment for possession—

Recovery of possession. *See* **Landlord and tenant** (Recovery of possession—Judgment for possession—Eviction).

Landlord and tenant. *See* **Landlord and tenant** (Eviction).Local authority dwelling. *See* **Housing** (Local authority houses—Management—Management—Eviction).**EVIDENCE**

Accountancy principles—

Income tax—

Computation of profits. *See* **Income tax** (Computation of profits—Accountancy principles—Evidence).

Admiralty action—

Retirement of trial judge during trial—

Admissibility of evidence already given at new trial. *See* **Admiralty** (Practice—Evidence—New trial).

Admissibility—

Affiliation proceedings. *See* **Affiliation** (Evidence—Admissibility).

Answers to Board of Trade inspector on investigation of company's affairs—

Admissibility in subsequent legal proceedings. *See* **Company** (Investigation by Board of Trade—Evidence before inspectors—Evidence given by officer of company's bankers—Admissibility in subsequent legal proceedings—Answers given to inspectors during informal questioning).

Fresh evidence—

Criminal appeal. *See* **Criminal law** (Appeal—Fresh evidence).

Out-of-court statement. *See* **Document** (Admissibility in evidence—Out-of-court statement).

Privilege—

Documents—Discovery. *See* **Discovery** (Privilege).

Without prejudice discussion—

Adoption arrangements—Admissibility of information in affiliation proceedings. *See* **Affiliation** (Evidence—Admissibility—Evidence of social worker—Conversations with respondent and his solicitor—Conversations exploring possibilities of adoption of unborn child).

Admission—

Adultery—

Divorce. *See* **Divorce** (Adultery—Admission).

Adoption—

Consent of parent or guardian. *See* **Adoption** (Consent—Parent or guardian—Evidence).

Adoption proceedings. *See* **Adoption** (Practice—Evidence).

Adultery—

Divorce. *See* **Divorce** (Adultery—Evidence).

Adverse possession—

Land—

Limitation of action. *See* **Limitation of action** (Land—Adverse possession—Evidence).

Affidavit—

Affidavit sworn before district judge but not received in proceedings—

Whether 'evidence given on oath' within meaning of Fugitive Offenders Act 1967, s. 11 (1)(a). *See* **Extradition** (Fugitive offender—Evidence given on oath—Affidavit—Affidavit sworn in Singapore before district judge after issue of warrant for fugitive's arrest).

Divorce. *See* **Divorce** (Evidence—Affidavit).

EVIDENCE (cont)

- Affidavit (cont)—
 - Generally. *See* **Affidavit**
- Age—
 - Intoxicating liquor. *See* **Licensing** (Knowingly selling liquor to person under age—Evidence of age).
- Agent provocateur. *See* **Police** (Conduct—Commission of offence to secure evidence against offender).
- Alibi—
 - Criminal proceedings. *See* **Criminal evidence** (Alibi).
- Appeal—
 - Enforcement notice—
 - Appeal to High Court. *See* **Town and country planning** (Enforcement notice—Appeal from Minister to High Court—Evidence).
 - Finding of fact of trial judge—
 - Interference with finding of fact—Principles on which appellate court acts. *See* **Appeal** (Evidence—Finding of fact of trial judge—Interference with finding of fact).
 - Whether court entitled to disturb finding. *See* **Court of Appeal** (Evidence—Finding of fact of trial judge—Finding depending on credibility of witnesses heard by trial judge—Whether court entitled to disturb finding).
 - Further evidence—
 - Court of Appeal. *See* **Court of Appeal** (Evidence—Further evidence).
 - Further evidence. *See* **Appeal** (Evidence—Further evidence).
 - Further evidence—
 - Generally. *See* **Appeal** (Evidence—Further evidence).
 - Further evidence. *See* **Court of Appeal** (Evidence—Further evidence).
- Architect's certificate—
 - Conclusiveness—
 - Arbitration—Building contract. *See* **Building contract** (Architect—Final certificate—Conclusiveness—Arbitration).
- Bankers' books—
 - Entries—
 - Inspection—Criminal proceedings. *See* **Criminal evidence** (Bankers' books—Inspection of entries).
- Barrister—
 - Giving of evidence by barrister when acting as counsel. *See* **Counsel** (Evidence—Giving of evidence by barrister when acting as counsel).
- Best evidence—
 - Charge that clothing not made in accordance with statutory restrictions—
 - Production of clothing—Whether production necessary—Making of Civilian Clothing (Restrictions) Order 1942, (S R & O 1942 No 541). **Hockin v Ahlquist Bros Ltd** [1943] 2 722, KBD.
 - Criminal proceedings. *See* **Criminal evidence** (Best evidence).
- Birth of child—
 - Nullity suit. *See* **Nullity** (Pregnancy at date of marriage by person other than petitioner—Evidence—Birth of child).
- Boundary—
 - Hedge. *See* **Boundary** (Hedge—Evidence of boundary between adjoining properties).
- Burden of proof—
 - Income tax avoidance. *See* **Income tax** (Avoidance—Burden of proof).
 - Industrial injury—
 - Accident arising in the course of employment. *See* **Industrial injury** (Disablement benefit—Accident arising in the course of employment—Burden of proof).
 - Negligence—
 - Latent defect. *See* **Negligence** (Defence—Latent defect—Evidential burden of proof).
 - Res ipsa loquitur—
 - Negligence. *See* **Negligence** (Res ipsa loquitur).
- Certiorari—
 - Affidavit evidence. *See* **Certiorari** (Evidence—Affidavit evidence).
- Charity—
 - Company—
 - Whether objects charitable. *See* **Charity** (Company—Objects—Evidence).
- Child—
 - Criminal proceedings. *See* **Criminal evidence** (Child).
- Child of the family—
 - Divorce. *See* **Divorce** (Infant—Child of the family).
- Collusion—
 - Divorce. *See* **Divorce** (Collusion—Evidence).
- Committal—
 - Fugitive offender. *See* **Extradition** (Fugitive offender—Evidence—Committal).
- Committal proceedings for civil contempt. *See* **Contempt of court** (Committal—Evidence).
- Commons—
 - Registration of common land and rights of common—
 - Conclusive evidence of matters registered. *See* **Commons** (Registration—Common land and rights of common—Effect of registration—Conclusive evidence of matters registered).
- Company—
 - Answers to inspectors of Board of Trade on investigation of company's affairs—
 - Admissibility in subsequent legal proceedings. *See* **Company** (Investigation by Board of Trade—Evidence before inspectors—Evidence given by officers of company's bankers—Admissibility in subsequent legal proceedings—Answers given to inspectors during informal questioning).

EVIDENCE (cont)

- Company (cont)—
 - Compulsory winding-up—
 - Petition by Board of Trade. *See* **Company** (Compulsory winding-up—Petition by Board of Trade—Evidence).
 - Secretary of State's petition. *See* **Company** (Compulsory winding-up—Just and equitable—Secretary of State's petition—Evidence).
 - Intention of company. *See* **Company** (Intention of company—Evidence of intention).
- Condonation—
 - Divorce. *See* **Divorce** (Condonation—Evidence).
- Confession—
 - Adultery—
 - Confession made before proceedings commenced—Admissibility. *See* **Divorce** (Evidence—Confession—Infant co-respondent—Confession of adultery made before proceedings commenced).
- Conflict of facts—
 - Evidence at variance with particulars of defence and other evidence—
 - No objection by opposing party. **Roberts v Dorman Long & Co Ltd** [1953] 2 428, CA.
- Consummation of marriage—
 - Incapacity. *See* **Nullity** (Incapacity to consummate marriage).
- Contempt of court—
 - Breach of injunction. *See* **Contempt of court** (Committal—Breach of injunction—Evidence of contempt).
- Contract—
 - Bill of lading. *See* **Shipping** (Bill of lading—Evidence of the contract).
- Conveyance—
 - Construction—
 - Evidence of surrounding circumstances. *See* **Sale of land** (Conveyance—Construction—Evidence of circumstances surrounding conveyance).
- Conviction—
 - Admission as evidence in civil proceedings—
 - Common law rule—Conviction of robbery—Action for fraud—Whether conviction evidence in civil action. **Barclays Bank Ltd v Cole** [1966] 3 948, CA.
 - Subsisting conviction—Conviction subject to appeal—Adjournment of civil proceedings pending appeal—Probate—Will—Validity—Allegation that will a forgery—One of executors named in purported will convicted of forgery—Action to pronounce against validity of will—Conviction only evidence adduced at trial—Certificate of conviction showing appeal pending—Action adjourned until after determination of appeal—Civil Evidence Act 1968, s 11(1), (2). **Re Raphael (decd)** [1973] 3 19, ChD.
 - Witness—Evidence of conviction of witness—Admissibility in interlocutory proceedings. **Torquay Hotel Co Ltd v Cousins** [1968] 3 43, ChD.
 - Evidence in subsequent civil proceedings—
 - Burden of proof. *See* **Burden of proof** (Civil action—Conviction as evidence).
- Coroner's inquest—
 - Suicide. *See* **Coroner** (Inquest—Suicide—Evidence).
- Corroboration—
 - Affiliation proceedings. *See* **Affiliation** (Evidence—Corroboration of mother's evidence).
 - Court-martial—
 - Direction of judge advocate. *See* **Court-Martial** (Evidence—Corroboration—Direction).
 - Divorce. *See* **Divorce** (Evidence—Corroboration).
 - Gift by deceased person. *See* **Gift** (Death of donor—Proof of intention).
 - Incapacity to consummate marriage. *See* **Nullity** (Incapacity to consummate marriage—Evidence—Corroboration).
 - Matrimonial proceedings—
 - Magistrates' courts. *See* **Husband and wife** (Summary proceedings—Corroboration).
- Criminal proceedings. *See* **Criminal evidence**.
- Cross-examination—
 - Affidavit—
 - Chancery Division. *See* **Practice** (Chancery Division—Affidavit—Cross-examination of deponent).
 - Committal proceedings for contempt—Affidavit of defendant. *See* **Contempt of court** (Committal—Proceedings for committal—Breach of interim injunction—Cross-examination of defendant—Affidavit of defendant read to court—Cross-examination on affidavit).
 - Divorce—
 - Adultery. *See* **Divorce** (Evidence—Cross-examination—Adultery).
 - Generally. *See* **Practice** (Cross-examination).
- Cruelty—
 - Divorce. *See* **Divorce** (Cruelty—Evidence).
- Damages—
 - Personal injuries claim—
 - Medical evidence. *See* **Medical evidence**—Agreed reports—Damages—Personal injuries claim, *post*.
- Death—
 - Evidence for procedural matters—
 - Grant of probate or letters of administration. **Practice Direction** [1970] 1 671, ChD.
- Declaration against interest—
 - Recognition of moral, but not legal or contractual, obligation by deceased—
 - Time at which to be judged. **Coward v Motor Insurers Bureau** [1962] 1 531, CA.
- Desertion—
 - Person subject to military law. *See* **Court-Martial** (Evidence—Desertion).
- Diminution in value of reversion—
 - Failure of tenant to repair. *See* **Landlord and tenant** (Damages for failure to repair—Diminution in value of reversion—Evidence).

EVIDENCE (cont)

- Divorce—
 - Generally. *See* **Divorce** (Evidence).
- Document—
 - Admissibility. *See* **Document** (Admissibility in evidence).
 - Privilege—
 - Legal professional privilege. *See* **Privilege** (Legal professional privilege).
- Documentary evidence—
 - Admissibility. *See* **Document** (Admissibility in evidence).
- Duty to hear and consider evidence. *See* **Natural justice** (Evidence—Duty to hear and consider evidence).
- Election—
 - Election to call no evidence—
 - Appeal—Order for new trial. *See* **Court of Appeal** (New trial—Election to call no evidence).
- Estoppel—
 - Issue estoppel—
 - Criminal proceedings. *See* **Criminal law** (Issue estoppel).
- Examination of plaintiff before examiner—
 - Action for defamation—
 - Examination on medical grounds—Risk to plaintiff's life of attending trial. **Donn v Feinstein** [1956] 1 803, QBD.
- Examination of witness before examiner—
 - Special report by examiner—
 - Comment on credibility of witness—RSC Ord 37, r 17. *In the Estate of Wippermann* [1953] 1 764, Prob.
- Examination of witness in relation to matters pending before foreign tribunal. *See* **Foreign tribunal**—
- Examination of witness in relation to matters pending before foreign tribunal, *post*.
- Exhibits—
 - Jurisdiction to order third party to produce exhibit—
 - Film—Cinematograph film of events on which action based—Jurisdiction to order maker of film to produce and exhibit film to court—Scope of jurisdiction—Inherent jurisdiction of High Court and county courts. **Senior v Holdsworth** [1975] 2 1009, CA.
- Expert—
 - Application for leave to call—
 - Summons for directions. *See* **Practice** (Summons for directions—Expert evidence—Application for leave to call).
- Expert witness—
 - Admiralty action—
 - Order that each party be at liberty to call one expert witness—Condition that statements be exchanged beforehand—Plans and other documents to be exchanged with statements. **The Planter** [1955] 2 751, Adm.
 - Statement of proposed evidence to be produced to other party. **Practice Direction** [1968] 1 447, Adm.
 - Application for leave to call—
 - Summons for directions. *See* **Practice** (Summons for directions—Expert evidence—Application for leave to call).
- Building contract—
 - Evidence of practical difficulties consequent on one construction of a clause of contract—Whether admissible. **Gold v Patman and Fotheringham Ltd** [1958] 2 497, CA.
- Calling of interpreter as expert witness. *See* **Practice** (Interpreter—Evidence).
- Costs—
 - Discretion of taxing master—Whether discretion fettered by order under RSC Ord 38, r 4, or absence of such order. **Atwell v Ministry of Public Building and Works** [1969] 3 196, QBD.
 - Fees recoverable as damages but not claimed—Whether costs 'necessary...for the attainment of justice'—RSC Ord 62, r 28. **Manakee v Brattle** [1971] 1 464, QBD.
- Criminal proceedings. *See* **Criminal evidence** (Expert evidence).
- Educational psychologist—
 - Wardship proceedings—Court's consent to examination of ward—Broken marriage—Boy aged 13 1/2 at English school—Mother remarried to American living in California—Mother wishing boy to continue education in America and live with her—Official solicitor's report—Ordinary case of broken home—Boy wishing to continue at school in England—Whether expert examination of boy necessary. **Re S (infants)** [1967] 1 202, ChD.
- Examination in relation to matters pending before foreign tribunal. *See* **Foreign tribunal**—
- Examination of witness in relation to matters pending before foreign tribunal—Expert witness, *post*.
- Negligence—
 - Proof of negligence. *See* **Negligence** (Proof of negligence—Expert evidence).
- Pediatrician—
 - Divorce proceedings—Custody of child in issue—Joint instructions from parents. **B (M) v B (R)** [1968] 3 170, CA.
- Production of statements of expert's evidence—
 - Procedure—Reference to Official Referee. **Practice Direction** [1968] 2 1213.
- Psychiatrist—
 - Divorce proceedings—Custody of child in issue—Joint instructions from parents. **B (M) v B (R)** [1968] 3 170, CA.
 - Wardship proceedings—Court's consent to examination of ward—Broken marriage—Boy aged 13 1/2 at English school—Mother remarried to American living in California—Mother wishing boy to continue education in America and live with her—Official solicitor's report—Ordinary case of broken home—Boy wishing to continue at school in England—Whether expert examination of boy necessary. **Re S (infants)** [1967] 1 202, ChD.
- Valuer. *See* **Valuer** (Expert evidence).

EVIDENCE (cont)

- Extradition—
 - Fugitive offender. *See* **Extradition** (Fugitive offender—Evidence).
 - Generally. *See* **Extradition** (Evidence).
- Extrinsic evidence of nature of transaction—
 - Underlease—
 - Premium—Action to recover premium—Landlord and Tenant (Rent Control) Act 1949, s 2(5).
 - Woods v Wise** [1955] 1 767, CA.
 - Written document—
 - Evidence varying or contradicting document—Hire-purchase. **Campbell Discount Co Ltd v Gall** [1961] 2 104, CA.
- Fair rent. *See* **Rent restriction** (Fair rent—Evidence).
- Family provision. *See* **Family provision** (Evidence).
- Film—
 - Television—
 - Untransmitted film—Production in court as evidence. *See* **Broadcasting** (Television—Independent television company—Film—Production in court as evidence).
- Firearms—
 - Appeal against refusal of certificate. *See* **Firearms** (Certificate—Refusal—Appeal—Evidence).
- Food and drugs—
 - Evidence of analysis of samples. *See* **Food and drugs** (Samples—Evidence of analysis).
- Sale—
 - Not of quality demanded. *See* **Food and drugs** (Sale—Not of quality demanded—Evidence).
 - Not of substance demanded. *See* **Food and drugs** (Sale—Not of substance demanded—Evidence).
- Foreign law—
 - Proof—
 - Construction of foreign statute by court. **Sharif v Azad** [1966] 3 785, CA.
- Foreign marriage—
 - Divorce. *See* **Divorce** (Evidence—Foreign marriage).
- Foreign tribunal—
 - Examination of witness in relation to matters pending before foreign tribunal—
 - Affiliation—Privilege—Whether putative father privileged to decline to answer questions as to paternity of child. **S v E** [1967] 1 593, QBD.
 - Company—Whether order can be made for examination of body corporate. **Penn-Texas Corp v Anstalt** [1963] 1 258, CA.
 - Criminal matter—Accused persons formerly in authority in a National Socialist concentration camp and now charged with murder of inmates—Camp inmates included Jews—Whether proceedings against the accused were a criminal matter of a political character—Extradition Act 1870, s 24. **Re Gross, ex parte Treasury Solicitor** [1968] 3 804, QBD.
 - Expert witness—Discretion of court to order evidence to be taken—Expert witness having no connection with facts of case—Expert not wishing to testify—Evidence requiring considerable and careful preparation—Risk that giving of evidence would involve breach of confidence—Foreign Tribunals Evidence Act 1856, s 1. **Seyfang v G D Searle & Co** [1973] 1 230, QBD.
 - Production of documents—Discovery against persons not parties to foreign action—Foreign Tribunals Evidence Act 1856, s 1. **Radio Corp of America v Rauland Corp** [1956] 1 549, QBD.
 - Production of documents—Discovery against persons not parties to foreign action—No objection by such persons—Documents ancillary to evidence of witnesses, but best evidence of matters to which witnesses could testify—Prior order of foreign court refusing discovery—Court will not go behind letters of request issued pursuant to subsequent order—Evidence by Commission Act 1859, s 1. **Panthalu v Ramnord Research Laboratories Ltd** [1965] 2 921, CA.
 - Production of documents—Documents must first be ascertained to exist—Order made only for production of specified documents or categories of documents—Whether English limited company can be ordered to be examined—Whether English limited company can be ordered to produce documents—Foreign Tribunals Evidence Act 1856, s 1. **Penn-Texas Corp v Anstalt** [1963] 1 258, CA.
 - Production of documents—Order made only for production of specified documents—Whether English limited company can be ordered to produce documents—Foreign Tribunals Evidence Act 1856, s 1. **Penn-Texas Corp v Murat Anstalt (No 2)** [1964] 2 594, CA.
- Fraudulent preference—
 - Winding-up of company. *See* **Company** (Winding-up—Fraudulent preference—Evidence of intention to prefer).
- Fresh evidence—
 - Appeal—
 - Criminal proceedings. *See* **Criminal law** (Appeal—Fresh evidence).
 - Divorce. *See* **Divorce** (Appeal—Fresh evidence).
 - Evidence obtained after appeal dismissed—Order dismissing appeal not passed and entered—Whether further hearing of appeal permissible. *See* **Court of Appeal** (Appeal—Variation of decision after judgment entered—Judgment dismissing appeal—Order not passed and entered—Appellant discovering fresh evidence).
 - Generally. *See* **Court of Appeal** (Evidence—Further evidence).
 - Application to High Court for order for new trial—
 - Original trial by High Court judge—Applicant discovering fresh evidence after original trial—Jurisdiction of High Court judge to set aside order of another High Court judge on ground of fresh evidence obtained. **Re Barrell Enterprises** [1972] 3 631, CA.
- Case stated—
 - Income tax appeal. *See* **Income tax** (Case stated—Further evidence).
- Damages. *See* **Damages** (Assessment—Further evidence).

EVIDENCE (cont)

Fresh evidence (cont)—

Discovery of fresh evidence after quarter sessions hearing—

Whether certiorari lies to quash quarter session decision. *See* **Certiorari** (Fresh evidence—Quarter sessions).House of Lords. *See* **House of Lords** (Evidence—Further evidence).

Judge—

Enquiries—Whether trial judge should pursue own enquiries. *See* **Judge** (Function of judge—Civil action—Negligence).

Medical appeal tribunal—

Review of decision. *See* **Industrial injury** (Medical appeal tribunal—Review of decision—Fresh evidence).

New trial—

County court. *See* **County court** (New trial—Further evidence).

Fresh evidence on appeal—

Criminal law. *See* **Criminal law** (Appeal—Fresh evidence).

Hearsay—

Agency—

Existence of agency—Company—Request to see company's depot manager—Person coming forward at company's place of business—Conversation with person calling himself company's depot manager—Visit of person calling himself company's representative—Whether prima facie evidence that they were agents of company with authority to discuss alleged sale of pre-packed cartons of milk in contravention of statute—Sale of Food (Weights and Measures) Act 1926, ss 7, 11. **Edwards v Brookes (Milk) Ltd** [1963] 3 62, QBD.Criminal proceedings. *See* **Criminal evidence** (Hearsay).

Evidence that statement made—

Medical practitioner not objecting to provision of breath test. **R v Chapman** [1969] 2 321, CA.

Industrial relations cases—

Communications to conciliation officers. *See* **Industrial relations** (Conciliation officers—Communications made to conciliation officers—Admissibility in evidence—Proceedings before Industrial Court and tribunals).

Public documents—

Admissibility of statements in documents—Conditions of admissibility—Duty of official recording information in document to satisfy himself as to truth of contents—Functions performed by two persons—One person who has knowledge of matters in question under a duty to prepare and submit document to second person—Second person under a duty to keep file of returns available for public inspection—Returns made by limited company to registrar of companies under statutory duty—Whether file containing returns admissible as evidence of truth of contents. **R v Halpin** [1975] 2 1124, CA.*Res gestae*. *See* *Res gestae, post*.

Valuer—

Expert evidence. *See* **Valuer** (Expert evidence—Hearsay).

Hedge—

Evidence of boundary between adjoining properties. *See* **Boundary** (Hedge—Evidence of boundary between adjoining properties).

Highway—

Dedication. *See* **Highway** (Dedication—Evidence).

Illegally obtained evidence—

Criminal proceedings. *See* **Criminal evidence** (Illegally obtained evidence).

Improperly obtained evidence—

Relevant to matters in issue—

Duty of court—Whether court concerned with method of obtaining evidence. **Kuruma Son of Kaniu v Reginam** [1955] 1 236, PC.

Income tax—

Nature of transaction—

Admissibility of extrinsic evidence. *See* **Income tax** (Evidence—Nature of transaction for purpose of ascertaining tax liability).

Inquest—

Suicide. *See* **Coroner** (Inquest—Suicide—Evidence).

Insanity—

Divorce. *See* **Divorce** (Insanity—Incurable unsoundness of mind—Evidence).Inspection by judge. *See* **Practice** (Inspection by judge—Discretion—Nature of inspection—Real evidence).Intention of company. *See* **Company** (Intention of company—Evidence of intention).

Interpreter—

Calling of interpreter to give evidence. *See* **Practice** (Interpreter—Evidence).

Investigation by Board of Trade into company's affairs—

Access by liquidator to transcripts of evidence. *See* **Company** (Compulsory winding-up—Liquidator—Powers—Investigation of company affairs by inspectors—Power of liquidator to obtain access to transcripts of evidence given before liquidation).Admissibility of answers given to inspectors in subsequent civil proceedings. *See* **Company** (Investigation by Board of Trade—Evidence before inspectors—Evidence given by officer of company's bankers—Admissibility in subsequent legal proceedings—Answers).Admissibility of self-incriminatory evidence in subsequent criminal proceedings. *See* **Company** (Investigation by Board of Trade—Evidence before inspectors—Self-incrimination—Admissibility against director in subsequent criminal proceedings).

Judicial notice—

Market—

Autumnal decline of second-hand car market. **Poole v Smith's Car Sales (Balham) Ltd** [1962] 2 482, CA.

EVIDENCE (cont)

- Magistrates—
 - Generally. *See* **Magistrates (Evidence)**.
 - Preliminary hearing. *See* **Criminal law (Committal—Preliminary hearing before justices—Prima facie case—Evidence)**.
- Magistrates. *See* **Magistrates (Evidence)**.
- Malice—
 - Libel action—
 - Malice avoiding privilege. *See* **Libel and slander (Qualified privilege—Malice avoiding privilege)**.
- Marriage—
 - Divorce proceedings. *See* **Divorce (Evidence—Marriage)**.
- Marriage certificate. *See* **Marriage (Evidence—Marriage certificate)**.
- Medical evidence—
 - Agreed reports—
 - Damages—Personal injuries claim—Agreed reports not in fact agreeing—Duty of judge to call oral evidence before making assessment. **Mullard v Ben Line Steamers Ltd** [1971] 2 424, CA.
 - Criminal proceedings. *See* **Criminal evidence (Medical evidence)**.
 - Nullity of marriage. *See* **Nullity (Evidence—Medical inspector's evidence)**.
- Mental cruelty—
 - Divorce. *See* **Divorce (Cruelty—Evidence—Mental cruelty)**.
- Minute book of company. *See* **Company (Minute book—Evidence)**.
- Non-access—
 - Divorce. *See* **Divorce (Evidence—Non-access)**.
- Nullity suit—
 - Birth of child. *See* **Nullity (Pregnancy at date of marriage by person other than petitioner—Evidence—Birth of child)**.
- Out-of-court statement—
 - Notice of intention to give in evidence. *See* **Document (Admissibility in evidence—Out-of-court statement—Notice of intention to give in evidence)**.
- Parol evidence—
 - Exclusion—
 - Statutory provision requiring writing—Trust and trustee. *See* **Trust and trustee (Constructive trust—Oral arrangements—Voluntary transfer of legal estate)**.
- Paternity—
 - Photographic evidence. *See* **Paternity (Evidence—Admissibility—Photographic evidence)**.
- Photograph—
 - Criminal proceedings—
 - Prejudice to accused. *See* **Criminal evidence (Improper conduct of accused on other occasions—Prejudice to accused—photograph of accused)**.
 - Paternity. *See* **Paternity (Evidence—Admissibility—Photographic evidence)**.
- Plan—
 - Sale of land. *See* **Sale of land (Conveyance—Plan)**.
- Point of law in issue on pleadings—
 - Defence containing admission of facts alleged in statement of claim but raising objection in point of law—
 - Claim for declaration that plastic closures for tins were not chargeable to purchase tax—Whether leave should be given to adduce evidence by affidavit. **Pioneer Plastic Containers Ltd v Commissioners of Customs and Excise** [1967] 1 105, ChD.
- Police—
 - Production of notebooks. *See* **Police (Evidence by police—Production of notebooks)**.
- Possession—
 - Trespass to land. *See* **Trespass to land (Possession sufficient to support trespass)**.
- Presumption—
 - Dedication of highway. *See* **Highway (Dedication—Presumption)**.
 - Legitimacy. *See* **Legitimacy (Presumption of legitimacy)**.
 - Negligence—
 - Res ipsa loquitur. *See* **Negligence (Res ipsa loquitur)**.
- Presumption of legitimacy—
 - Rebuttal of presumption. *See* **Legitimacy (Presumption of legitimacy—Rebuttal—Evidence of non-access)**.
- Previous inconsistent statement—
 - Witness in criminal proceedings. *See* **Criminal evidence (Witness—Previous inconsistent statement)**.
- Privilege—
 - Affiliation—
 - Putative father. *See* **Affiliation (Evidence—Putative father)**.
 - Confidential relationships—
 - Discretion of court where legal privilege not to answer questions does not arise. **Attorney-General v Mulholland, Attorney-General v Foster** [1963] 1 767, CA.
 - Marriage guidance—Privilege attaching to spouse. **Pais v Pais** [1970] 3 491, PDA.
 - Marriage guidance—Waiver—Waiver in part. **Pais v Pais** [1970] 3 491, PDA.
- Documents. *See* **Discovery (Privilege)**.
- Press—
 - Newspaper reporter—Source of information—Whether privileged from disclosure—Tribunals of Inquiry (Evidence) Act 1921, s 1(2)(b),(3). **Attorney-General v Clough** [1963] 1 420, QBD, **Attorney-General v Mulholland, Attorney-General v Foster** [1963] 1 767, CA.
- Waiver—
 - Waiver only by unmistakable and unequivocal pronouncement—Civil Evidence Act 1968, s 2(2)(a)—RSC Ord 38, rr 21 and 22. **Pais v Pais** [1970] 3 491, PDA.
- Privy Council—
 - Fresh point. *See* **Privy Council (Fresh point)**.

EVIDENCE (cont)

Probate—

Admission of document. *See Probate* (Document—Admission to probate).

Probate action. *See Probate* (Action—Evidence).

Prosecution. *See Criminal evidence* (Prosecution evidence).

Public analyst's certificate—

Proceedings under Food and Drugs Act. *See Food and drugs* (Samples—Evidence of analysis—Certificate of analysis).

Recognition of foreign sovereign state. *See Constitutional law* (Foreign sovereign state—Recognition—Evidence).

Recovery of possession—

Procedure before magistrates. *See Landlord and tenant* (Recovery of possession—Procedure before magistrates—Evidence).

Rehearing—

Answers to cross-examination on affidavits at first hearing—

Answers then adduced in relation to credibility—Whether answers admissible at rehearing on substantive matters. *Simm v Simm* [1967] 1 618, Div.

Rent assessment committee—

Expert opinion. *See Rent restriction* (Fair rent—Evidence).

Res gestae—

Criminal proceedings. *See Criminal evidence* (Res gestae).

Statement to third party—

Action for dissolution of partnership—Plaintiff accepted cheque from defendant—Defendant alleged that payment was made in pursuance of an agreement by the plaintiff to sell share to defendant—Plaintiff denied this—Whether statement made by plaintiff to third party after the transaction, but in the absence of the defendant, admissible. *Spittle v Spittle* [1965] 3 451, ChD.

Fatal accident to workman—Statement by workman immediately after accident. *Davies v Fortior Ltd* [1952] 1 1359, QBD.

Health—Belief of patient regarding his health—Whether evidence of what doctor told patient as to his state of health admissible. *Tickle v Tickle* [1968] 2 154, Div.

Statement not known to defendant and truth not admitted by him. *Gillie v Posho Ltd (in liquidation)* [1939] 2 196, PC.

Res ipsa loquitur—

Negligence. *See Negligence* (Res ipsa loquitur).

Restrictive Practices Court. *See Restrictive trade practices* (Court—Evidence).

Sale of land—

Evidence of possession. *See Sale of land* (Breach of contract—Evidence of possession).

Memorandum of contract. *See Sale of land* (Memorandum of contract).

Secret trust—

Standard of proof. *See Trust and trustee* (Secret trust—Expressed orally).

Short weight—

Prepacked goods. *See Weights and measures* (Prepacked goods—Short weight—Evidence).

Shorthand writer's notes. *See Practice* (Shorthand writer's notes—Evidence).

Similar facts—

Circumstances in which similar fact evidence admissible—

Probative weight—Prejudice to defendant—Rebuttal of defence—Action for infringement of copyright—Issue whether similarity of plaintiffs' and defendants' works result of copying by defendants or mere coincidence—Evidence that on three other occasions defendants had reproduced copyright works—Whether evidence admissible. *Mood Music Publishing Co Ltd v De Wolfe Ltd* [1976] 1 763, CA.

Source—

Refusal to disclose—

Newspaper reporter. *See Tribunal* (Tribunal of inquiry—Evidence—Newspaper reporter).

Statements on other occasions—

Previous statements by witness to same effect as his evidence given at trial—

Disciplinary proceedings before committee of General Medical Council. *Fox v General Medical Council* [1960] 3 225, PC.

Statement made in the course of giving evidence in other legal proceedings—

Discretion of court—Exercise of discretion—Official transcript of oral evidence—Refusal to admit evidence obliging party to call opposite party as witness—Prosecution witnesses in earlier criminal proceedings opposite party and employees of opposite party in later civil action—Whether admission of evidence in interests of justice—Conditions to be attached to admission of evidence—RSC Ord 38, rr 28, 29(2). *Tremelbye (Selangor) Rubber Co Ltd v Stekel* [1971] 1 940, ChD.

Subsequent statement by party to third party tending to show innocence—

Admissibility. *Corke v Corke and Cooke* [1958] 1 224, CA.

Stockbroker or expert—

Trust. *See Variation of trusts* (Evidence—Investment).

Suicide—

Coroner's inquest. *See Coroner* (Inquest—Suicide—Evidence).

Television film—

Production in court as evidence. *See Broadcasting* (Television—Independent television company—Film—production in court as evidence).

Tenancy—

Agricultural holding. *See Agricultural holding* (Tenancy—Evidence).

Terms. *See Landlord and tenant* (Tenancy—Terms of tenancy—Evidence).

Tithe document—

Admissibility for purpose of establishing ownership of land. *See Document* (Admissibility in evidence—Tithe document).

EVIDENCE (cont)

Tribunal—

Rules of evidence governing admissibility in court of law not applicable—

Logically probative evidence admissible before tribunal—Town planning inquiry—Letter written admitted in evidence—Other evidence given by witnesses on oath—Letter relied on—Finding based on letter upheld. **T A Miller Ltd v Minister of Housing and Local Government** [1968] 2 633, CA.

Variation of trusts—

Arrangements. *See* **Variation of trusts** (Practice—Arrangements—Evidence).

View. *See* **Practice** (Inspection by judge).Wardship case. *See* **Ward of court** (Evidence).

Will—

Executor dies without taking out probate—

Admissibility of evidence to prove that testator had not died intestate. *See* **Will** (Executor dies without taking out probate—Admissibility of evidence to prove that testator had not died intestate).

Revocation—

Need of evidence of physical destruction of will. *See* **Will** (Revocation—Conditional revocation—Need of evidence of physical destruction of will).

Without prejudice correspondence—

Agreement on liability for accident at work—

Measure of damages not agreed—Whether agreement admissible—Whether agreement binding as to liability. **Tomlin v Standard Telephones and Cables Ltd** [1969] 3 201, CA.

Witness—

Affirmation—

Conditions precedent to affirmation—Sikh affirming owing to impracticability of administering oath according to his religion—'Lawfully sworn'—Oaths Act 1888, s 1—Perjury Act 1911, ss 1(1), 15(2). **R v Pritam Singh** [1958] 1 199, Assizes.

Objection to taking oath—Questions by court as to grounds of objection—Partial acceptance of New Testament—Oaths Act 1888, s 1. **R v Clark** [1962] 1 428, CCA.

Calling by court—

Committal motion. *See* **Contempt of court** (Committal—Evidence—Witness—Court's power to call witnesses without consent of parties).

Competency—

Clerk to justices—Matrimonial proceedings—Subpoena—Production of notes of evidence—Whether privileged. **McKinley v McKinley** [1960] 1 476, Assizes.

Examination—

Judicial interventions. **Jones v National Coal Board** [1957] 2 155, CA.

examination by justices' clerk. *See* **Magistrates** (Clerk—Examination of witnesses by clerk).

Expert. *See* **Expert witness, ante**.

Fee for attendance—

Married woman not gainfully employed. **Reed v Gray** [1952] 1 241, ChD.

Hostile witness—

Bankrupt—Evidence of bankrupt in proceedings by trustee in bankruptcy against third party—Whether bankrupt may be treated as hostile witness. **Re Marsden** [1944] 1 597, ChD.

Imputation on character. *See* **Criminal evidence** (Character of accused—Imputation on character of prosecutor or witness).

Perjury—

No civil cause of action. **Wargreaves v Bretherton** [1958] 3 122, QBD.

Presence in court. *See* **Witness** (Presence in court of witnesses during examination of earlier witnesses).

Presence of witnesses in court during examination of earlier witnesses—

Allowed by trial judge—Discretion—Not contrary to natural justice. **Moore v Registrar of Lambeth County Court** [1969] 1 782, CA.

Summons—

Setting aside—Certiorari. *See* **Certiorari** (Justices—Witness summons—Witness not able to give relevant and admissible evidence—Jurisdiction of court to set aside witness summons issued under Magistrates' Courts Act 1952, s77).

Workmen's compensation—

Accident to workman. *See* **Workmen's compensation** (Injury by accident arising out of and in due course of employment—Evidence).

Written statement—

Criminal proceedings. *See* **Criminal evidence** (Written statement).

EX GRATIA PAYMENT

Charity funds. *See* **Charity** (Ex gratia payment).

EX PARTE APPLICATION

Committal for contempt of court. *See* **Contempt of court** (Committal—Application—Ex parte application).

Inspection of document—

Jurisdiction of Court of Appeal. *See* **Court of Appeal** (Jurisdiction—Ex parte application—No proceedings—Application to inspect document filed in central office).

Leave to issue writ—

Revocation. *See* **Practice** (Leave—Leave on ex parte application—Revocation).

Preservation of subject-matter of cause of action. *See* **Practice** (Inspection of property—Property subject matter of action or in respect of which question arising—Interlocutory motion—Ex parte application).

EX PARTE INJUNCTION

See **Injunction** (Ex parte injunction).

EX TURPI CAUSA NON ORITUR ACTIO

Fatal accident claim—

Application to. *See* **Fatal accident** (Action—Right of action—Claim by widow for damages in respect of husband's death—Husband's income obtained from proceeds of criminal offences—Application of maxim ex turpi causa non oritur actio).

EXAMINATION

Accused—

Criminal proceedings. *See* **Criminal evidence** (Examination of accused).

Company—

Public examination of officer in compulsory winding-up of company. *See* **Company** (Compulsory winding-up—Public examination).

Fee—

Deduction from emoluments for assessment to income tax. *See* **Income tax** (Emoluments from office or employment—Expenses wholly, exclusively and necessarily incurred—Examination fees).

Medical—

Personal injuries claim—

Stay of proceedings. *See* **Practice** (Stay of proceedings—Medical examination of plaintiff at defendant's request).

Offence—

Inquiry into examination offence. *See* **Natural justice** (Educational establishment—Inquiry into examination offence).

Officer of company—

Public examination of officer of company in voluntary winding-up. *See* **Company** (Voluntary winding-up—Examination of officer of company etc).

University—

Generally. *See* **University** (Examination).

Student sent down for failing examination—

Natural justice. *See* **University** (Student—Natural justice—Student sent down for failing examination).

EXCAVATION

Building operations—

Duty to provide barriers. *See* **Building** (Building operations—Excavations—Duty to provide barriers for).

Highway—

Excavation near highway—

Duty to fence. Unfenced dock basin. *See* **Highway** (Dangers adjoining highway—Duty to fence—Unfenced dock basin).

Highway—Excavation near highway—

Duty to fence.

1944 10014

EXCEPTION

Bill of lading. *See* **Shipping** (Bill of lading—Exceptions).

Charterparty. *See* **Shipping** (Charterparty—Exceptions).

Clause—

Contract. *See* **Contract** (Exception clause).

Insurance—

Accident insurance policy. *See* **Insurance** (Accident insurance—Exception clause).

Lease. *See* **Landlord and tenant** (Lease—Exclusion clause).

Public liability insurance. *See* **Insurance** (Liability insurance—Public liability insurance).

Sale of goods—

Latent defects. *See* **Sale of goods** (Implied condition as to fitness—Exception clause for latent defects).

Demurrage—

Exception's clauses. *See* **Shipping** (Demurrage—Exceptions clause).

Insurance policy—

Motor insurance. *See* **Motor insurance** (Exception).

Negligence—

Exclusion of liability—

Defence to action for negligence. *See* **Negligence** (Defence—Exclusion of liability).

Sale of land—

Conveyance. *See* **Sale of land** (Conveyance—Exception and reservation).

EXCESS PROFITS TAX

Avoidance—

Transactions designed to avoid liability—

Avoidance main purpose or one of main purposes of transaction—Acquisition of shares by a company in another company already controlled indirectly—Uncertainty as to liability to excess profits tax—Whether main benefit expected to accrue from the transaction was avoidance or reduction of liability to tax—Finance Act 1941, s 35—Finance Act 1944, s 33. **Crown Bedding Co Ltd v Inland Revenue Comrs** [1946] 1 452, CA.

Avoidance main purpose or one of main purposes of transaction—Appointment of directors with transfers of shares to enable them to become 'working proprietors'—Whether valid for purposes of excess profits tax—Finance Act 1941, s 35. **Pinner and Willis Ltd v Inland Revenue Comrs** [1944] 2 320, KBD.

Avoidance main purpose or one of main purposes for which transaction effected—Transfer or acquisition of shares—Change in persons carrying on trade or business—Principal shareholder in company allotted majority of shares in new company—Finance Act 1941, s 35(1) (as amended by Finance Act 1944, s 33(2))—Finance Act 1944, s 33(3). **Joseph Smith (Cleckheaton) Ltd v Inland Revenue Comrs** [1949] 2 211, KBD.

EXCESS PROFITS TAX (cont)

Avoidance (cont)—

Transactions designed to avoid liability (cont)—

Avoidance main purpose or one of main purposes for which transaction effected—Transfer or acquisition of shares in company—Main purpose of transaction—Main benefit accruing—Benefits weighed against avoidance—Whether confined to benefits to company—Transferees of shares rendered working proprietors—Standard profits raised—Finance Act 1941, s 35—Finance Act 1944, s 33. **Marshall Castings Ltd and Cindal Aluminium Ltd v Inland Revenue Comrs** [1946] 2 16, KBD.

Direction by Commissioners—Appeal to Special Commissioners—Burden of proof—Finance Act 1941, s 35(1)—Finance Act 1944, s 33(2). **Dixon and Gaunt Ltd v Inland Revenue Comrs** [1947] 1 723, KBD.

Purchase of shares in another company—Direction by commissioners—Construction—Whether investment or capital employed in business—Finance Act 1940, s 28, Sch V—Finance Act 1941, s 35. **Frodingham Ironstone Mines Ltd v Inland Revenue Comrs** [1946] 1 168, KBD.

Capital—

Computation—

Assets acquired otherwise than by purchase—Contribution to superannuation fund to equalise benefits for employees—Whether company had acquired, otherwise than by purchase, an asset in consideration of contribution—Mere advantage not equivalent to acquisition of asset—Asset—Finance (No 2) Act 1939, s 13(3), Sch VII, Pt II, para 1. **Lever Bros and Unilever Ltd v Inland Revenue Comrs** [1946] 1 486, HL.

Capital employed in a trade or business—Insurance company promoting underwriting syndicates—Loans to persons added as 'names'—Finance (No 2) Act 1939, s 13(3), Sch VII, Pt II, para 1(1)(b). **Inland Revenue Comrs v Laurence Philipps & Co (Insurance) Ltd** [1947] 2 144, KBD.

Capital employed in a trade or business—Theatre destroyed by enemy action—Whether theatre remained 'capital employed in the business'—Finance (No 2) Act 1939, ss 13(3), 14(2), Sch VII, Pt II, para 1(1). **Inland Revenue Comrs v Terence Byron Ltd** [1945] 1 636, HL.

Capital employed in a trade or business—War damage claim for destroyed machine tools and plant—Finance (No 2) Act 1939, Sch VII, Pt II, paras 1(1)(c), 2, 3. **Birmingham Small Arms Co Ltd v Inland Revenue Comrs** [1951] 2 296, HL.

Deductions—Borrowed money—Proceeds of discounting bills—Finance (No 2) Act 1939, s 14(2), Sch VII, Pt II, para 2(1). **Inland Revenue Comrs v Rowntree & Co Ltd** [1948] 1 482, CA.

Deductions—Debt—Companies interconnected in standard period but not in chargeable accounting period—Finance (No 2) Act 1939, ss 13(4), 14, 17, Sch VII, Pt I, paras 1, 4, Pt II, paras 2(1), 4. **Trinidad Petroleum Development Co Ltd v Inland Revenue Comrs** [1946] 1 497, HL.

Deductions—Debt—Sum offered in settlement of excess profits duty liability—Whether deductible as debt before accepted—Finance Act 1926, s 38(1), (6)—Finance (No 2) Act 1939, Sch VII, Pt II, para 2. **Inland Revenue Comrs v Bagnall Ltd** [1944] 1 204, KBD.

Deduction—Debt—Meaning—Rebate paid to customer—Consequent reduction of profit—Finance (No 2) Act 1939, Sch VII, Pt II, para 2(1). **Inland Revenue Comrs v Northern Aluminium Co Ltd** [1947] 1 608, HL.

Money not required for purposes of the business—Reserves for purchasing timber stocks—Timber control—Restriction of supplies—Finance (No 2) Act 1939, Sch VII, Pt II, para 3. **Acme Flooring and Paving Co (1904) Ltd v Inland Revenue Comrs** [1948] 1 546, CA.

Computation of profits—

Accountancy method—

Last in first out—Whether suitable for tax purposes—Excess profits tax in Canada. **Minister of National Revenue v Anaconda American Brass Ltd** [1956] 1 20, PC.

Contract extending beyond accounting period—

Pooling agreement between builders and building society—Finance (No 2) Act 1939, Sch VII, Pt I, para 11. **Allen Fairhead & Sons Ltd v Inland Revenue Comrs** [1943] 1 636, KBD.

Spread-over of profits—Special circumstances—Discretion of commissioners—Appeal from decision of commissioners—Competence—Finance (No 2) Act 1939, Sch VII, Pt I, para 11. **London and National Property Co Ltd v Inland Revenue Comrs** [1947] 2 799, KBD.

Deductions—

Cost of litigation—Appeal in respect of incidence of tax—Income Tax Act 1918, Sch D, Cases I and II, r 3(a)—Finance (No 2) Act 1939, s 14(1). **Rushden Heel Co Ltd v Keene (Inspector of Taxes)** [1948] 2 378, HL.

Director—controlled company—Directors' remuneration—Secretary of company also a director—Salary received as secretary and fees as director—Finance Act 1940, s 33(5). **Henry Richardson Ltd v Inland Revenue Comrs** [1947] 1 275, KBD.

Director—controlled company—Whether directors' remuneration may be deducted in chargeable accounting period and not in standard period—Finance (No 2) Act 1939, Sch VII, Pt I, para 10(1), (2). **Inland Revenue Comrs v Ash Bros and Heaton Ltd** [1943] 2 417, KBD.

Eire taxes—Deduction of Eire taxes against English profits—Income Tax Act 1918, Sch D, Rules Applicable to Case I and II, r 3(a)—Finance (No 2) Act 1939, s 14(1), Sch VII, Pt I, paras 5, 8—Finance Act 1940, s 30(1), (2). **Inland Revenue Comrs v Dowdall O'Mahoney & Co Ltd** [1952] 1 531, HL.

Fruit grower and fruit salesman—Growing cherries bought with freehold—Admissibility of deduction of apportioned cost of cherries. **Saunders (Inspector of Taxes) v Pilcher** [1949] 2 1097, CA.

Relief in respect of deficiency of profits—Adjustment of excess profits tax over five years—Right of taxpayer to deduct excess profits tax payable in each year and not merely the adjusted figure—Finance (No 2) Act 1939, s 15(2), s 18(1). **Inland Revenue Comrs v John Dow Stuart Ltd** [1950] 1 1, HL.

EXCESS PROFITS TAX (cont)

Computation of profits (cont)—

Discontinuance of trade—

Payments for trading not finally settled—Subsequent gratuitous payments received—Re-opening of trading accounts. *Severne (Inspector or Taxes) v Dadswell, Inland Revenue Comrs v Same* [1954] 3 243, ChD.

Inclusion of income received from investments—

Fees from licences to perform gramophone records in public collected and distributed to members by company limited by guarantee—Finance (No 2) Act 1939, Sch VII, Pt I, para 6(1). *Electric and Musical Industries Ltd v Inland Revenue Comrs* [1950] 2 261, HL.

Motor agent and repairing company sub-letting part of premises—Finance (No 2) Act 1939, Sch VII, Pt I, para 6(2). *Inland Revenue Comrs v Broadway Car Co (Wimbledon) Ltd* [1946] 2 609, CA.

Royalties received from licences of patented inventions—Finance (No 2) Act 1939, s 12(4), Sch VII, Pt I, paras 6(2), 9. *Inland Revenue Comrs v Desoutter Bros Ltd* [1946] 1 58, CA.

Royalty received from licence of patented invention—Finance (No 2) Act 1939, Sch VII, Pt I, para 6(1). *Tootal Broadhurst Lee Co Ltd v Inland Revenue Comrs* [1949] 1 261, HL.

Royalty received from licence of patented invention—Inventions made by research department—Whether 'income received from investments'—Finance (No 2) Act 1939, Sch VII part 1 para 6(1)(2). *Inland Revenue Comrs v Rolls-Royce Ltd* [1944] 2 340, KBD.

Temporary letting and requisition of business premises—Finance (No 2) Act 1939, Sch VII, Pt I, para 6(1). *Albert E Reed & Co Ltd v Inland Revenue Comrs* [1948] 2 1079, CA.

Standard profits—

Accounts made up for successive periods of 12 months—Finance Act 1937, s 20(2)(a)—Finance (No 2) Act 1939, ss 14(1), 22(f). *Jenkins Productions Ltd v Inland Revenue Comrs* [1944] 1 610, CA.

Company—Directors with controlling interest—Working proprietor—Director—Person not holding a number of qualification shares prescribed by articles—Finance (No 2) Act 1939, s 13(2)(b) (as amended by Finance Act 1940, s 31(1)). *Inland Revenue Comrs v Heaver Ltd* [1949] 2 367, KBD.

Controlling interest in company—Directors holding shares as trustees of settlement—Directors with contingent beneficial interest in shares—Controlling interest meaning 'controlling voting power'—Finance (No 2) Act 1939, s 13(2)(b)(3)(9), Sch VII, Pt I, para 10(2). *Inland Revenue Comrs v J Bibby & Sons Ltd* [1945] 1 667, HL.

Working proprietor—Director of company 'owning' shares—Shareholding as joint owner—Finance (No 2) Act 1939, s 13(2)(b) (as substituted by Finance Act 1940, s 31(1)). *Inland Revenue Comrs v T W Law Ltd* [1950] 2 196, ChD.

Working proprietor—More than one-half of chargeable accounting period—Seasonable trade—Finance Act 1937, s 20—Finance (No 2) Act 1939, s 13(2)—Finance Act 1940, s 31. *Wilkie, Neck and Smith v Inland Revenue Comrs* [1946] 2 13, KBD.

Trade receipts—

Period of account—Pawnbroker's undistributed surpluses—Pawnbroker's Act 1872, ss 16, 17, 18, 19, 21, 22, 24—Finance (No 2) Act 1939, s 14(1), Sch VII, para I. *Jay's the Jewellers Ltd v Inland Revenue Comrs* [1947] 2 762, KBD.

Trading stock—

Stock in trade—Valuation—Cost or market value—Need to value all items on same basis. *Inland Revenue Comrs v Cock, Russell & Co Ltd* [1949] 2 889, KBD.

Disposal of company's stock at under market value—

Disposal for benefit of person holding controlling interest in the company—

Purchase of shares from sole shareholder—Liability to tax of vendor of shares—Finance Act 1943, s 24(1)(2)(4). *Holt v Inland Revenue Comrs* [1947] 1 148, CA.

Scheme to avoid tax—

Relevance of knowledge of shareholder—Financial benefit—Money received in respect of abortive transaction—Compensation for loss of agency or directorate—'Market value'—Appointment—Discretion of commissioners—Finance Act 1943, s 24. *Inland Revenue Comrs v Ross and Coulter (Bladnoch Distillery Co Ltd)*, [1948] 1 616, HL.

Exemption—

Profits of profession dependent wholly or mainly on personal qualifications—

Leader and conductor of dance band—Finance (No 2) Act 1939, s 12(3). *Loss v Inland Revenue Comrs* [1945] 2 683, KBD.

Optician—Finance (No 2) Act 1939, s 12(3). *Webster v Inland Revenue Comrs* [1942] 2 517, KBD. *Carr v Inland Revenue Comrs* [1944] 2 163, CA.

Profits of profession dependant wholly or mainly on personal qualifications—

Severance of trade from profession—Finance (No 2) Act 1939, s 12(3). *Neild v Inland Revenue Comrs* [1947] 1 480, CA, [1948] 2 1071, CA.

Income or capital—

Lump sum payment for licence to use patented process—

Receipt in nature of income—Profit arising from trade or business—Finance (No 2) Act 1939, s 12(1). *Rustproof Metal Window Co Ltd v Inland Revenue Comrs* [1947] 2 454, CA.

Principal company beneficial owner of stock in American subsidiary company—

Stock compulsorily made security for loan by United States Government to HM Government—

Treasury statutory mandatory to carry out terms of agreement—Whether principal company's beneficial interest lost. *English Sewing Cotton Co Ltd v Inland Revenue Comrs* [1947] 1 679, CA.

Profits—

Computation of profits—

Deductions—Cost of litigation—Appeal vital to retain services of valuable employee—Income Tax Act 1918, Sch D, Cases I and II, r 3(a)—Finance (No 2) Act 1939, s 14(1)—Finance Act 1940, s 32(1)—Finance Act 1941, s 34. *Smith's Potato Estates Ltd v Bolland (Inspector of Taxes), Smiths Potato Crisps (1929) Ltd v Inland Revenue Comrs* [1948] 2 367, HL.

EXCESS PROFITS TAX (cont)

Profits arising from a trade or business—

Trade or business—

Commercial traveller—Salary and commission—Employee of one firm travelling for other firms—Whether engaged in 'trade or business'—Finance (No 2) Act 1939, s 12. **Marsh v Inland Revenue Comrs** [1943] 1 199, KBD.

Sand and gravel merchant—Royalties received by him from licensees permitted to win gravel from his land—Finance (No 2) Act 1939, s 12(2). **Inland Revenue Comrs v Iles** [1947] 1 798, KBD.

See **Profits tax**

EXCESS RENT

Income tax. *See* **Income tax** (Profits—Excess rent).

EXCESSIVE PERIOD

Accumulation. *See* **Accumulation** (Excessive period).

EXCHANGE

Contracts—

Sale of land. *See* **Sale of land** (Exchange of contracts).

Control—

Currency. *See* **Currency control**.

Income tax—

Computation of profits. *See* **Income tax** (Computation of profits—Exchange transaction).

Rate. *See* **Money** (Currency—Rate of exchange).

EXCHANGE CONTROL

Foreign law—

Enforcement—

Refusal to make order compelling violation of foreign law—Indian exchange control legislation. *See* **Conflict of laws** (Foreign law—Revenue law—Enforcement—Refusal to make order compelling violation of foreign law—Indian exchange control legislation).

EXCISE

Customs and excise. *See* **Customs and excise**.

EXCLUSION CLAUSE

Lease. *See* **Landlord and tenant** (Lease—Exclusion clause).

EXCLUSION OF LIABILITY

Misrepresentation. *See* **Misrepresentation** (Exclusion of liability for misrepresentation).

Occupier's liability. *See* **Occupier's liability** (Exclusion of liability).

EXCLUSIVE LICENCE

Copyright. *See* **Copyright** (Licence—Exclusive licence).

EXECUTION

Bankruptcy—

Effect on. *See* **Bankruptcy** (Execution).

Charging order—

Discretion—

Sufficient cause to the contrary—Events subsequent to order nisi—Judgment creditor obtaining charging order nisi against debtors—Receiving orders subsequently made against debtors and debtors adjudicated bankrupt—Discretion of judge to make charging order absolute—Whether judge entitled to take into consideration in exercising discretion events subsequent to order nisi—RSC Ord 50, r 1. **Burston Finance Ltd (in liquidation) v Godfrey** [1976] 2 976, CA.

Interest in land. *See* **Charging order**—Land—Interest in land, *post*.

Interest on order—

Order not expressly providing for interest—Order carrying interest irrespective of whether interest expressly mentioned in order—Judgments Act 1838, ss 14, 17. **Stoker v Elwell** [1942] 1 261, ChD.

Jurisdiction—

High Court—County court judgment debt—Whether High Court can make a charging order on, or order payment out of, fund in High Court standing to credit of judgment debtor—County Courts Act 1934, s 136, repealed by Administration of Justice Act 1956, s 34(3). **London County Council v Monks** [1958] 3 670, ChD.

Order made in respect of debt not immediately payable—Value of property charged must bear a reasonable proportion to the amount of the debt. **Robinson v Bailey** [1942] 1 498, ChD.

Land—

Application for appointment of receiver to enforce charge—Master without jurisdiction to appoint receiver—Appointment made by judge on appeal from refusal of master to appoint—Discretion—Administration of Justice Act 1956, s 35—Supreme Court of Judicature (Consolidation) Act 1925, s 45—RSC Ord 32, r 11(1)(d), Ord 50, r 1(1), (4). **Barclays Bank Ltd v Moore** [1967] 3 34, CA.

Charge for securing payment of moneys due or to become due under judgment or order—Unascertained sum—Costs—Taxation of costs not completed at date of application for charging order—Whether court having power to make order to secure payment of sum as yet unascertained—Administration of Justice Act 1956, s 35(1). **A & M Records Inc v Darakdjian** [1975] 3 983, ChD.

EXECUTION (cont)

Charging order (cont)—

Land (cont)—

Company—Non-registration of charging order under s 95 of Companies Act 1948—Validity as against liquidator of company in subsequent voluntary winding-up—Judgment creditor obtained charging order on company's leasehold interest in land—Company went into liquidation—No seizure of land by judgment creditor nor receiver appointed—Whether judgment creditor retained benefit of charge—Meaning of 'execution'—Administration of Justice Act 1956, s 35(3)—Companies Act 1948, 325 (as amended by Administration of Justice Act 1956, s 36(4)). **Re Overseas Aviation Engineering (GB) Ltd** [1962] 3 12, CA.

Discretion—Insolvent debtor—Effect of order to place judgment creditor at advantage over other creditors—Duty of court—Duty not to put judgment creditor at an advantage over other creditors unless circumstances justifying it—Judgment debtor insolvent company—Company belonging to group—Group as a whole in financial difficulties—Creditors agreeing to moratorium on debts and preparation of scheme of arrangement—Plaintiffs obtaining charging order nisi against company in ignorance of creditors' decision—Company subsequently presenting winding-up petition—Whether charging orders should be made absolute—Administration of Justice Act 1956, s 35(1). **Rainbow v Moorgate Properties Ltd** [1975] 2 821, CA.

Interest in land—Property held legally and beneficially by joint tenants—Joint tenants jointly liable on judgment debt—Charging order on their legal interest in the property—Administration of Justice Act 1956 s 35(1). **National Westminster Bank Ltd v Allen** [1971] 3 201, QBD.

Interest in land—Property held legally and beneficially by joint tenants—Whether 'interest in land'—Administration of Justice Act 1956, s 35(1). **Irani Finance Ltd v Singh** [1970] 3 199, CA.

Order nisi—

Death of judgment debtor—Discharge of order nisi—Judgments Act 1838, s 15. **Scott v Scott** [1952] 2 890, Div.

Stock or shares—

Order absolute—Shares in private company—Transfers executed by judgment debtor before date of order—Articles of company in regard to transfers not complied with—Shares still registered in name of judgment debtor—Rights of purchasers as against judgment creditor. **Hawks v McArthur** [1951] 1 22, ChD.

Committal order—

Contempt of court. *See* Contempt of court (Order—Execution).

Company—

Winding-up—

Creditor's rights—Restriction. *See* Company (Winding-up—Restriction of rights of creditor as to execution).

Winding-up of company. *See* Winding-up of company, *post*.

Writ of attachment against directors—

Indorsement of order served on company—Need for order to be served on directors as well as company—RSC Ord 42, r 31. **Benabo v William Jay & Partners Ltd** [1940] 4 196, ChD.

County court—

Bailiff. *See* County court (Execution—Bailiff).

Deed—

Date of execution—

Stamp duty—Rate of stamp duty in force. *See* Stamp duty (Rate of duty—Rate in force on date instrument executed)—Execution of deed).

Generally. *See* Deed (Execution).

Discovery in aid of execution—

Examination of judgment debtor as to debts owing to him—

Examination before an officer of the court—Order for examination of judgment debtor as to means before an examiner—Validity—Regularity of appointment—Form of order—Committal for failure to keep appointment—RSC Ord 42, r 32, Ord 61, r 33, App K, Form No 38. **Hunt v Allied Bakeries Ltd (No 2)** [1959] 1 37, CA.

Entry by bailiff in execution of civil process. *See* County court (Execution—Bailiff—Entry).

Exemption from civil process—

Airman—

Exception—Debt exceeding £30—Costs of legal proceedings—Whether to be taken into account in computing amount of debt—Air Force Act, s 144(1). **Boon v Boon** [1952] 1 760, Div.

Foreign judgment. *See* Conflict of laws (Foreign judgment—Enforcement).

Garnishee order—

Appeal—

Judgment debtor's right of appeal—Garnishee's position in relation to appeal—RSC Ord 45, r 1. **Dawson v Preston Law Society, Garnishee** [1955] 3 314, QBD.

Attachment of banking account—

Wife debtor—Account in wife's name—Payments in made by husband—Resulting trust in favour of husband—No garnishee order could be made. **Harrods Ltd v Tester** [1937] 2 236, CA.

Debts owing or accruing from third party to judgment debtor—

Attachment of bank account—Payments into account after service of garnishee order—Whether payments in attachable. **Heppenstall v Jackson and Barclays Bank Ltd** [1939] 2 10, CA.

Building contract—Contractor to be paid on architect's certificate—Sub-contractor to be paid in accordance with the certificates—Whether sum payable by contractor to sub-contractor is debt owing or accruing until architect's certificate issued—RSC Ord 45, r 1. **Dunlop & Ranken Ltd v Hendall Steel Structures Ltd (Pitchers Ltd, Garnishees)** (Pitchers [1957] 3 344, QBD. 344, QBD.

EXECUTION (cont)

Garnishee order (cont)—

Debts owing or accruing from third party to judgment debtor (cont)—

Debtor Crown servant—Wages for services—Whether 'a debt owing or accruing—RSC Ord 45, r 1. **Lucas v Lucas and High Comr for India** [1943] 2 110, Div.

Judgment debtor company—Bank account in name of liquidator—Whether account attachable. **Lancaster Motor Co (London) Ltd v Bremith Ltd** [1941] 2 11, CA.

Money in hands of receiver for debenture holder—Debenture holders and preferential creditors not yet paid—Whether receiver debtor to company—Whether debt 'owing or accruing'—RSC Ord 45, r 1. **Seabrook Estate Co Ltd v Ford** [1949] 2 94, KBD.

Sum standing to debtor's credit in deposit account—Money repayable only on production of deposit book—Whether debt 'owing or accruing—RSC Ord 45, r 1—County Court Rules 1936, Ord 27, r 1. **Bagley v Winsome (National Provincial Bank Ltd (Garnishee))** [1952] 1 637, CA.

Insolvent company. *See* Winding-up of company—Garnishee order—Insolvent company, *post*.

Judgment creditor obtaining order absolute against executors of insolvent estate. *See*

Administration of estates (Order of application of assets—Judgment debt—Priority—

Judgment creditor obtaining garnishee order against executors).

Jurisdiction—

Divorce court. **W v W (Barclays Bank Ltd, Garnishee)** [1961] 2 56, CA.

Prior assignment of debt—

Direction and authority to garnishees to pay to third party all moneys owing by them to judgment debtors—No direct evidence of assignment—Law of Property Act 1925, s 136(1). **Curran v Newpark Cinemas Ltd** [1951] 1 295, CA.

Set-off—

Judgment debtor employed by garnishee as sub-contractor on building work—Cross-claims between garnishee and judgment debtor, the former alleging work badly done—Claim by garnishee likely to extinguish judgment debtor's claim of indebtedness to him. **Hale v Victoria Plumbing Co Ltd and En-Tout-Cas Co Ltd** [1966] 2 762, CA.

Interpleader. *See* Interpleader.

Lease. *See* Landlord and tenant (Lease—Execution).

Leave—

Emergency Powers. *See* Emergency legislation (Leave to enforce judgment or order—Execution on judgment).

Leave to issue execution—

Application—

More than six years after judgment—Previous application refused—New material—Explanation of delay—Validity of R & C Ord 42, r 23(a). **W T Lamb & Sons v Rider** [1948] 2 402, CA.

Suspended order for possession—Breach of suspensory terms—Ex parte application for leave to issue execution—Necessity for defendant to have opportunity of being heard before leave given—RSC Ord 45, Ord 46. **Fleet Mortgage and Investment Co Ltd v Lower Maisonette 46 Eaton Place Ltd** [1972] 2 737, ChD.

Suspended order for possession—Circumstances in which application to be made by summons—Service—Proof of service—Administration of Justice Act 1970, s 36—RSC Ord 46, rr 2, 4. **Practice Direction** [1972] 1 576, ChD.

Emergency powers. *See* Emergency legislation (Leave to enforce judgment or order—Execution on judgment).

Leave during wartime—

Discretion of court under Courts (Emergency Powers) Act 1939—Factors to be considered—Existence of other debts—Courts (Emergency Powers) Act 1939, s 1. **A v B** [1939] 4 169, CA.

Persons requiring leave—Crown debt—Taxes—Whether Courts (Emergency Powers) Act 1939 binding on Crown—Courts (Emergency Powers) Act 1939, s 1(1). **Attorney-General v Hancock** [1940] 1 32, KBD.

Mortgage. *See* Mortgage (Execution).

Possession—

Jurisdiction to suspend warrant—

County court. *See* County court (Execution—Warrant for possession of premises—Suspension of execution—Jurisdiction).

Jurisdiction *ros* to suspend warrant. *See* County court (Execution—Warrant for possession of premises—Suspension of execution—Jurisdiction).

Leave to issue writ—

Contents of affidavit in support of application—RSC Ord 47, r 1. **Practice Direction** [1955] 3 646, QBD.

Interlocutory application—Jurisdiction to grant leave to issue writ of possession on interlocutory application. **Manchester Corp v Connolly** [1970] 1 961, CA.

Mortgaged property—

Suspension of execution of order for possession. *See* Mortgage (Possession of mortgaged property—Suspension of execution of order for possession).

Walking possession—

Distress for rent. *See* Distress (Distress for rent).

Possession order—

Jurisdiction to postpone—

County court. *See* Landlord and tenant (Recovery of possession—County court action—Order for possession—Jurisdiction to postpone execution of order).

Summary proceedings for possession of land. *See* Land (Summary proceedings for possession—Execution of possession order).

Priority—

Seizure of company's goods by creditor—

Claim by receiver under debenture deed—Necessity for receiver to prove that power to appoint has arisen. **Kasofsky v Kreegers (Phillips, claimant)** [1937] 4 374, KBD.

EXECUTION (cont)

Sequestration—

Contract for sale of land—

Release of contract to sequestrators and subsequent approval of modified contract—
Matrimonial suit—Judicial separation—Maintenance in arrear—Writ of sequestration by
wife—Sale of land—Appointment of sequestrator to convey land—Trustee Act 1925, s 50.
Hipkin v Hipkin [1962] 2 155, Div.

Position of third parties in relation to writ of sequestration. *See* **Contempt of court**
(Sequestration—Position of third parties in relation to writ of sequestration).

Wilful disobedience—

Breach of undertaking. *See* **Contempt of court** (Sequestration—Wilful disobedience of court
order—Breach of undertaking by company).

Sheriff—

Protection—

Action in respect of seizure and possession of goods—Withdrawal from possession of goods
claimed—Action for trespass by person in position of claimant—‘Substantial grievance’ of
claimant—RSC Ord 57, r 16A. **Cave v Capel** [1954] 1 428, CA.

Stay—

Committal for breach of custody order—

Refusal by magistrates to stay order. *See* **Minor** (Custody—Order—Breach—Breach by father
of order made in favour of mother).

Grounds for stay—

Equities raised in the action—1969 10271

Equities raised in the action—Supreme Court of Judicature (Consolidation) Act 1925, s 41,
proviso (a). **T C Trustees Ltd v J S Darwen (Successors) Ltd** [1969] 1 271, CA.

Mortgaged property—

Order for possession. *See* **Mortgage** (Order for possession of mortgaged property—Stay of
execution of order).

Possession—

Jurisdiction to order stay. *See* **County court** (Execution—Warrant for possession of
premises—Suspension of execution—Jurisdiction).

Stay of execution pending appeal—

Conditions imposed on stay—County court—Appeal to Court of Appeal—Jurisdiction of
county court judge to impose conditions on stay—Discretion of judge—Wrongful exercise
of discretion—Condition requiring appellants to pay contractual interest from date of
judgment until determination of appeal—RSC Ord 59, r 19(5). **Sewing Machines Rentals**
Ltd v Wilson [1975] 3 553, CA.

Effect of stay—Lease determined by notice to quit—Judgment for possession stayed pending
appeal as to validity of notice—Subsequent valid notice while stay still in operation—Rights
of landlord. **Clifton Securitates Ltd v Huntley** [1948] 2 283, KBD.

Effect of stay—Stay not precluding successful plaintiff from issuing judgment summons or
garnishee proceedings. **Berliner Industriebank Aktiengesellschaft v Jost** [1971] 2 1513,
CA.

Jurisdiction—First application for stay of execution pending appeal refused—Further
application on evidence adduced—Whether court had jurisdiction to order stay on the
further application—Special circumstances—RSC Ord 42, r 19(1). **Ellis v Scott** [1964] 2
987, QBD.

Variation of terms of stay—

Jurisdiction—Jurisdiction where order for stay passed and entered—Jurisdiction to vary
amount of security. **Re VGM Holdings Ltd** [1941] 3 417, ChD.

Suspension of execution of order—

Mortgaged property—

Order for possession. *See* **Mortgage** (Order for possession of mortgaged property—
Suspension of execution of order).

Warrant. See Magistrates (Warrant—Execution).

Will. See Will (Execution).

Winding-up of company—

Creditors' rights—

Duties of sheriff—Notice served on sheriff—Notice relating to proposed winding-up of
company—Service on sheriff's officer and not on sheriff or under-sheriff—Effect—Writ of
fi fa issued and sent to under-sheriff—Warrant issued to sheriff's officer—Sums received
by officer in execution of warrant—Notice served on sheriff's officer of meeting of a
company at which winding-up resolution to be proposed—Whether service of notice on
sheriff's officer constituting service on sheriff—Whether notice effective—Companies Act
1948, s 326(2)—Companies (Winding-up) Rules 1949, (S 1 1949 No 330) r 43. **Hellyer v**
Sheriff of Yorkshire [1974] 2 712, CA.

Liquidator's rights—Goods sold under the writ of fi fa of sale held by sheriff—Notice under
s 293 of the Companies Act 1948—Notice of creditors' meeting only to sheriff—Whether
notice under s 293 was sufficient notice for the purposes of s 326(2)—Whether liquidator
or execution creditors entitled to proceeds of execution—Companies Act 1948, ss 293,
326 (2). **Engineering Industry Training Board v Samuel (Talbot) Ltd** [1969] 1 480,
CA.

Liquidator's rights—Goods sold under writs of fi. fa.—Notice under s 293 of the Companies
Act 1948 sent to under-sheriff—Proceeds paid to execution creditors—Whether notice
under s 293 was sufficient notice for purposes of s 326(2)—Whether liquidator or execution
creditors entitled to proceeds of execution—Companies Act 1948, s 326(2). **Re T D Walton**
Ltd [1966] 2 157, ChD.

Restriction. *See* Winding-up of company—Restriction of creditor's rights, *post*.

EXECUTION (cont)

Winding-up of company (cont)—

Garnishee order—

Insolvent company—Effect of winding-up petition—Discretion of court—Duty of court to have regard to position of all creditors—Duty to ensure company's available assets distributed among creditors *pari passu*—Garnishee order nisi made on application of judgment creditor against debtor to company—Petition for winding-up of company presented before garnishee order made absolute—Whether order should be made absolute. **D Wilson (Birmingham) Ltd v Metropolitan Property Developments Ltd** [1975] 2 814, CA.

Restriction of creditor's rights—

Execution not completed before winding-up—Discretion of court to set aside liquidator's rights in favour of creditor. **Re Grosvenor Metal Co Ltd** [1949] 2 948, ChD.

Execution not completed before winding-up—Discretion of court to set aside liquidator's rights in favour of creditor—English winding-up ancillary to foreign winding-up. **Re Suidair International Airways Ltd** [1950] 2 920, ChD.

Execution not completed before winding-up—Discretion to set aside liquidator's rights in favour of creditor—Insolvent company stalling creditors—W Ltd, a creditor, deferred action on promise of payment—No payment made and judgment obtained—Sheriff received writs of fi. fa. from two other creditors of company before receiving that of W Ltd—Resolution for voluntary winding-up of company—W Ltd instructed sheriff to take walking possession under its execution—Whether W Ltd should be allowed to retain benefit of its execution as against liquidator—Companies Act 1948, s 325(1)(c). **Re Redman (Builders) Ltd** [1964] 1 851, ChD.

execution not completed before winding-up—Not completed before notice of intention to liquidate—Garnishee order absolute obtained by judgment creditor against company—Order made after judgment creditor given notice of resolution for voluntary winding-up—Garnishee moneys paid to judgment creditor before winding-up resolution passed—Whether judgment creditor entitled to retain moneys recovered under the garnishee order as against the liquidator—Discretion of court to allow creditor to retain moneys—Exercise—Companies Act 1948, s 325(1), proviso (c). **Re Caribbean Products (Yam Importers) Ltd** [1966] 1 181, CA.

Restriction of creditors rights—

Execution not completed before winding-up—Payment of money to avoid sale—Money remaining in hands of sheriff's officer—Notice of winding-up resolution given more than fourteen days after payment—Whether money to be paid over to liquidator—Companies Act 1948, ss 325(1), 326(1)(2). **Re Walkden Sheet Metal Co Ltd** [1959] 3 333, ChD.

Writ of fi fa—

Attachment of property subject to equitable mortgage—

Sale of property—Title acquired by purchaser. **Ghana Commercial Bank v Chandiram** [1960] 2 865, PC.

Seizure of goods—

Abandonment of seizure—Intention—Conduct not amounting to abandonment—Purchase of caravan, not in market overt, by third party without notice of writ—Whether seizure abandoned as against third party—Whether his title protected by Sale of Goods Act 1893, s 26(1), proviso. **Lloyds and Scottish Finance Ltd v Modern Cars and Caravans (Kingston) Ltd** [1964] 2 732, QBD.

Payment of rent by sheriff—Claim for rent by landlord—Need for relationship of landlord and tenant to exist between person claiming rent and execution debtor—Landlord and Tenant Act 1709, s 1. **Re Eastcheap Alimentary Products Ltd** [1936] 3 276, ChD.

Sale by bailiff of goods seized while subject of chattels mortgage—Title of purchaser—Bankruptcy Ordinance 1930 (Laws of 1948 1948, c 30), s 45(3). **Dyal Singh v Kenyan Insurance Ltd** [1954] 1 847, PC.

Sale by sheriff of goods seized—Title of purchaser—Rights of true owner—Bankruptcy and Deeds of Arrangement Act 1913, s 15. **Curtis v Maloney, R Cheke & Co (third parties)** [1950] 2 982, CA.

Walking possession agreement—Excessive seizure—Exclusion of debtor from own premises—Sale on debtor's premises without permission—Trepass. **Watson v Murray & Co** [1955] 1 350, QBD.

Walking possession agreement—Retaining possession after seizure—Walking possession agreement refused by judgment debtor—Agreement subsequently signed by judgment debtor's wife, and repudiated by judgment debtor—Wife signing as responsible person in house—Whether agreement of responsible person in house sufficient notwithstanding objection by judgment debtor—Sheriff's Fees (Amendment) Order 1956 (SI 1956 No 502), Schedule. **National Commercial Bank of Scotland Ltd v Arcam Demolition & Construction Ltd (Hatherley Hall Ltd, Claimants)** [1966] 3 113, CA.

Wrongful and irregular execution—

Distress warrant for judgment moneys and costs suspended as to judgment moneys—

Outstanding costs—Whether distress leviable in respect of costs outstanding. **Moore v Lambeth County Court Registrar (No 2)** [1970] 1 980, CA.

Excessive execution—

Liability of county court registrar in absence of malice. **Moore v Lambeth County Court Registrar (No 2)** [1970] 1 980, CA.

Writ of possession—

Judgment in respect of whole premises—Portion alleged protected by Rent Acts—Failure of landlord to warn sheriff's officer of protection—Liability of landlord. **Williams v Williams and Nathan** [1937] 2 559, CA.

Judgment in respect of whole premises—Sub-tenant protected by Rent Restrictions Acts—Ejection of sub-tenant—Liability of landlord—RSC Ord 47, r 1. **Barclays Bank Ltd v Roberts** [1954] 3 107, CA.

EXECUTOR AND ADMINISTRATOR**Account—****Account on footing of wilful default—**

One act of wilful default admitted—No evidence of further instances of wilful default on part of executors—No evidence of bad faith—Whether general account on footing of wilful default should be ordered of whole estate. **Re Tebbs (deceased)** [1976] 2 858, ChD.

Action—**Form of action—**

Beneficiary as plaintiff—Personal representatives unwilling to sue—Adding personal representatives as defendants. *See Practice* (Parties—Adding defendants—Personal representatives).

Substitution of executors as defendants. *See Practice* (Parties—Substitution—Action against deceased person—Defendant dead at date of issue of writ—Substitution of executors).

Action against—**Judgment by default—**

Return of nulla bona on execution—Presumption of devastavit—Rebuttal of presumption—Order for administration and appointment of receiver of estate. **Batchelar v Evans** [1939] 3 606, ChD.

Action by—**Application for directions whether to bring action—**

Disclosure of evidence to proposed defendant—Practice—Plaintiff executor and trustee asking for liberty to bring proceedings for undue influence against trustees of declaration of trust sought to be set aside—One such trustee also a beneficiary in testatrix' estate—Application by beneficiary, and her husband (also a trustee of the declaration), to see evidence filed by plaintiff and to be allowed to remain in court to take part in discussion whether action should be brought—No substantial allegations against beneficiary probable—Practice to be adjusted to circumstances of individual case—Plaintiff to consider what material could be made available to beneficiary and her husband to enable them to decide what attitude to adopt on the present application—Beneficiary and her husband to have opportunity to submit to court, through plaintiff, statement of facts for the present application. **Re Eaton (decd)** [1964] 3 229, ChD.

Administration pendente lite—

Intestacy. *See Intestacy* (Administration pendente lite).

Administrator—**Appointment in special circumstances—**

Conviction of executor—Executrix convicted of manslaughter of deceased and sentenced to life imprisonment—Supreme Court of Judicature (Consolidation) Act 1925, s 162(1), proviso (b), as substituted by Administration of Justice Act 1928, s 9. **Re S (decd)** [1967] 2 150, Prob.

Discretion of court—Sole beneficiary under will entitled to absolute interest—Beneficiary of full age, but of immature development—Supreme Court of Judicature (Consolidation) Act 1925, s 162(1) (as amended by Administration of Justice Act 1928, s 9)). **Re Taylor (decd)** [1950] 2 446, Prob.

Inventory and account—

Administration revoked by court and granted to new administrator—Order requiring former administrator to exhibit on oath an inventory and account of estate of deceased—Jurisdiction to order inventory and account. **Re Thomas (decd)** [1956] 3, 897, Prob.

Pendente lite—

Costs of administration and remuneration of administrator—Possible benefit of administration to estate—Apportionment between estate and party bringing proceedings. **Re Howlett (decd)** [1950] 1 485, Prob.

Power of court to authorise remuneration—

Solicitor sole administrator—Insolvent estate—Profit costs of preparing petition for administration in bankruptcy and of preparing and lodging accounts. **Re Worthington (decd)** [1954] 1 677, ChD.

Trust corporation appointed as trustee. Trustee Act 1925, s 42. **Re Masters (decd)** [1953] 1 19, ChD.

Relation back of title—

Death intestate of contractual tenant of dwelling-house subject to Rent Restrictions Acts—Vesting of tenancy in probate judge—Notice to President of Probate Division to quit—Subsequent grant of letters of administration—Right of administrator to retain possession of dwelling-house—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 12(1) (f)—Administration of Estates Act 1925, s 9. **Fred Long & Sons Ltd v Burgess** [1949] 2 484, CA.

Administration pendente lite—

Intestacy. *See Intestacy* (Administration pendente lite).

Appointment—

Incomplete will. *See Will* (Incomplete will—Appointment of executor).

Appointment of new trustee—

Executors by representation. *See Trust and trustee* (Appointment of new trustee—Settlement created by will—Executors by representation).

Appropriation—

Intestacy. *See Intestacy* (Appropriation by personal representatives).

Attorney—**Administrator—**

Distribution of estate. *See Administration of estates* (Distribution—Attorney-administrator).

EXECUTOR AND ADMINISTRATOR (cont)

Bankrupt—

Discharged bankrupt—

Whether jurisdiction to order inquiry against executors concerning bankrupt's dealings. *See Bankruptcy* (Enquiry as to debtor's dealings and property—Summons to persons deemed capable of giving information—Discharged bankrupt—Summons to his personal representatives after his death).

Beneficiary—

Duty to. *See* Duty to beneficiaries, *post*.

Capital gains tax—

Time limit for assessment. *See* **Capital gains tax** (Time limit for assessment—Chargeable gains which arose or accrued to deceased before his death).

Contract—

Action to enforce—

Widow, administratrix, a stranger to her deceased husband's contract for sale of his business under which she was to be paid annuity. *See* **Contract** (Stranger to contract—Annuitant—Widow of deceased owner of business—Sale of business by deceased on terms under which widow was to be paid weekly sum).

Liability of administrator—

Tenancy agreement—Implied obligation—Obligation to pay rent so long as tenancy subsisting—Furnished premises let to deceased at weekly rent—Death of deceased during subsistence of tenancy—Administrator not entering or taking possession of premises—No express agreement by deceased to pay rent—Implied obligation on deceased tenant to pay rent during continuance of tenancy—Implied obligation binding on administrator—Liability for arrears of rent from deceased's death to expiry of notice to terminate tenancy given by administrator—Liability of administrator to extent of deceased's assets. **Youngmin v Heath** [1974] 1 461, CA.

Liability of executor—

Executor making payments in respect of contract—Probate subsequently revoked—Right of executor who had acted reasonably to set off payments made in estate accounts. **Ahmed Angullia bin Hadjee Mohamed Salleh Angullia v Estate & Trust Agencies (1927) Ltd** [1938] 3 106, PC.

Criminal appeal—

Death before application for leave to appeal—

Effect. *See* **Criminal law** (Appeal—Death of appellant—Effect—Death before application for leave to appeal heard).

Dealings with assets of estate—

Power of one of two or more personal representatives to bind estate—

Action for possession against two executors—Joint tenants—Executors—Leasehold premises—Denial of landlord's title by one executor binding on both—Whether denial was a disclaimer within Administration of Estates Act 1925, ss 2(2), 55(1)(iii). **Warner v Sampson** [1959] 1 120, CA.

Contract to sell asset—Contract made by one administrator—Contract expressed to be between purchaser and both administrators—Administrator signing on behalf of himself and as agent for other administrator—Other administrator ignorant of contract—Whether contract binding on estate. **Fountain Forestry Ltd v Edwards** [1974] 2 280, ChD.

Real property—

Power of one of two or more administrators to deal with real property—Contract by one of two administrators to sell real property—Whether contract binding on estate—Administration of Estates Act 1925, s 2. **Foundation Forestry Ltd v Edwards** [1974] 2 280, ChD.

Death of executor without taking out probate—

Evidence—

Admissibility of evidence to show that testator had not died intestate. *See* **Will** (Evidence—Executor dies without taking out probate—Admissibility of evidence to show that testator had not died intestate).

Duty to beneficiaries—

Power of sale of realty to one of beneficiaries—

Sale to be at estate duty valuation—Exercise of power—Valuation at price realty would fetch in open market—Duty of executor to consider interests of estate—Whether duty to hold balance evenly between beneficiaries—Whether valuation to be at highest possible price that might be obtained in open market. **Re Hayes's Will Trusts** [1971] 2 341, ChD.

Purchase by executor of asset of estate—

No conflict of duty and interest—Farms sold by proving executors to son of testator who had purported to renounce probate—Son had acted in administration of estate before renouncing—Beneficiary claimed to have sale rescinded—Tenancy of farms in favour of son disputed by plaintiff—Beneficiaries knowing that son was would-be purchaser—Sale by auction with reserve price on valuer's advice—Valuers not instructed by son—Whether rule of equity that purchase of trust property by trustee might be avoided was applicable. **Holder v Holder** [1968] 1 665, CA.

Estate duty—

Direction for payment. *See* **Administration of estates** (Estate duty).

See **Administration of estates** (estate duty).

Executor—

Appointment—

Appointment of debtor as executor—Release of debt in law—Equitable obligation to account for debt—Intention to forgive debt—Will forgiving and releasing executor from debt—Whether appointment of debtor as executor having extinguished obligation to account for debt—Whether will forgiving debt. **Comr of Stamp Duties v Bone** [1976] 2 354, PC.

Appointment of debtor as executor—Release of debt in law—Guarantee by testatrix of son's debt—son appointed executor—Son also beneficiary under will—Security taken from son after execution of will—Whether debt released. **Re Eiser's Will Trusts** [1937] 1 244, ChD.

EXECUTOR AND ADMINISTRATOR (cont)

Executor (cont)—

Appointment (cont)—

Appointment of firm—Probate granted to two—Whether appointment void for uncertainty. **Re Morgan (decd)** [1969] 3 1570, Prob.

No disposition of beneficial interest in estate made by will—Whether appointment of executor constituting disposition of estate—Executors Act 1830—Administration of Estates Act 1925, ss 46, 49. **Re Skeats** [1936] 2 298, ChD.

Appointment of debtor as executor—

Release of debt—Guarantee by testatrix of son's debt—Son appointed executor—Son also beneficiary under will—Security taken from son after execution of will—Whether debt released. **Re Eiser's Will Trusts** [1937] 1 244, ChD.

Intermeddling with estate—

Refusal to apply for grant of probate—Special circumstances—Power of court to pass over executor and grant letters of administration with will annexed to applicant—Supreme Court of Judicature (Consolidation) Act 1925, s 162(1), as amended by Administration of Justice Act 1928, s 9—Non-Contentious Probate Rules 1954 (S 1 1954 No 796), r 46(3), (5)(c). In **the Estate of Biggs (decd)** [1966] 1 358, Prob.

Family provision. *See* Family provision.*See* Family provision.

Fatal accident—

Action by executor or administrator of deceased. *See* Fatal accident (Action—Executor or administrator of deceased).

Fraud—

Cheque fraudulently drawn by executor on executor's account. *See* Trust and trustee (Constructive trust—Cheque fraudulently drawn by executor on executor's account).

Fund for payment of legacies. *See* Administration of estates (Fund for payment of legacies).

Gift—

Burden of proof of gift by deceased. *See* Gift (Death of donor—Proof of intention).

Grant of administration—

Generally. *See* Administration of estates (Grant of administration).

Intestacy. *See* Intestacy (Grant of administration).

Grant of administration. *See* Administration of estates (Grant of administration).

Guarantee—

Payment under—

Enforcement against estate of deceased person. *See* Guarantee (Payment under—Enforcement against estate of deceased person).

Income tax—

Incorrect return—

Penalty. *See* Income tax (Penalty—Incorrect return—Executors).

Liability of executor. *See* Income tax (Persons chargeable—Executors).

Special contribution. *See* Special contribution (Additional assessment—Limitation of time for making).

Joint tenancy—

Death of one of two joint tenants—

Liability for rent. *See* Landlord and tenant (Rent—Joint tenancy—Death of one of two joint tenants—Tenancy of committee rooms—Liability of executors).

Judicial trustee—

Appointment. *See* Trust and trustee (Judicial trustee).

Liability—

Interest-bearing debt—

Delay—Loss to estate—Liability of executors. **Re Tankard** [1941] 3 458, ChD.

Leaseholds—

Lapse of time—Payment out of court of indemnity fund. **Re Lewis** [1939] 3 269, ChD.

Personal liability where possession taken—Indemnity—Setting aside fund to meet contingent liability—Trustee Act 1925, s 26. **Re Owers** [1941] 2 589, ChD.

Specific bequests of leaseholds—Assent executed in respect of some bequests but not of others—Whether executors should retain indemnity fund in respect of leaseholds. **Re Bennett** [1943] 1 467, ChD.

Relief—

Legal advice followed—Insolvent estate—Business continued to be carried on by executor—Ejectment proceedings resisted—Unsuccessful claim for new lease—Trustee Act 1925, s 61—Judgment for rent obtained by landlord in county court—Presumption of devastavit—County Court Rules 1936, Ord 32, r 2(1). **Marsden v Regan** [1954] 1 475, CA.

Notice to creditors and others to send in claims—

New Zealand. *See* New Zealand (Executor and administrator—Notice to creditors and others to send in claims).

Probate. *See* Probate.

Release—

Renunciation of probate—

Release from liability in respect of estate. **Tiger v Barclays Bank Ltd** [1951] 2 262, KBD.

Renunciation—

Release of executors. *See* Probate (Renunciation—Release of executors from liability in respect of estate).

Residuary gift. *See* Will (Residue).

Restriction on number of executors—

Probate. *See* Probate (Grant—Restriction on number of executors to whom grant may issue in respect of same property).

EXECUTOR AND ADMINISTRATOR (cont)

Retainer—

Extent of right of retainer—

Application to debts due to personal representative in his own right—Debt due to executor as trustee—Executor a trustee jointly with another—Whether executor entitled to exercise right of retainer—Administration of Estates Act 1925, s 34(2). **Re Rudd** [1942] 2 206, ChD.

Loans to husband for purposes of business—Bankruptcy Act 1914, ss 36, 130(8), (9)—Administration of Estates Act 1925, s 34(1), Sch I. **Re Patten** [1936] 2 1119, ChD.

Retainer against costs of administration action—

Discretion of court—Administration of Estates Act 1925, s 34—Supreme Court of Judicature (Consolidation) Act 1925, s 50—RSC Ord 65, r 1. **Re Wester Wemyss** [1939] 3 746, CA.

Secret trust. *See* **Trust and trustee** (Secret trust).

Shareholder's personal representative—

Application for restoration of company's name to register. *See* **Company** (Restoration to register)—Application—Member's application—Personal representative of shareholder.

Application to court to wind-up company—

Right to present petition. *See* **Company** (Compulsory winding-up)—Petition by contributory—Personal representative of shareholder—Whether personal representative a contributory).

Solicitor administrator—

Costs. *See* **Solicitor** (Costs—Solicitor administrator).

Survival of cause of action—

Action for recovery of overpaid rent—

Action by executor—Whether right to recover overpayments passing to executor—Law Reform (Miscellaneous Provisions) Act 1934, s 1. **Dean v Wiesengrund** [1955] 2 432, CA.

Action in respect of penalties under Income Tax Acts—

No proceedings during lifetime of deceased—Proceedings against executor—Whether action in tort—Law Reform (Miscellaneous Provisions) Act 1934, ss 1(1)(3), 4(2). **Attorney-General v Canter** [1939] 1 13, CA.

Financial provision—

Application in divorce proceedings—Survival for benefit of applicant's estate. *See* **Divorce** (Financial provision—Application—Practice and procedure—Death of applicant).

Tenancy—

Tenancy by estoppel—

Passing of tenant's right to enforce estoppel to tenant's personal representative. *See* **Landlord and tenant** (Tenancy—Tenancy by estoppel—Passing of tenant's right to enforce estoppel to tenant's personal representative).

Tort—

Dead joint tortfeasor—

Contribution—Representation of estate. *See* **Tort** (Contribution between joint tortfeasors—No representative of dead joint tortfeasor's estate).

Trading for tax purposes—

Dealing in land—

Realisation of asset of estate. *See* **Income tax** (Trade—Executors—Partnership business—Dealing in land).

Trustee—

Appointment—

Acceptance—Legacy to executor on condition he should prove the will and accept trusteeship. **Re Sharman** [1942] 2 74, ChD.

Personal representative of last surviving trustee. *See* **Trust and trustee** (Appointment of new trustee—Appointment by personal representative of last surviving trustee).

Right of administrator to appoint new trustees after administration complete—Appointment of new trustees by administrators with the will annexed. **Re Cockburn (decd)** [1957] 2 522, ChD.

Appointment. *See* **Trust and trustee** (Appointment of new trustee—Appointment by personal representative of last surviving trustee).

Will—

Condition—

Specific conditions—Executors to be satisfied that hospital not taken over by state. *See* **Will** (Condition—Specific conditions—Executors to be satisfied hospital not taken over by state).

EXECUTOR AND ADMINISTRATOR

Appropriation—

Intestacy. *See* **Intestacy** (Appropriation by personal representatives).

Estate duty—

Direction for payment. *See* **Administration of estates** (Estate duty).

EXECUTOR AND ADMINISTRATOR

Family Provision. *See* **Family provision**.

EXECUTORS AND ADMINISTRATOR

Criminal appeal—

Death before application for leave to appeal. *See* **Criminal law** (Appeal—Death of appellant—Effect—Death before application for leave to appeal heard).

EXEMPLARY DAMAGES

Generally. *See* **Damages** (Exemplary damages).

Pleading. *See* **Pleading** (Damage—Exemplary damages).

EXEMPTION

- Drainage rates. *See* **Land drainage** (Drainage rates—Exemption).
- Income tax. *See* **Income tax** (Exemption).
- National health insurance. *See* **National health insurance** (Exemption).
- Street trading licence. *See* **Street trading** (Licence—Exemption).
- Value added tax. *See* **Value added tax** (Exemptions).

EXHIBIT

- County court—
 - Practice. *See* **County court** (Practice—Exhibits).
- Examination—
 - Criminal proceedings—
 - Open court. *See* **Criminal law** (Trial—Open court—Proceedings to be held in open court—Evidence—Exhibits).
- Production in court. *See* **Evidence** (Exhibits—Jurisdiction to order third party to produce exhibit).

EXHIBITION

- Collection exhibited in public place—
 - Removal of article from exhibition. *See* **Criminal law** (Removal of articles from public building—Collection intended for permanent exhibition to the public).
- Indecent. *See* **Criminal law** (Disorderly house—Indecent performances and exhibitions).
- Indecent films—
 - Censorship—
 - Local authority's rules. *See* **Cinema** (Censorship—Indecent films—Test to be applied—Local authority's rules prohibiting exhibition of films tending to deprave or corrupt persons likely to see them).
- Stall—
 - Sunday trading. *See* **Shop** (Sunday closing—Retail trading elsewhere than in shop).

EXONERATION

- Debts—
 - Will. *See* **Will** (Debts—Exoneration).

EXPECTATION OF LIFE

- Loss of—
 - Damages—
 - Personal injuries cases. *See* **Damages** (Personal injury—Loss of expectation of life).

EXPELLE

- Non-patrial—
 - Right of entry to United Kingdom. *See* **Immigration** (Leave—Non-patrial—Right of entry—Expellee).

EXPENDITURE

- Local government. *See* **Local Government** (Expenditure).

EXPENSES

- Board of Trade investigation of company's affairs. *See* **Company** (Investigation by Board of Trade—Expenses of investigation).
- Burial. *See* **Burial** (Expenses).
- Car provided by employer—
 - Expenses included in remuneration. *See* **Master and servant** (Remuneration—Salary plus expenses).
- Deduction for assessment to income tax—
 - Emoluments from office or employment. *See* **Income tax** (Emoluments from office or employment—Expenses wholly, exclusively and necessarily incurred).
 - Profits of trade etc. *See* **Income tax** (Deduction in computing profits).
- Election. *See* **Elections** (Expenses).
- See* **Elections** (Expenses).
- Income tax—
 - Deduction in computing profits. *See* **Income tax** (Deduction in computing profits).
- Local government. *See* **Local government** (Expenses).
- Prisoner's attendance at court—
 - Conduct of case while in custody. *See* **Prison** (Expenses—Maintenance of prisoner—Removal from prison for other judicial purposes—Expenses of producing prisoner in court in interests of justice).
- Private street works. *See* **Highway** (Private street works—Expenses).
- Third parties—
 - Claim for damages for personal injuries—
 - Circumstances in which third party expenses recoverable by plaintiff. *See* **Damages** (Personal injury—Expenses of third parties).
- Value added tax—
 - Supply of services. *See* **Value added tax** (Supply of goods or services—Supply of services for a consideration—Expenses).

EXPENSES ALLOWANCES

- Payment by body corporate—
 - Income tax. *See* **Income tax** (Emoluments from office or employment—Expenses allowances—Body corporate).

EXPERT

- Evidence—
 - Application for leave to call—
 - Summons for directions. *See* **Practice** (Summons for directions—Expert evidence—Application for leave to call expert evidence).

EXPERT (cont)

Evidence (cont)—

Criminal proceedings. *See* **Criminal evidence** (Expert evidence).

Magistrate—

Specialised knowledge. *See* **Magistrates** (Evidence—Specialised knowledge of magistrate).

Taxation of costs—

Legal aid. *See* **Legal aid** (Taxation of costs—Expert evidence).

Fee—

Legal aid. *See* **Legal aid** (Taxation of costs—Expert's fee).Handwriting. *See* **Criminal evidence** (Handwriting).

Witness—

Evidence. *See* **Evidence** (Expert witness).

Foreign law—

Whether court can reject opinion of witness. *See* **Statute** (Foreign—Construction—Opinion of expert witness).**EXPLOSION**

Fire insurance—

Explosion of boiler. *See* **Insurance** (Fire insurance—Perils insured against—Explosion of boiler).**EXPLOSIVE SUBSTANCE**

Contributory negligence—

Child—

Explosive substance given to child. *See* **Negligence** (Contributory negligence—Child—Explosive substance given to child).Offences relating to. *See* **Explosives**.

Plant etc containing substance—

Safety precautions. *See* **Factory** (Explosive or inflammable substance).**EXPLOSIVES**

Offence—

Knowingly possessing explosive substance in circumstances giving rise to suspicion possession for unlawful object—

Aiding and abetting offence—Whether there is an offence of aiding and abetting the crime of possessing explosives for an unlawful object—Explosive Substances Act 1883, s 4(1). **R v McCarthy** [1964] 1 95, CCA.Indictment—Form of indictment—Court omitting allegation of knowledge—Whether indictment bad—Explosive Substances Act 1883, s 4(1). **R v McVitie** [1960] 2 498, CCA.Proof of knowledge—Explosive Substances Act 1883, s 4(l). **R v Hallam** [1957] 1 665, CCA.Proof of knowledge—Explosive Substances Act 1883, s 9. **R v Dacey** [1939] 2 641, CCA.

Prosecution for offence—

Consent of Attorney-General—Form of consent—Written consent—Sufficiency—Degree of particularity required—Sufficient if consent given in wide terms—Presumption that Attorney-General has made necessary and proper enquiries before giving consent—Explosive Substances Act 1883, s 7(1). **R v Cain**, **R v Schollick** [1975] 2 900, CA.**EXPORT**

Contract—

Guarantee insurance—

Subrogation. *See* **Insurance** (Subrogation—Guarantee insurance—Export contract).

Licence—

Sale of goods. *See* **Sale of goods** (Export licence).

Payment—

Exchange control. *See* **Currency control** (Exchange control—Payment for exports).Prohibited goods. *See* **Customs** (Exportation of prohibited goods).Supply of goods for export only. *See* **Control of goods** (Supply of goods for export only).**EXPRESS CARRIAGE***See* **Road traffic** (Express carriage).**EXPULSION**

Trade union—

Member. *See* **Trade union** (Expulsion of member).**EXTENDED TERM OF IMPRISONMENT***See* **Sentence** (Extended term of imprisonment).**EXTINGUISHMENT**Tithe and tithe rentcharge. *See* **Tithe and tithe rentcharge** (Extinguishment).**EXTRADITION**

Arrest—

Provisional warrant—

Arrest of fugitive without order of Secretary of State—Procedure—Remand in custody—Duty of magistrate to fix date on which fugitive to be released unless order received from Secretary of State signifying requisition made by requesting state—Extradition Act 1870, s 8. **Government of the Federal Republic of Germany v Sotiriadis** [1974] 1 692, HL.

EXTRADITION (cont)

Arrest (cont)—

Warrant—

Charges—Practice—Reference to charges should be made on, and particulars should be attached to, warrant—Fugitive Offenders Act 1881, s 2. **Re Mourat Mehmet** [1962] 1 463, QBD.

Charge—

Time for charge—

Fugitive not charged with offence for which extradition sought at time of arrest—Charge preferred before committal—Whether a person being accused who was 'found' within United Kingdom—United States of America (Extradition) Order in Council 1935 (S R & O 1935 No 574), art 1. **Atkinson v United States Government** [1969] 3 1317, HL.

Committal—

Evidence—

Offence for which accused committed same as that for which accused was surrendered by foreign state—Depositions not to be examined but evidence of deponents taken—Whether magistrate entitled to hear further evidence—Extradition Act 1870, s 19. **R v Aubrey-Fletcher, ex parte Ross-Munro** [1968] 1 99, QBD

Fugitive offender. *See* Fugitive offender—Committal, *post*.

Power of magistrate to refuse to commit fugitive—

Natural justice—Conviction in foreign country obtained in accused's absence and without his knowledge—Certificate of conviction tendered—Natural justice not a relevant consideration for committing magistrate—Magistrate having no power to refuse to commit on ground conviction contrary to natural justice—Power of Secretary of State to refuse to surrender fugitive. **Royal Government of Greece v Brixton Prison Governor** [1969] 3 1337, HL.

Natural justice—Fugitive charged with crime based on same facts as previous conviction—Natural justice not a relevant question for committing magistrate—Power of Secretary of State to refuse to surrender fugitive—Procedure—Extradition Act 1870, s 10, s 11. **Atkinson v United States Government** [1969] 3 1317, HL.

Discharge of fugitive—

Circumstances rendering it unjust or oppressive or too severe a punishment to return fugitive—

Extent of court's discretion to discharge fugitive—Fugitive Offenders Act 1881, s 10. **Re Henderson** [1950] 1 283, CA.

Factors to be considered—Political character of offences not relevant as such—Danger of assassination of fugitive if returned and of evidence against him being fabricated—Whether unjust or oppressive to make order for return—Gravity of alleged offences taken into account—Fugitive Offenders Act 1881, s 10. **Zacharia v Republic of Cyprus** [1962] 2 438, HL.

Discretion of court—

Circumstances rendering it unjust or oppressive or too severe a punishment to return fugitive—Evidence application not made in good faith in the interests of justice or otherwise—Meaning of 'or otherwise'—Fugitive Offenders Act 1881, s 10. **Re Naranjan Singh** [1961] 2 565, QBD

Power of court to make order—

Power where fugitive not returned within one month after committal—Court may unless sufficient cause shown to the contrary order the fugitive to be discharged—'May' construed to mean 'shall'—What amounts to 'sufficient cause'—Fugitive Offenders Act 1881, s 7. **Re Shuter (No 2)** [1959] 3 481, QBD, **R v Brixton Prison (Governor), ex parte Enahoro** [1963] 2 477, QBD.

Refusal—

Appeal—Jurisdiction—Application refused by Divisional Court—Whether Court of Appeal had jurisdiction to entertain appeal from decision of Divisional Court—Fugitive Offenders Act 1881, s 10, s 39. **De Demko v Home Secretary** [1959] 1 341, HL.

Undertakings by foreign government—

Undertakings as to trial of fugitive—Whether unconditional undertakings by foreign government as to trial of fugitive should be accepted by English Court—Fugitive Offenders Act 1881, s 10. **Armah v Government of Ghana** [1966] 3 177, HL.

Evidence—

Sufficient evidence to be produced within two months from date of apprehension—

Date of apprehension—Meaning—Arrest of fugitive offender under provisional warrant—Requesting state subsequently making requisition with necessary evidence and Secretary of State signifying by order that requisition made—Whether two month period commencing on date of initial arrest or following Secretary of State's order—Extradition Act 1870, s 8—Federal Republic of Germany (Extradition) Order 1960 (S I 1960 No 1375), Sch 2, art XII. **Government of the Federal Republic of Germany v Sotiriadis** [1974] 1 692, HL.

Evidence sufficient to justify committal for trial—Proceedings commenced within two month period—Sufficient evidence produced at hearing—Hearing adjourned to date after expiry of two month period for further evidence—Possibility that evidence at adjourned hearing would weaken or destroy *prima facie* case—Whether sufficient evidence for extradition produced within two month period—Federal Republic of Germany (Extradition) Order 1960 (S I 1960 No 1375), Sch 2, art XII. **Beese v Governor of Ashford Remand Centre** [1973] 3 689, HL.

Production of evidence—Meaning—Production to magistrate or to United Kingdom government—Whether production to United Kingdom government sufficient—Federal Republic of Germany (Extradition) Order 1960, (S I 1960 No 1375) Sch 2 art XII. **Government of the Federal Republic of Germany v Sotiriadis** [1974] 1 692, HL.

EXTRADITION (cont)

Fugitive offender—

Committal—

Court of committal—Duty to commit—Person accused of relevant offence—Court satisfied that evidence sufficient to warrant trial if committed within jurisdiction—Defence to charge under legislation of requesting country—No corresponding defence in English law—Whether existence of possible defence relevant in committal proceedings—Fugitive Offenders Act 1967, s 7(5). **Government of Australia v Harrod** [1975] 2 1, HL.

Evidence—Lack of evidence to show offences charged offences to which statute applied—Evidence of local law—Remission of case—Whether offence punishable by imprisonment with hard labour for a term of 12 months or more by any greater punishment—Inherent jurisdiction of Divisional Court to remit case for further evidence—Fugitive Offenders Act 1881, s 9. **Re Shuter** [1959] 2 782, QBD.

Evidence—Sufficiency—Affidavit evidence referring to cash book the subject-matter of offences charged—Original not before court nor authenticated copies of it or extracts from it—Whether evidence justified committal order—Fugitive Offenders Act 1881, ss 5, 9. **R v Governor of Brixton Prison, ex parte Sadri** [1962] 3 747, QBD.

Warrant—Form of printed warrant wrong. **Armah v Government of Ghana** [1966] 3 177, HL.

Evidence—

Committal—Lack of evidence to show offences charged offences to which statute applied—Remission of case—Whether offence punishable by imprisonment with hard labour for a term of 12 months or more, or by any greater punishment—Inherent jurisdiction of Divisional Court to remit case for further evidence—Fugitive Offenders Act 1881, s 9. **Re Shuter** [1959] 2 782, QBD.

Evidence given on oath—

Affidavit—Affidavit sworn in Singapore before district judge after issue of warrant for fugitive's arrest—Whether admissible as document setting out 'evidence given on oath' in extradition proceedings in United Kingdom—Fugitive Offenders Act 1967, s 11(1)(a). **Fernandez v Government of Singapore** [1971] 2 691, HL.

Depositions—Counsel for fugitive not allowed to appear at taking of depositions in Canada—Whether depositions rendered inadmissible in committal proceedings in England—Conspiracy charges in wide terms—Whether applicant's committal thereon justified—Fugitive Offenders Act 1881, s 29, s 39—Canadian Criminal Code (Statutes of Canada, 1953—54, c 51), s 453. **R v Governor of Brixton Prison, ex parte Caldough** [1961] 1 606, QBD.

Jurisdiction—

Extension of statute to foreign country in which Her Majesty has jurisdiction—Consequential reciprocal operation of statute between foreign country and United Kingdom—Alleged crime committed in Qatar—Whether Qatar to be treated as a British possession for purposes of statute—Fugitive Offenders Act 1881, ss 2, 36—Foreign Jurisdiction Act 1890, s 5—Qatar Order 1959 (SI 1959 No 1038), art 12(b), Sch 2. **Re Demetrious** [1966] 2 998, QBD.

Fugitive from Republic of India—Operation of Fugitive Offenders Act 1881, s 5—Preservation of existing provisions of Imperial statutes—India (Consequential Provision) Act 1949, s 1(1). **Re Government of India and Mubarak Ali Ahmed** [1952] 1 1060, QBD.

Order for return to requesting country—

Return by warrant of Home Secretary on expiration of fifteen days—May if he thinks it just by warrant order fugitive to be returned—'May' not mandatory—Discretion of Home Secretary—Fugitive Offenders Act 1881, s 6. **R v Brixton Prison (Governor), ex parte Enahoro** [1963] 2 477, QBD.

Relevant offences—

Equivalent acts constituting offence under English law—Indian citizen charged with offence in India—Fraudulent conversion—No specific equivalent in English law of alleged offence—Fraud committed in course of business as agent—Particulars of offence constituting offence under English law—Fugitive Offenders Act 1967, s 3(1), (2), Sch 1, para 18. **R v Governor of Pentonville Prison, ex parte Teja** [1971] 2 11, QBD.

Equivalent acts constituting offence under English law—Offence of false pretences alleged—Warrants of arrest issued in New Zealand for false pretences, particulars alleging false pretences as to future event—Not, therefore, offence of false pretences according to law of England—Whether relevant offence for which fugitive liable to be returned—Fugitive Offenders Act 1967, s 3(1)(c). **R v Governor of Brixton Prison, ex parte Gardner** [1968] 1 636, QBD.

Extra-territorial offence—Charge alleging conspiracy in Canada to defraud public—United States residents induced to purchase shares in companies—All descriptions of assets false—Whether offence triable in corresponding circumstances in United Kingdom—Fugitive Offenders Act 1967, s 3(1). **R v Brixton Prison Governor, ex parte Rush** [1969] 1 316, QBD.

Restrictions on return—

Political offence—Fugitive Offenders Act 1881, s 10. **Re Government of India and Mubarak Ali Ahmed** [1952] 1 1060, QBD.

Prosecution on account of political opinions—Prejudice at trial on account of political opinions—Applicant Indian citizen charged with offence in India—Applicant centre of political controversy in India—Applicant not having himself entered political arena—Whether request for return for purpose of prosecution for political opinions—Whether trial would be prejudiced on account of political opinions—Fugitive Offenders Act 1967, s 4(1)(b)(c). **R v Governors of Pentonville Prison, ex parte Teja** [1971] 2 11, QBD.

Punishment by reason of race, religion, nationality or political opinions—Possibility of punishment—Burden of proof—Fugitive Offenders Act 1967, s 4(1)(c). **Fernandez v Government of Singapore** [1971] 2 691, HL.

EXTRADITION (cont)

Fugitive offender (cont)—

Surrender—

Fugitive from India—No reference in warrant to statute—Duplicity of charges—Admissibility of depositions not taken for purposes of Act—Conclusiveness of expert's evidence as to Indian law—Court's discretion to postpone fugitive's return to India—Indian Penal Code 1860, ss 120B, 420—Fugitive Offenders Act 1881, ss 2, 3, 5, 9, 10, 20. **R v Secretary of State for India in Council, ex parte Ezekiel** [1941] 2 546, KBD.

Warrant—

Indorsement—Authorities empowered to endorse writ—Secretary of State and magistrate—And—Endorsement by magistrate alone—Validity—Fugitive Offenders Act 1881, s 3. **R v Governor of Brixton Prison, ex parte Bidwell** [1936] 3 1, KBD.

Habeas corpus—

Evidence—

Further evidence—Whether further evidence not before chief magistrate when making committal order admissible—Extradition Act 1870, s 3(1). **Schtraks v Government of Israel** [1962] 3 529, HL.

Second application—What evidence admissible—Fraud or collusion alleged—Administration of Justice Act 1960, s 14(2). **Re Shalom Schtraks (No 2)** [1962] 3 849, QBD.

Fugitive—

Considerations relevant on application for habeas corpus—Fugitive Offenders Act 1881 (44 & 45 Vict c 69), s 10. **Armah v Government of Ghana** [1966] 3 177, HL.

Evidence—Review of evidence—Jurisdiction to examine sufficiency of evidence on which magistrate ordered committal—Fugitive Offenders Act 1881, s 5. **Re Mourat Mehmet** [1962] 1 463, QBD, [1962] 1 467, QBD.

Evidence—Strong or probable presumption—Standard of proof required—Fugitive Offenders Act 1881, s 5. **Armah v Government of Ghana** [1966] 3 177, HL.

Passage of time since offence—Applicant Indian citizen charged with offences in India—Delay not result of neglect of Indian government—Delay caused by applicant's own conduct—Fugitives Offenders Act 1967, s 8(3). **R v Governor of Pentonville Prison, ex parte Teja** [1971] 2 11, QBD.

Notice of motion—

Service on requisitioning government—Whether requisitioning government may be directed to be served and may be heard on application for habeas corpus. **R v Governor of H M Prison, Brixton, ex parte Minervini** [1958] 3 318, QBD.

Irish warrant. *See* **Magistrates** (Indorsement of Irish warrant).

Jurisdiction—

Territory—

Alleged crime committed in Norwegian ship—No evidence as to position of ship—Whether ship in the 'territory' of Norway within the meaning of the extradition treaty of 1873—Extradition Act 1870, s 25. **R v Governor of HM Prison, Brixton, ex parte Minervini** [1958] 3 318, QBD.

Restrictions on surrender—

Arrangement that not to be detained or tried for another offence on return—

Treaty obligations of foreign government not so to do—Whether court would presume that foreign government will honour obligations. **Royal Government of Greece v Brixton Prison Governor** [1969] 3 1337, HL.

Political offence—

Offence of political character only as between offender and state other than requesting state—Offence committed in United States—Offence committed in course of dispute between governing regime of Taiwan and movement dedicated to its overthrow—Offence committed in furtherance of purposes of movement—United States requesting extradition of offender—Whether offence 'one of a political character'—Extradition Act 1870, s 3(1). **Tzu-Tsai Cheng v Governor of Pentonville Prison** [1973] 2 204, HL.

Political—Nature of alleged offences not itself political—Issue involved one on which political struggle existed—Religious differences involved—If offence was to be of political character on such ground, it must have been committed as part of the political struggle—Extradition Act 1870, s 3(1). **Schtraks v Government of Israel** [1962] 3 529, HL.

Proof requisition for surrender made with view to punish for offence of political character—Prisoners accused of extradition crimes—Evidence on behalf of prisoners that offences were of political character—Duty of magistrates—Extradition Act 1870, s 3(1), s 9. **Re Kolczynski** [1955] 1 31, QBD.

Surrender—

Persons accused or convicted of extradition crime—

Conviction not including conviction which under foreign law conviction for contumacy—Conviction for contumacy—Meaning—Extradition Act 1870, s 26. **Athanassiadis v Government of Greece** [1969] 3 293, HL.

Conviction not including conviction which under foreign law conviction for contumacy—Conviction of obtaining by false pretences—Absence of accused at trial—Whether for contumacy—Extradition Act 1870, s 26. **R v Brixton Prison Governor, ex parte Kotronis** [1969] 3 304, QBD.

Conviction not including conviction which under foreign law conviction for contumacy—Fugitive convicted and sentenced in his absence by French court for crime in France—Notice by fugitive for re-trial—No appearance by fugitive—Conviction and sentence confirmed—No appeal—Meaning of 'conviction for contumacy'—Effect of French judgement par défaut and judgement iteratif défaut—Fugitive committed to prison in England to await extradition on ground of being an accused person—Whether committal bad as fugitive was a convicted person in French law—Extradition Act 1870, ss 10, 26. **Re Caborn-Waterfield** [1960] 2 178, QBD.

Restrictions on surrender. *See* **Restrictions on surrender, ante**.

Surrender of prisoner to native state—

India. *See* **India** (Extradition).

EXTRADITION (cont)

Treaty—

Application—

Alleged crime committed in part of Jerusalem occupied by Israel—De facto but not de jure authority of State of Israel over that part of Jerusalem recognised by United Kingdom government—Whether extradition treaty of 1960 applied to that part of Jerusalem—Israel (Extradition) Order 1960 (S 1 1960 No 1660). **Schtraks v Government of Israel** [1962] 3 529, HL.

Breach—

Whether presumption that no breach by friendly State intended—Whether question for court or Home Secretary. **R v Brixton Prison Governor, ex parte Atkinson** [1969] 2 1146, QBD

EXTRINSIC EVIDENCE

Nature of transaction. *See Evidence* (Extrinsic evidence of nature of transaction).

EYES

Injury to—

Damages. *See Damages* (Personal injury—Eye).

protection—

Building operations. *See Building* (Building operations—Protection of eyes of persons employed in specified processes).

Factory—

Generally. *See Factory* (Protection of eyes).

Statutory duty and common law duty. *See Negligence* (Duty to take care—Statutory duty—Relation of statutory duty to common law duty—Factory—Protection of eyes).

FACT

Mistake of fact. *See Mistake* (Mistake of fact).

FACTORY

Accommodation for clothing—

Duty to provide suitable accommodation—

Consideration of risk of theft—Factories Act 1937, s 43(1). **McCarthy v Daily Mirror Newspapers Ltd** [1949] 1 801, CA.

Basement bakehouse—

Certificate of suitability—

Notice revoking certificate of suitability—Appeal against notice—Premises rendered suitable before decision by court of summary jurisdiction—'Is suitable'—Material time for determining suitability—Factories Act 1937, ss 53(3), 54(2)(3). **Fulham Borough Council v A B Hemmings Ltd** [1940] 3 625, KBD.

Building regulations. *See Building* (Building regulations).

Circular saw—

Duty to adjust guard—

Delegation of duty to operator—Right to delegate duty—Woodworking Machinery Regulations 1922 (S R & O 1922 No 1196), regs 9(b), 10(c), 21, 23. **Smith v A Baveystock & Co Ltd** [1945] 1 531, CA.

Guard incorrectly adjusted—Operator injured—Breach of safety regulations—Defence of contributory negligence—Onus of proof—No express delegation to operator of employers' statutory duty—Factories Act 1937, ss 14(2), 60, 159(1)—Woodworking Machinery Regulations 1922 (S R & O 1922 No 1196), regs 10(b)(c), 21, 23. **Vyner v Waldenberg Bros Ltd** [1945] 2 547, CA.

Guard to extend from top of riving knife to point as low as practicable at cutting edge of saw—Guard provided with n in clearance—Whether 'as low as practicable'—Woodworking Machinery Regulations 1922 (S R & O 1922 No 1196), reg 10(c). **Lee v Nursery Furnishings Ltd** [1945] 1 387, CA.

Duty to fence—

Exception when, owing to the nature of the work being done, the use of the guards is rendered impracticable—Size of timber being cut such as to render use of guard impracticable on saw actually used—Other machines with guards obtainable—Employee injured—Liability of employers—Woodworking Machinery Regulations 1922 (S R & O 1922 No 1196), regs 10, 21. **Harriman v Martin** [1962] 1 225, CA.

Nature of duty—Guard complying with regulations—Whether duty to guard against dangerous material ejected from machine—Factories Act 1937, s 14, s 60, s 159—Woodworking Machinery Regulations 1922 (S R & O 1922 No 1196), reg 10. **Nicholls v F Austin (Leyton) Ltd** [1946] 2 92, HL.

Nature of duty—Guard impracticable in particular operation—Operator injured—Whether absolute liability under Factories Act modified by regulations—Woodworking Machinery Regulations 1922 (S R & O 1922 No 1196), regs 10, 21—Factories Act 1937, ss 14, 60. **Whitten v Army & Navy Stores Ltd** [1943] 2 244, KBD.

Nature of duty—Guard provided—Operator injured—Absolute liability under Factories Act 1937, s 14, modified by Woodworking Machinery Regulations 1922, reg 10—Factory and Workshop Act 1901, ss 10(c), 79, 82(1), 83—Factories Act 1937, ss 14(1), 60, 159—Woodworking Machinery Regulations 1922 (S R & O 1922 No 1196), reg 10. **Miller v William Boothman & Sons Ltd** [1944] 1 333, CA.

Nature of duty—Saw fenced in compliance with Woodworking Machinery Regulations 1922, reg 10(c)—Operator injured in course of ancillary operation—Liability to fence under Factories Act 1937, s 14(1), modified by regulations—No breach of statutory duty—Woodworking Machinery Regulations 1922 (S R & O 1922 No 1196), reg 10(c)—Factories Act 1937, s 14(1). **Automatic Woodturning Co Ltd v Stringer** [1957] 1 90, HL.

FACTORY (cont)

Circular saw (cont)—

Duty to fence (cont)—

Persons to whom duty owed—Guard could not be brought down sufficiently far to afford adequate protection—Unskilled operator acting otherwise than in course of employment—Whether duty owed by employers—Contributory negligence—Damages—Woodworking Machinery Regulations 1922 (S R & O 1922 No 1196), reg 10(c). **Smith v Supreme Wood Pulp Co Ltd** [1968] 3 753, QBD.

Riving knife—Arc of 'radius not exceeding radius of largest saw used on bench'—Meaning of 'largest saw'—Woodworking Machinery Regulations 1922 (S R & O 1922 No 1196), reg 10(c)—Factories Act 1937, s 14(1). **Automatic Woodturning Co Ltd v Stringer** [1952] 2 851, CA.

Saw not properly fenced—Responsibility of operator—Liability of factory occupier—Burden of proof—Factories Act 1937, s 130(2)—Woodworking Machinery Special Regulations 1922-1945, regs 10(b)(ii)(c). **Carr v Decca Gramophone Co Ltd** [1947] 2 20, KBD.

Duty to maintain guard in position—

Delegation of duty by employer to workman—Negligence of workman—Injury to workman—Liability of employers—Woodworking Machinery Regulations 1922 (S R & O 1922 No 1196), reg 21—Law Reform (Contributory Negligence) Act 1945, s 1(1). **Cakebread v Hopping Bros (Whetstone) Ltd** [1947] 1 389, CA.

Guard—

Duty to adjust guard. *See* Circular saw—Duty to adjust guard, *ante*.

Duty to maintain guard in position. *See* Circular saw—Duty to maintain guard in position, *ante*.

Cleaning machinery—

Women and young persons—

Exposure to risk of injury from moving part—'Moving part'—Cylinder partially rotated for cleaning—Factories Act 1937, s 20. **Kelly v John Dale Ltd** [1964] 2 497, QBD.

Exposure to risk of injury from moving part—Moving part—Roller partially rotated for cleaning—Factories Act 1961, s 20. **Denyer (Suing by his father and next friend) v Charles Skipper & East Ltd** [1970] 2 382, CA.

Cranes—

Safety precautions—

Overhead travelling cranes. *See* Lifting machine—Overhead travelling crane, *post*.

Cutting concrete by means of a tool—

Obligation to provide suitable goggles or effective screens. *See* Protection of eyes—Obligation to provide suitable goggles or effective screens—Cutting of concrete by means of a tool, *post*.

Dangerous parts of machinery—

Breach of duty to fence—

Causation—Employee cleaning machine in motion—Machine unfenced—Employee injured—Contributory negligence—Apportionment of liability. **Williams v Sykes and Harrison Ltd** [1955] 3 225, CA.

Causation—Employee performing act in defiance of established practice—Machine unfenced—Employee injured—Contributory negligence—Apportionment of liability. **Hodkinson v Henry Wallwork & Co Ltd** [1955] 3 236, CA.

Causation—Gantry unfenced—Employee killed on gantry—Evidence not showing precise cause of death—Inference of negligence of workman. **Gibby v East Grinstead Gas and Water Co** [1944] 1 358, KBD.

Causation—Onus of proof—Factory and Workshop Act 1901, ss 10, 24(6), 149(4)—Electricity Regulations 1908 (S R & O 1908 No 1312), reg 12. **Stimson v Standard Telephones & Cables Ltd** [1939] 4 225, CA.

Causation—Workman deliberately inserting hand into moving machine in order to clean groove—Operative cause of accident—Factories Act 1937, s 14(1). **Rushton v Turner Bros Asbestos Co Ltd** [1959] 3 517, Assizes.

Contributory negligence—Failure of boy to use push-stick in accordance with statutory regulations—Boy ignorant of regulations—Factory and Workshop Act 1901, ss 10, 79—Woodworking Machinery Regulations 1922 (S R & O 1922 No 1196), regs 11, 23(ii). **Lewis v Denye** [1940] 3 299, HL.

Contributory negligence—Plaintiff cutting metal on a machine that he was not authorised to use for that purpose—Guard not properly adjusted and, even if correctly adjusted, leaving gap as metal passed through—Plaintiff injured—Whether faults by plaintiff and his employers coterminous and coextensive—Factories Act 1961, s 14(1), s 16. **Leach v Standard Telephones & Cables Ltd** [1966] 2 523, QBD.

Defence—Interference with fence by unknown employee—Thrust stop in transfer machine forming part of moving platform and fixed structure in juxtaposition—Machine securely fenced except for control panel which controlled by key which opened gate admitting persons to machine—Unknown employee forced lock in gate—Another employee injured by machine—Whether occupiers of factory liable—Factories Act 1961, s 14(1), s 143(1), s 155(1)(2). **Wright v Ford Motor Co Ltd** [1966] 2 518, QBD.

Safety guard not kept in position by workman—Accident—Section under which summons to be issued—Factories Act 1937, ss 14(1), 16. **Smith v Morris Motors Ltd** [1949] 2 715, KBD.

Duty to fence—

Abrasive carborundum wheel—Disintegration of wheel—Guard shifted by flying parts of wheel and injuring workman—Factories Act 1937, ss 14(1), 16. **Rutherford v R E Glanville & Sons (Bovey Tracey) Ltd** [1958] 1 532, CA.

Breach of duty. *See* Dangerous parts of machinery—Breach of duty to fence, *ante*.

Cutters of horizontal milling machines—Special regulations requiring cutters to be fenced—Guard to be kept in position while cutter in motion—Whether contravention of regulations if guard not in position when cutter not in motion—Horizontal Milling Machines Regulations 1928 (S R & O 1928 No 548), reg 3 (i), reg 6. **Morris Motors Ltd v Hopgood** [1956] 3 467, QBD.

FACTORY (cont)

Dangerous parts of machinery (cont)—

Duty to fence (cont)—

Cutters of horizontal milling machines—Special regulations requiring cutters to be fenced—Relationship between special regulations and statute—Injury to workman adjusting 'stop' at side of platform—Factories Act 1937, s 14(1)—Horizontal Milling Machines Regulations 1928 (S R & O 1928 No 548), reg 3. **Benn v Kamm & Co Ltd** [1952] 1 833, CA.

Cutters of horizontal milling machines—Special regulations requiring cutters to be fenced—Relationship between special regulations and statute—Milling cutter used for automatic profiling exempt from requirement to fence under regulations—Employee injured by cutter—Liability of employers—Factories Act 1937, s 14(1)—Horizontal Milling Machines Regulations 1928 and 1934 (S R & O 1928 No 548, as amended by S R & O 1934 No 207), exemptions, para (vii), proviso, reg 3(i). **Quinn v Horsfall & Bickham Ltd** [1956] 2 467, CA.

Dangerous part—Bar-straightening machine—Danger arising from juxtaposition of moving piece of material and part of machine itself—Foreseeability—Factories Act 1961, s 14(1). **Midland and Low Moor Iron and Steel Co Ltd v Cross** [1964] 3 752, HL.

Dangerous part—Criterion by which danger determined—Factories Act 1937, s 151. **Kinder v Mayor, Aldermen and Councillors of the Metropolitan Borough of Camberwell** [1944] 2 315, KBD.

Dangerous part—Criterion by which danger determined—Factory and Workshop Act 1901, s 10. **Walker v Bletchley Flettons Ltd** [1937] 1 170, KBD.

Dangerous part—Evidence—Machine capable of causing injury—Injury suffered by operator—No presumption of danger—Factories Act 1937, s 14(1). **Carr v Mercantile Produce Co Ltd** [1949] 2 531, KBD.

Exception—Examination and adjustment—Parts 'necessarily exposed for examination... or adjustment'—Tests after toolsetting operation—Need for dangerous parts to be exposed—Factories Act 1937, s 16. **Nash v High Duty Alloys Ltd** [1947] 1 363, CA.

Exception—Examination or adjustment—Appointment of machine attendants to carry out operations—Toolsetters—Registration and certificates—Whether toolsetters 'machine attendants'—Operations at Unfenced Machinery Regulations 1938 (S R & O 1938 No 641), reg 1(ii), reg 2. **Nash v High Duty Alloys Ltd** [1947] 1 363, CA.

Extent of duty—Component on machine forming a fence preventing operator's body touching machinery—Hand tool coming into contact with machinery—Whether breach of duty to fence in that fencing not secure against hand tool—Factories Act 1937, s 14(1). **Sparrow v Fairey Aviation Co Ltd** [1962] 3 706, HL.

Extent of duty—Foreseeability of injury—Accident occurring in unforeseeable way—Factories Act 1961, s 14(1). **Millard v Serck Tubes Ltd** [1969] 1 598, CA.

Extent of duty—Injection moulding machine—Ram covered by metal box with Perspex lids—Adjustable nuts inside box—Lid removed by operator to test whether adjustment necessary—Injury to operator—Whether statutory duty discharged if means of achieving security provided—Whether contributory negligence—Whether wilful interference with or misuse of appliance by operator—Factories Act 1937, s 14(1), s 16, s 119(1)(2). **Charles v S Smith and Sons (England) Ltd** [1954] 1 499, QBD.

Extent of duty—Preventing operator coming in contact with dangerous machinery—Hand drill—Breaking of revolving bit—Fragments flying out and causing injury—Danger not foreseeable in ordinary course—Whether machinery 'dangerous'—Whether duty to fence against fragments of broken machinery flying out—Factories Act 1937, s 14(1). **Close v Steel Co of Wales Ltd** [1961] 2 953, HL.

Extent of duty—Preventing operator coming into contact with dangerous machinery—Hand tool used by operator coming into contact with machinery—Whether employers under statutory duty to fence against hand tool coming into contact with machinery—Factories Act 1937, s 14(1). **Sparrow v Fairey Aviation Co Ltd** [1962] 3 706, HL.

Extent of duty—Preventing operator coming into contact with dangerous machinery—Wire rope—Manufacture of wire rope—Guard of machine insufficient—Injury to operator from particle of broken wire flying out of machinery—Whether action for breach of statutory duty sustainable—Factories Act 1937, s 14(1). **Kilgollan v William Cooke & Co Ltd** [1956] 2 294, CA.

Extent of duty—Workpiece coming into contact with unfenced dangerous part of machinery—Whether breach of statutory duty—Factories Act 1937, s 14(1). **Johnson v J Stone & Co (Charlton) Ltd** [1961] 1 869, QBD.

Fencing rendering machine unusable—Grinding machine—Employers liability for not fencing—Factories Act 1937, s 14(1). **Pugh v Manchester Dry Docks Co Ltd** [1954] 1 600, Assizes.

Fencing to be kept in position while machinery in motion or use—Lathe—Guard removed for repair—Intermittent movement—Machine switched on, and immediately off, to alter position of parts for purposes of adjustment—Whether machinery 'in motion'—Position of parts could have been altered manually—Contributory negligence—Factories Act 1961, s 16. **Mitchell v W S Westin Ltd** [1965] 1 657, CA.

Fencing to be kept in position while machinery in motion or use—Press—Cover removed to adjust new mould on table—One electric switch turned off—Major electric switch left on—Cable of electric drill used on work accidentally turned on one switch with result that table was operated—Whether machine 'in motion or in use'—Factories Act 1961, s 16. **Horne v Lec Refrigeration Ltd** [1965] 2 898, Assizes.

Fencing to be kept in position while machinery in motion or use—Printing press—Guard removed for cleaning—Rollers slowly moved—Whether machinery 'in motion or in use'—Factories Act 1937, s 14(1), s 16, s 20. **Knight v Leamington Spa Courier Ltd** [1961] 2 666, CA.

Fencing to be kept in position while machinery in motion or use—Printing press—Guard removed for feeding paper into machine—Roller rotatable only by motor power—Operator injured—Whether machinery 'in motion'—Factories Act 1961, s 14(1), s 16. **Stanbrook v Waterlow & Sons Ltd** [1964] 2 506, CA.

FACTORY (cont)

Dangerous parts of machinery (cont)—

Duty to fence (cont)—

Fencing to be kept in position while machinery in motion or use—Printing press—Partial rotation of cylinder for cleaning—Whether machine 'in use'—Factories Act 1937, s 16. **Kelly v John Dale Ltd** [1964] 2 497, QBD.

Fencing to be kept in position while machinery in motion or use—Transmission machinery—Machinery dismantled, guard removed and power cut off—Movement by hand—Whether 'in motion'—Factories Act 1937, s 13(1), s 14(1), s 16. **Richard Thomas and Baldwins Ltd v Cummings** [1955] 1 285, HL.

Foreseeability of injury—Horizontal milling machine—Machine comprising traversing table carrying block in nature of vice—Bolts to be milled affixed to block—Whether block, when moving and carrying bolts, dangerous part of machinery—Factories Act 1937, s 14(1). **Eaves v Morris Motors Ltd** [1961] 3 233, CA.

Foreseeability of injury—Inference from primary facts—Machine capable of causing injury—Warnings by employers to workmen to be careful—Fencing previously put on machine to emphasise warnings removed—Injury suffered by operator—Whether reasonably foreseeable—Factories Act 1961, s 14(1). **Woodley v Meason Freer & Co Ltd** [1963] 3 636, QBD.

Foreseeability of injury—No danger to operator—Appreciable, but not serious, risk to cleaners—Whether machinery dangerous—Factories Act 1937, s 14(1). **Dunn v Birds Eye Foods Ltd** [1959] 2 403, QBD.

Foreseeability of injury—Rolling machine in bakery—Guard leaving space for operator's hand to go underneath it—Operator putting hand through in breach of instructions—Factories Act 1937, s 14(1). **Smith v Chesterfield & District Co-operative Society Ltd** [1953] 1 447, CA.

Foreseeability of injury—Unfenced nip between conveyor belt and roller—Employee cleaning machine in motion—Employee injured—Contributory negligence—Causation—Apportionment of liability—Factories Act 1937, s 14(1)—Law Reform (Contributory Negligence) Act 1945, s 1(1). **Williams v Sykes and Harrison Ltd** [1955] 3 225, CA.

Foreseeability of injury—Unfenced pinion-wheels—Injury to workman—Factory and Workshop Act 1901, s 10(1)(c). **Chasteney v Michael Nairn & Co Ltd** [1937] 1 376, KBD.

Machinery—Employee injured by dangerous and unfenced part of machinery manufactured in factory—Whether 'machinery' including machinery which product of factory—Factories Act 1937, s 14(1), s 16, s 20. **Parvin v Morton Machine Co Ltd** [1952] 1 670, HL.

Machinery—Mobile crane—Failure to fence—Gap between rotating body and wheel—Injury to workman trapped in gap—Crane part of factory equipment containing machinery—Mobility of crane did not exclude it from Factories Act 1961, s 14(1). **British Railways Board v Liptrot** [1967] 2 1072, HL.

Machinery—Overhead travelling cable-way used for transporting materials from one part of factory to another—Large buckets suspended from cables and intermittently in motion—Bottom of buckets passing four feet above flat roof of factory building—Access to part of factory obtained from flat roof—Injury to workman standing on roof—Whether cable-way was 'machinery'—Factories Act 1937, s 14(1). **Quintas v National Smelting Co Ltd** [1961] 1 630, CA.

Machinery—Truck for conveying factory product—Whether 'machinery' requiring to be fenced—Factories Act 1937, s 14(1). **Cherry v International Alloys Ltd** [1960] 3 264, CA.

Method of fencing machine best method known at time—Cutting machine—Machine accidentally set in operation—Failure to use clearing tool—Operator injured—Liability of employers—Factories Act 1937, ss 14(1)(2), 133. **Dennistoun v Charles E Greenhill Ltd** [1944] 2 434, KBD.

Mill gearing—Nature of duty—Absolute duty to fence—Factory and Workshop Act 1901, s 10(1)(c). **Findlay v Newman, Hender & Co Ltd** [1937] 4 58, KBD.

Nature of duty—Absolute duty of occupier to fence securely—Factories Act 1937, ss 14, 119(2), 130(2), 133. **Wraith v Flexile Metal Co Ltd** [1942] 2 549, KBD.

Nature of duty—Absolute duty of occupier to fence securely—Gear-wheels of reeling-machine—Factory and Workshop Act 1901, s 10(1)(c). **Sutherland v Executors of James Mills Ltd** [1938] 1 283, KBD.

Nature of duty—Plaintiff injured by guillotine machine—Findings by jury that plaintiff not negligent and that machine securely fenced—Whether findings mutually exclusive—Factory and Workshop Act 1901, s 10(1)(c). **Vowles v Armstrong Siddeley Motors Ltd** [1938] 4 796, CA.

Part of machinery not dangerous in itself—Component to be bored affixed to machine—Danger arising from machinery in use with component affixed—Vertical boring machine—Whether duty to fence component affixed to machine—Factories Act 1937, s 14(1). **Hoare v M & W Grazebrook Ltd** [1957] 1 470, Assizes.

Part of machinery not dangerous in itself—Danger caused by conjunction of part of machine with part of materials used on it—Factories Act 1937, s 14(1). **Lewis v High Duty Alloys Ltd** [1957] 1 740, Assizes.

Part of machinery not dangerous in itself—Danger caused by juxtaposition of workpiece—Factories Act 1961, s 14(1). **Johnson v F E Callow (Engineers) Ltd** [1970] 3 639, HL.

Part of machinery not dangerous in itself—Gap between one machine and end of another machine—Moving part of machinery not foreseeable cause of danger—Whether duty to fence where any danger caused by proximity of moving part to stationary extraneous object—Factories Act 1937, s 14. **Pearce v Stanley-Bridges Ltd** [1965] 2 594, CA.

Part of machinery not dangerous in itself—Stationary part—Moving material—Felt milling machine—Whether stationary part and moving material together amounted to dangerous part—Factories Act 1961, s 14(1). **Hindle v Joseph Porritt & Sons Ltd** [1970] 1 1142, Assizes.

FACTORY (cont)

Dangerous parts of machinery (cont)—

Duty to fence (cont)—

Parts of machinery—Wire drawn through hole by revolving drum—Whether material or part of machinery—Factories Act 1937, s 14(1). **Bullock v G John Power (Agencies) Ltd** [1956] 1 498, CA.

Parts of transmission machinery—Duty to fence every part unless as safe as it would be if securely fenced—Every part—Workman injured by flying part of broken machinery—Liability of employers—Factories Act 1937, ss 13(1), 14(1). **Carroll v Andrew Barclay & Sons Ltd** [1948] 2 386, HL.

Parts of transmission machinery—Duty to fence every part unless as safe as it would be if securely fenced—'Securely fenced'—Test—Fencing giving security from reasonably expected dangers—Factories Act 1937, s 13(1). **Burns v Joseph Terry & Sons Ltd** [1950] 2 987, CA.

Parts of transmission machinery—Duty to fence every part unless as safe as it would be if securely fenced—Unfenced transmission machinery nine feet above ground—Contributory negligence—Employee performing act in defiance of established practice—Apportionment of liability—Factories Act 1937, s 13(1). **Hodkinson v Henry Wallwork & Co Ltd** [1955] 3 236, CA.

Parts of transmission machinery—Lift operated by ropes—Whether 'transmission machinery'—Factories Act 1937, s 13. **Deane v H F Edwards & Co Ltd** [1941] 3 331, CA.

Protection of persons employed or working on premises—Accident occurring while plaintiff was employed—No evidence showing precisely how accident happened or that plaintiff was doing his work at time—Injury caused by unfenced dangerous machinery—Plaintiff would not have been injured had machinery been fenced as required by statute—Whether necessary for employee to show injury occurred in course of his employment—Factories Act 1961, s 14(1). **Allen v Aeroplane and Motor Aluminium Castings Ltd** [1965] 3 377, CA.

Protection of persons employed or working on premises—Employee in place where he knew that he was not authorised to be—Act of folly outside scope of employment—Employee's clothing caught in dangerous unfenced revolving shaft and employee seriously injured—Whether employee entitled to protection of enactment imposing duty to fence, although employee not working at the time—Apportionment of responsibility for accident—Factories Act 1937, s 14(1). **Uddin v Associated Portland Cement Manufacturers Ltd** [1965] 2 213, CA.

Protection of persons employed or working on premises—Licensee—Injury to operator while voluntarily helping another workman on private job after clocking-off—'Person employed'—'Working'—Factories Act 1937, s 14(1), s 60(1), as amended by Factories Act 1948, s 12(1), Sch 1—Woodworking Machinery Regulations 1922, (S R & O 1922 No 1196), reg 10(c). **Napierski v Curtis (Contractors) Ltd** [1959] 2 426, Assizes.

Test to be applied in determining whether duty discharged—Grindstone fenced by 'hood'—Part of grindstone exposed—Injury to employee—Whether 'securely fenced'—Factories Act 1937, s 14(1). **John Summers & Sons Ltd v Frost** [1955] 1 870, HL.

Time when duty arises—Machinery of factory not completely installed, but one machine completed—Sack hoist installed but not in commercial use—Deceased running machinery of sack hoist—Opening not securely fenced—Accident causing his death by the operation of the hoist—Whether the hoist was 'in motion' when not engaged on commercial operation—Whether a machine within Factories Act (Northern Ireland) 1938, s 15(1), s 17. **Irwin v White, Tomkins and Courage Ltd** [1964] 1 545, HL.

Unfenced travelling crane—Injury to sub-contractor's workman—Liability in damages of factory owner—Breach of statutory duty—Factory and Workshop Act 1901, s 10(1)(c). **Fowler v Yorkshire Electric Power Co Ltd** [1939] 1 407, KBD.

Dangerous things—

Liability of occupier—

Negligence. *See* **Negligence** (Dangerous things—Factory occupier).

Definition—

Premises excluded from definition *See* Premises excluded from definition, *post*.

Premises in which persons employed in manual labour in any process for or incidental to purposes specified—

Adapting for sale of article—Compressing waste paper—Whether process of adapting paper for sale—Factories Act 1937, s 151. **Kinder v Camberwell Borough Council** [1944] 2 315, KBD.

Altering or cleaning of an article—Pumping station occupied by water board—Water from springs filtered and chlorinated in filter house then put under pressure in pump house—Whether water an 'article'—Whether pump house a factory—Factories Act 1937, s 151(1) (b),(iii),(6). **Longhurst v Guildford Godalming and District Water Board** [1961] 3 545, HL.

Breaking up or demolition of an article—Kitchen in public institution—Electrical mincing-machine—Employee injured operating machine—Whether kitchen a factory within definition—Factories Act 1937, s 14(1), s 151(1),(9). **Wood v London County Council** [1941] 2 230, CA.

Building not ready for use as factory—Preparation for performance of work when building used as factory—Whether building a 'factory'. **Barrington v Kent Rivers Catchment Board** [1947] 2 782, KBD.

Employed—Prisoner working in prison workshop on manufacture of mats—Whether prison workshop a factory—Factories Act 1937, s 151. **Pullen v Prison Comrs** [1957] 3 470, QBD.

Employed in manual labour—In any process—Chemist's shop—Staff comprising manager, dispenser, assistants and porter—Porter alone employed in manual labour—Whether premises a 'factory'—Factories Act 1937, s 151(1). **Joyce v Boots Cash Chemists (Southern) Ltd** [1951] 1 682, CA.

FACTORY (cont)**Definition (cont)—**

Premises in which persons employed in manual labour in any process for or incidental to purposes specified (cont)—

Making of an article—Adapting for sale of article—Gas works—Reconstruction of gas holder on site separate from gas works—Site in exclusive possession of contractors—Whether coal gas 'article'—Factories Act 1937, s 151(1)(e)(c)(xiii) (6). *Cox v S Cutler & Sons Ltd and Hampton Court Gas Co* [1948] 2 665, CA.

Making of an article—Photographic business carried on by way of trade involving supply of prints together with right to produce prints to various media of public dissemination—Use of manual labour only in dark room and glazing room used for producing prints—Whether premises a factory—Factories Act 1937, s 151(1). *Paul Popper Ltd v Grimsey* [1962] 1 864, QBD.

Manual labour—Incidental use of back-room—Television and radio sets sold and hired out in shop—Workshop or workroom at back of shop where repairs and maintenance of sets carried out by radio and television engineer—Whether engineer engaged in manual labour—Whether premises a factory within the meaning of the Factories Act 1961, s 175(1). *Stone (J & F) Lighting & Radio Ltd v Haygarth* [1966] 3 53, HL.

Repair of vehicles—Exception—Premises used for housing of vehicles where only cleaning, washing, running repairs or minor adjustments carried out—Whether omnibus depot within exception—Factories Act 1937, s 151(1)(vi). *Jones v Crosville Motor Services Ltd* [1956] 3 417, Assizes.

Repair of vehicles—Exception—Premises used for housing vehicles where only cleaning, washing, running repairs or minor adjustments carried out—Running repairs—Minor adjustments—Factories Act 1937, s 151(1). *Griffin v London Transport Executive* [1950] 1 716, KBD.

Work carried on by way of trade or for the purposes of gain—Testing place—Premises used for testing concrete—Town planning scheme—Whether premises 'factory' within definition—Factories Act 1937, s 151(1). *Hendon Corp'n v Stanger* [1948] 1 377, CA.

Premises included within definition—

Premises in occupation of public authority—Work not carried on by way of trade or for purposes of gain—Technical institute carried on by local authority—Whether a 'factory'—Factories Act 1937, s 151(9). *Weston v London County Council* [1941] 1 555, KBD.

Premises within close or curtilage or precincts of which persons employed in manual labour—

Close or curtilage or precincts—Areas at quay bounded on one side by quay wall, on other side by warehouses and at each end by access road—No exclusive use of areas—Use for storage and assembly of steel components of floating dock—Whether a 'factory'—Factories Act 1937, s 151(1). *Barry v Cleveland Bridge and Engineering Co Ltd* [1963] 1 192, Assizes.

Docks regulations. *See* Dock.

Duty of care—

Relationship between statutory duty and common law duty of care. *See* Negligence (Duty to take care—Statutory duty—Relation of statutory duty to common law duty).

Electrical station—

Premises in which electrical energy generated or transformed for purposes of supply—

Kiosk housing transformer and switches—Kiosk divided into three cubicles—Transformer and switches in separate cubicles—Whether whole of kiosk electrical station—Factory and Workshop Act 1901, Sch VI, para (20). *Paine v Colne Valley Electricity Supply Co Ltd, and British Insulated Cables Ltd* [1938] 4 803, KBD.

Electricity regulations—**Electrical apparatus—**

Apparatus to be so worked as to prevent danger—Danger—Danger to life from burn or other injury to persons employed—Servant of independent contractor electrocuted—No evidence of danger to servants of occupier—Liability of occupier to penalty—Factories Act 1937, s 60(1) (as amended by Factories Act 1948, s 12(1), Sch I), s 133—Regulations for the Generation, etc., of Electrical Energy 1908, (S R & O 1908 No 1312), definitions, reg 1. *Massey-Harris-Ferguson (Manufacturing) Ltd v Piper* [1956] 2 722, QBD.

Apparatus to be so worked as to prevent danger—Danger—Danger to life from burn or other injury to persons employed—Fireman electrocuted while fighting fire—Persons employed—Regulations for Generation, Transformation, Distribution and Use of Electrical Energy in Premises under the Factory and Workshop Acts 1901 to 1907 (S R & O 1908 No 1312), reg 9—Factories Act 1937, s 60(1), as amended by Factories Act 1948, s 12(1). *Hartley v Mayoh & Co* [1954] 1 375, CA.

Such special precautions to be taken as necessary to prevent danger—High voltage testing and research apparatus—Failure of automatic safety devices—Contributory negligence—Failure to use earthing rod in compliance with works regulations—Regulations for the Generation, Transformation, Distribution and Use of Electrical Energy 1908 (S R & O 1908 No 1312), reg 4. *Proctor v Johnson and Phillips Ltd* [1943] 1 565, CA.

Electrical joints—

Proper construction as regards mechanical strength—Cable supplying electricity to magnet of crane—Duty to make safe for electrician pulling on cable—Regulations for the Generation, Transformation, Distribution and Use of Electrical Energy in Premises under the Factory and Workshop Acts 1901 and 1907 (S R & O 1908 No 1312), reg 6. *Gatehouse v John Summers & Sons Ltd* [1953] 2 117, CA.

High pressure switchboards—

Duty to screen—Nature of duty—Absolute duty—Regulations for the Generation, Transformation, Distribution and Use of Electrical Energy in Premises under the Factory and Workshops Acts 1901 and 1907 (S R & O 1908 No 1312), reg 18(d), as substituted by Electricity (Factories Act) Special Regulations 1944, (S R & O 1944 No 739). *Murfin v United Steel Companies Ltd (Power Gas Corp'n Ltd third Party)* [1957] 1 23, CA.

FACTORY (cont)

Electricity regulations (cont)—

Insulating stands or screens—

Duty to provide even in place set apart for switchboards having bare conductors—Regulations for the Generation, Transformation, Distribution and Use of Electrical Energy in Premises under the Factory and Workshops Acts 1901 and 1907 (S R & O 1908 No 1312), reg 15, reg 24. **Murfin v United Steel Companies Ltd (Power Gas Corp Ltd third party)** [1957] 1 23, CA.

Lighting of parts of premises in which apparatus placed—

Parts to be adequately lighted to prevent danger—Definition of danger—Construction—Alleged inadequate lighting to prevent danger—Regulations for the Generation, etc, of Electrical Energy 1908 (S R & O 1908 No 1312), reg 26. **Lane v London Electricity Board** [1955] 1 324, QBD.

Person responsible for complying with regulations—

Building operations—Club premises with restaurant—Restaurant managed by licensee—Joint occupation by club owner and licensee—Re-decoration of restaurant—Electrical work done by electrician of licensee—Plastering work carried out by independent contractor—Workman injured through exposed wires becoming live—Liability of occupiers—Occupiers' Liability Act 1957, s 1—Electricity (Factories Act) Special Regulations 1908 and 1944 (S R & O 1908 No 1312, as amended by S R & O 1944 No 739), reg 1—Factories Act 1961, s 127(4). **Fisher v C H T Ltd** [1966] 1 88, CA.

Employee—

Duty to use means or appliance provided. *See* Statutory duty—Duty of persons employed—Duty to use means or appliance provided, *post*.

Explosive or inflammable substance—

Plant, tank or vessel containing substance—

Prohibition on subjecting plant, etc, to operation involving application of heat—Meaning of 'plant'—Part of apparatus in factory used in carrying on industrial process on premises—Employers metal merchants—Employers acquiring old safe—Safe locked and contents unknown—Employee directed to cut safe open with oxyacetylene cutter—Safe containing gelignite—Safe exploding and injuring employee—Whether safe 'plant'—Whether employers in breach of statutory duty—Factories Act 1961, s 31(4). **Haigh v Charles W Ireland Ltd** [1973] 3 1137, HL.

Fettling of metal castings—

Obligation to provide suitable goggles or effective screens. *See* Protection of eyes—Obligation to provide suitable goggles or effective screens—Fettling of metal castings, *post*.

Floor—

Maintenance—

Duty to ensure floor properly maintained—Extent of duty—Workman slipping on slippery substance on floor of factory—Two persons employed to clean floor—Proper instructions given to work-people—'So far as is reasonably practicable'—Factories Act 1937, s 25(1), as amended, s 26(1), as amended. **Braham v J Lyons & Co Ltd** [1962] 3 281, CA.

Duty to ensure floor properly maintained—Floor slippery from flood water and oil—Injury to employee—Liability of employer—Factories Act 1937, s 25(1), s 152(1). **Latimer v A E C Ltd** [1953] 2 449, HL.

Duty to ensure floor properly maintained—Steel plate placed in groove in floor—Plate tipping when employee walking on it—Employee injured—Finding by trial judge that floor not dangerous—Consideration jointly with duty to provide safe means of access—Liability of employers—Factories Act 1937, s 25(1), s 152(1). **Payne v Weldless Steel Tube Co Ltd** [1955] 3 612, CA.

Duty to ensure floor of sound construction and properly maintained—Test to be applied—Factories Act 1937, s 25(1). **Mayne v Johnstone & Cumbers Ltd** [1947] 2 159, KBD.

Obstruction—

Duty to keep floor free from obstruction—As far as reasonably practicable—Castings piled prior to removal—Plaintiff, in course of moving casting, trips over scrap which had fallen off one of the castings in the pile—Whether 'obstruction'—Whether reasonably practicable to remove—Factories Act 1961, s 28(1). **Jenkins v Allied Ironfounders Ltd** [1969] 3 1609, HL.

Duty to keep floor free from obstruction—Meaning of obstruction—Material customarily stored on floor at foot of storage racks—Whether 'obstruction'—Factories Act 1961, s 28(1). **Pengelly v Bell Punch Co Ltd** [1964] 2 945, CA.

Duty to keep floor free from obstruction—Meaning of obstruction—Passageway separating lathes for purpose of giving access to operatives and for making way whereby material to be treated could be brought to lathe—Trolley left partially in gangway but not for an unreasonably long time—Whether breach of duty at common law—Whether 'obstruction' within Factories Act 1961, s 28(1). **Marshall v Ericsson Telephones Ltd** [1964] 3 609, CA.

Duty to keep floor free from slippery substance—As far as reasonably practicable—Slippery substance not on floor but on top of two plates lying one on top of another on floor—Accident caused by plates—Whether 'reasonably practicable' to have kept floor free from obstruction—Factories Act 1961, s 28(1). **Dorman Long (Steel) Ltd v Bell** [1964] 1 617, HL.

Opening—

Duty to fence—Dry dock—Whether 'opening'—Factories Act 1937, s 25(3). **Bath v British Transport Commission** [1954] 2 542, CA.

Duty to fence—Hole in sand ground level at edge of steel-flagged gangway—Whether hole an 'opening'—Factories Act 1937, s 25(3). **Harrison v Metropolitan-Vickers Electrical Co Ltd, Same v Same** [1954] 1 404, CA.

Duty to fence—Planking covering part of one level of a gantry—Gaps in planks—Whether planking 'floor'—Factories Act 1937, s 25(3). **Tate v Swan Hunter & Wigham Richardson Ltd** [1958] 1 150, CA.

Duty to fence—Space for hoist at edge of floor—Whether space 'opening in floor'—Factories Act 1937, ss 25(3), 26(1). **Street v British Electricity Authority** [1952] 1 679, CA.

FACTORY (cont)

Gangways and pouring aisles—

Duty to provide sufficient and clearly defined pouring aisles—

Clearly defined—Iron and Steel Foundries Regulations 1953 (S I 1953 No 1464), reg 6(2)(a).

Hawkins v Ian Ross (Castings) Ltd [1970] 1 180, QBD.Duty to keep free from obstruction—Iron and Steel Foundries Regulations 1953 (S I 1953 No 1464), reg 6(2)(a). **Hawkins v Ian Ross (Castings) Ltd**, [1970] 1 180, QBD.

Sufficient—Iron and Steel Foundries Regulations 1953 (S I 1953 No 1464), reg 6(2)(a).

Hawkins v Ian Ross (Castings) Ltd [1970] 1 180, QBD.

Grinding machines—

Regulations—

Exemption of portable grinding machines—Swing frame grinder—Whether portable grinding machine within exemption certificate—Grinding of Metals (Miscellaneous Industries) Regulations 1925 (S R & O 1925 No 904), reg 1. **Nicholson v Atlas Steel Foundry and Engineering Co Ltd** [1957] 1 776, HL.

Grinding of metals—

Removal of dust. *See* Removal of dust—Grinding of metals, *post*.

Hoists or lifts—

Duty to ensure of good mechanical construction, sound material, etc—

Employee sustaining injury—Load falling from fork lift truck—Whether fork lift truck a 'hoist or lift'—Factories Act 1961, s 22(1). **Oldfield v Reed & Smith Ltd** [1972] 2 104, Assizes.Nature of duty—Injury to employee—Latent defect in lift—Absolute duty of occupiers—Factories Act 1937, s 22(1). **Whitehead v James Stott Ltd** [1949] 1 245, CA.

Duty to ensure properly maintained—

Properly maintained—Unexplained failure of mechanism—Employee killed—Liability of occupier—Factories Act 1937, ss 22(1), 152(1). **Galashiels Gas Co Ltd v O'Donnell (or Millar)** [1949] 1 319, HL.

Gates—

Duty to provide gates which, when shut, would prevent persons coming into contact with any moving part of lift—Injury to person putting hand through gates in order to close inner gate properly—Factories Act 1937, s 22(3). **Blakeley v C & H Clothing Co (a [73328502 firm])** [1958] 1 297, Assizes.

Horizontal milling machines—

Cutters—

Duty to fence. *See* Dangerous parts of machinery—Duty to fence—Cutters of horizontal milling machines, *ante*.

Industrial injury—

Injury on factory premises—

Disablement benefit. *See* Industrial injury (Disablement benefit—Accident arising in the course of employment—Tea-break—Worker injured on factory premises at a time when he was overstayng the tea-break).

Iron and steel foundries—

Gangways and pouring aisles. *See* Gangways and pouring aisles, *ante*.

Lifting excessive weights—

Person not to be employed to lift, carry or move excessive weight—

Employed to move—Meaning—Employee instructed to paint stillages—Necessary to turn stillages to paint underneath—Stillages too heavy for one person to turn safely—Employers knowing stillages had been turned single-handed on previous occasions—Employee not instructed to seek help in turning stillages—Help available if asked for—Whether employee 'employed to...move' stillages single-handed—Factories Act 1961, s 72(1). **Brown v Allied Ironfounders Ltd** [1974] 2 135, HL.

Lifting machine—

Overhead travelling crane—

Men working in or near wheel track of crane—Duty to take effective measures to prevent crane approaching within 20 ft of place where men liable to be struck by crane—Crane working overhead but running along ground—Injury to workman—Whether 'overhead travelling crane'—Factories Act 1937, s 24(7). **Carrington v John Summers & Sons Ltd** [1957] 1 457, Assizes.Men working in or near wheel track of crane—Duty to take effective measures to prevent crane approaching within 20 ft of place where men liable to be struck by crane—Absolute duty—Exhibition of notice insufficient—Factories Act 1937, s 24(7). **Lotinga v North Eastern Marine Engineering Co (1938) Ltd** [1941] 3 1, KBD.Men working on or near wheel track of crane—Duty to take effective measures to prevent crane approaching within 20 ft of place where men liable to be struck by crane—Absolute duty—Breach of duty—Workman standing where not liable to be struck by crane injured by tool dislodged by crane—Factories Act 1937, s 24(7). **Holmes v Hadfields Ltd** [1944] 1 235, CA.

Parts and working gear—

Duty to ensure of good construction—Travelling crane with magnet—Defective cable conveying current to magnet—Employee killed—Whether cable one of 'parts and working gear' of lifting machine—Factories Act 1937, s 24(1). **Gatehouse v John Summers & Sons Ltd** [1953] 2 117, CA.

Lifting tackle—

Use for purpose of raising or lowering persons, goods or material—

Prohibition of use unless of good construction, sound material, adequate strength and free from patent defect—Chain sling—Chains of unequal length—Sprung hook—Factories Act 1937, s 23(1)(a). **Dawson v Murex Ltd** [1942] 1 483, CA.Prohibition of use unless of good construction, sound material, adequate strength and free from defect—Chains used in abattoir for attaching animals to elevator—Chains strong and without fault but unsuitable for purpose for which required—Whether of good construction, adequate strength and properly maintained—Factories Act 1937, ss 23(1), 24(1), 152(1). **Gledhill v Liverpool Abattoir Utility Co Ltd** [1957] 3 117, CA.

FACTORY (cont)

Lifting tackle (cont)—

Use for purpose of raising or lowering persons, goods or material (cont)—

Prohibition of use unless of good construction, sound material, adequate strength and free from patent defect—Hook attached to overhead crane—Use to lift slightly edge of metal scab adhering to floor—Intention was to facilitate loosening of scab for removal—Hook not of adequate strength for the use to which it was being put—Flew off when strain taken by crane and injured workman who was standing too close—Strain involved was incalculable, so that adequacy of strength could not be computed—Whether operation 'raising material'—Contributory negligence—Factories Act 1961, s 26(1). **Ball v Richard Thomas & Baldwins Ltd** [1968] 1 389, CA. **Gledhill**

Prohibition of use unless of good construction, sound material, adequate strength and free from defect—Meaning of 'use'—Whether limited to use authorised by employer—Factories Act 1937, s 23(1)(a). **Barry v Cleveland Bridge and Engineering Co Ltd** [1963] 1 192, Assizes.

Prohibition of use unless of good construction, sound material, adequate strength and free from defect—Tackle of good construction, etc, supplied by employers, but used for wrong purpose by servant—Fellow-servant killed—Liability of employers—Factories Act 1937, s 23(1)(a). **Beadsley v United Steel Companies Ltd** [1950] 2 872, CA.

Lighting—

Duty to secure and maintain sufficient and suitable lighting—

General illumination over areas where persons are regularly employed—General illumination over other interior parts—Workman tripping over tool lying on floor in shadow of article being constructed in the factory—Shadow reducing otherwise sufficient lighting below required level—Accident occurred before work started or other employees were in factory—Whether employers in breach of statutory duty—Whether accident entirely workman's fault—Factories Act 1961, s 5(1)—Factories (Standards of Lighting) Regulations 1941 (S R & O 1941 No 94), reg 2(a),(b). **Lane v Gloucester Engineering Co Ltd** [1967] 2 293, CA.

Roadway in factory—Lighting equipment sufficient but light not turned on in early morning before full daylight—Employee going to work at 6.45 a.m. tripped on coil of wire in roadway and fell—Whether breach of obligation to make effective provision for securing and maintaining sufficient lighting—Factories Act 1961, s 5(1). **Thornton v Fisher & Ludlow Ltd** [1968] 2 241, CA.

Locomotive—

Safety regulations—

Contravention—Regulation for safety of persons employed—Fatal accident to servant of independent contractor in consequence of breach of regulation by occupier of factory—Liability of occupier to penalty—Factories Act 1937, s 133—Regulations for Use of Locomotives and Wagons on Lines and Sidings in or used in connection with premises under the Factory and Workshop Act 1901 (S R & O 1906 No 679), reg 14. **Stanton Ironworks Co Ltd v Skipper** [1955] 3 544, QBD.

Mill gearing—

Fencing. *See* Dangerous parts of machinery—Duty to fence—Mill gearing, *ante*.

Obstruction—

Floor. *See* Floor—Obstruction, *ante*.

Passage. *See* Passage—Duty to keep free from obstruction, *post*.

Offence—

Contravention of statutory provisions by occupier—

Occupier—Receiver and manager appointed by debenture holder—Liability to penalty for breach of statutory duty—Factories Act 1937, ss 130, 133. **Meigh v Wickenden** [1942] 2 68, KBD.

Person dying or sustaining injury—Injury to employee's health not directly caused by contravention—Accident due to employee's wilful disobedience to orders—Employee's hand injured—Whether injury was in consequence of contravention of statutory duty—Whether injury was an injury to health—Factories Act 1937, ss 14(1), 133. **Dunn v Birds Eye Foods Ltd** [1959] 2 403, QBD.

Person dying or suffering bodily injury—Person for whom occupier liable. **Stanton Ironworks Ltd v Skipper** [1955] 3 544, QBD.

Employee's contravention of statute by interference with fence of machine—

Another employee injured by reason of contravention—Not shown that occupier of factory had failed to take all reasonable steps to prevent contravention—Whether occupier liable—Factories Act 1961, ss 14(1), 143(1), 155(1),(2). **Wright v Ford Motor Co Ltd** [1966] 2 518, QBD.

Prosecution—

Time limit—Fatal accident—Inquest—Limitation period for laying information—Summary Jurisdiction Act 1848, s 11—Factories Act 1937, ss 24, 140(1),(4). **Ross v English Steel Corpn Ltd** [1945] 2 606, KBD.

Overhead travelling crane—

Statutory duty. *See* Lifting machine—Overhead travelling crane, *ante*.

Passage—

Duty to keep free from obstruction—

Roadway 30 feet wide in factory area—Employee coming to work in early morning tripped on coil of wire in roadway—Pavement of roadway normally obstructed—Roadway not swept at night—Whether roadway a 'passage' or 'gangway'—Factories Act 1961, s 28(1). **Thornton v Fisher & Ludlow Ltd** [1968] 2 241, CA.

FACTORY (cont)**Premises excluded from definition—**

Place within factory solely used for purpose other than process carried on in factory—

Administration block—Aeroplane engine factory—Administrative building within perimeter, but with separate entrance from highway—Building used for work of administrative and technical staff, the designing of engines, etc.—Whether administration block excluded from definition of 'factory', as being solely used for some purpose other than processes carried on in the factory—Factories Act 1961, s 175(6). **Powley v Bristol Siddeley Engines Ltd** [1965] 3 612, QBD.

Canteen for use of people employed in factory—Whether canteen part of 'factory'—Factories Act 1937, s 25(2), s 151(6). **Luttman v Imperial Chemical Industries Ltd** [1955] 3 481, Assizes.

Place within close, curtilage or precincts forming factory—Apron of aircraft hangar—Concrete surface forming apron of aircraft hangar—Apron and hangar in occupation of licensee—Hangar used by licensee as factory—Concrete surface being renewed by contractors—Accident to workman employed by contractors—Whether the place of accident was part of a factory—Factories Act 1937, s 151(1),(6). **Walsh v Allweather Mechanical Grouting Co Ltd** [1959] 2 588, CA.

Place within close, curtilage or precincts forming factory—Bay separated from operating part of factory—Whether bay part of factory—Factories Act 1937, s 151(6). **Street v British Electricity Authority** [1952] 1 679, CA.

Place within close, curtilage or precincts forming factory—Maintenance shop—Repair of plant used in factory—Whether part of factory—Factories Act 1937, s 14(1), s 151(6). **Thorogood v Van Den Berghs and Jurgens Ltd** [1951] 1 682, CA.

Place within close, curtilage or precincts forming factory—Pump house within curtilage of factory precincts—Factory carrying on work of bleaching and finishing textiles—Transmission machinery in pump house used to pump water under pressure into mill in factory—Employee injured by unfenced transmission machinery—Whether pump house a factory—Factories Act 1937, s 151(6). **Newton v John Stanning & Son Ltd** [1962] 1 78, QBD.

Restaurant within curtilage—Use by administrative staff—Exclusion of workmen—Dining room in restaurant occasionally used for conferences—Games room for apprentices—whether part of 'factory'—Factories Act 1937, s 151(1),(6). **Thomas v British Thomson-Houston Co Ltd** [1953] 1 29, QBD.

Protection of eyes—

Obligation to provide suitable goggles or effective screens—

Breach of duty—Causation—Workman engaged in welding process—Failure to provide suitable goggles or effective screen—Injury to eye—Injury caused by operation immediately subsequent to welding process—Accident would not have occurred if suitable goggles provided—Provision of effective screens would not have prevented accident—Whether employers liable for breach of statutory duty—Factories Act 1961, s 65. **Hay v Dowty Mining Equipment Ltd** [1971] 3 1136, Assizes.

Breach of duty—Causation—Injury to workman's eye—Failure of workman to show that he would have worn goggles if they had been provided—Factories Act 1937, s 49—Protection of Eyes Regulations 1938 (S R & O 1938 No 654), Schedule. **Nolan v Dental Manufacturing Co Ltd** [1958] 2 449, Assizes.

Cutting concrete by means of a tool—Cutting—Whether drilling hole in reinforced concrete 'cutting'—Building (Safety, Health and Welfare) Regulations 1948 (S I 1948 No 1145), reg 84, Sch II(2). **Fallaize v Troughton & Young Ltd** [1956] 3 127, QBD.

Cutting off of bolts from boilers or other plant—Plant—Protection of Eyes Regulations 1938 (S R & O 1938 No 654), Schedule. **Watts v Enfield Rolling Mills (Aluminium) Ltd** [1952] 1 1013, CA.

Fettling of metal castings—Fitter chipping groove in cast-iron component in course of assembly work—Whether 'fettling of metal castings'—Factories Act 1937, s 49—Protection of Eyes Regulations 1938 (S R & O 1938 No 654), Schedule. **Prophet v Platt Bros & Co Ltd** [1961] 2 644, CA.

Fettling of metal castings—Moulder removing 'runners' or 'gates' from castings—Whether 'fettling'—Factories Act 1937, s 49—Protection of Eyes Regulations 1938, (S R & O 1938 No 654), reg 1, Schedule. **Williams v Falkirk Iron Co Ltd** [1951] 1 294, Assizes.

Grinding machine—Goggles in foreman's office 30 feet from machine—Safe system of work—Contributory negligence—Whether goggles 'provided'—Whether breach of statutory duty—Factories Act 1937, s 49. **Finch v Telegraph Construction and Maintenance Co Ltd** [1949] 1 452, KBD.

Independent contractor's employee—Operation in factory by independent contractor using implement moved by mechanical power—No duty owed to contractor's employee by occupier of factory—Factories Act 1937, s 49, s 139—Protection of Eyes Regulations 1938 (S R & O 1938 No 654), Schedule. **Whalley v Briggs Motor Bodies Ltd** [1954] 2 193, Assizes.

Suitable goggles provided but liable to misting—Eye injured while cleaning misty goggles—Factories Act 1937, s 49. **Daniels v Ford Motor Co Ltd** [1955] 1 218, CA.

Welding or cutting of metals by electrical oxy-acetylene or similar process—Whether including cutting sheet metal by cold process—Factories Act 1937, s 49—Protection of Eyes Regulations 1938 (S R & O 1938 No 654), Schedule. **Rees v Bernhard Hastie & Co Ltd** [1953] 1 375, CA.

Removal of dust—

All practicable measures to be taken—

Obligation where dust likely to be injurious or where substantial quantity of dust of any kind—Breach of duty—Causation—Onus of proof—Health regulation for removal of dust—Tubercular condition of workman becoming active—Whether caused by breach of regulation—Factories Act 1937, s 47(1). **Mist v Toleman & Sons (A firm)** [1946] 1 139, CA.

FACTORY (cont)

Removal of dust (cont)—

All practicable measures to be taken (cont)—

Obligation where dust likely to be injurious or where substantial quantity of dust of any kind—Dust not known at date of accident to be dangerous—Masks not provided—Effective masks if supplied would not have been used by workmen—Provision of effective masks not a practicable measure—Factories Act 1937, s 47(1). **Richards v Highway Ironfounders (West Bromwich) Ltd** [1957] 2 162, QBD.

Obligation where dust likely to be injurious or where substantial quantity of dust of any kind—Duty to provide exhaust appliances—Standard of duty—Factories Act 1937, s 47(1). **Adsett v K & L Steelfounders & Engineers Ltd** [1953] 2 320, CA.

Obligation where dust likely to be injurious or where substantial quantity of dust of any kind—Iron foundry—Moulders not provided with masks—Whether breach of statutory duty—Factories Act 1937, s 47(1). **Gregson v Hick Hargreaves & Co Ltd** [1955] 3 507, CA.

Obligation where dust likely to be injurious or where substantial quantity of dust of any kind—Masks provided, but failure to take reasonable steps to induce workmen to wear them—Whether breach of statutory duty—Factories Act 1937, s 47(1). **Crookall v Vickers-Armstrong Ltd** [1955] 2 12, Assizes.

Obligation where dust likely to be injurious or where substantial quantity of dust of any kind—No failure to ventilate—Dust not of character or extent likely to be injurious—Duty of occupier—Factories Act 1937, s 4(1), s 47(1). **Ebbs v James Whitson & Co Ltd** [1952] 2 192, CA.

Obligation where dust likely to be injurious or where substantial quantity of dust of any kind—'Substantial quantity of dust of any kind'—Provision of exhaust appliances 'as near as possible to the point of origin of the dust'—Iron moulders' factory—Risk of silicosis known only after disease contracted by workman—Whether breach of statutory duty—Factories Act 1937, s 47(1). **Richards v Highway Ironfounders (West Bromwich) Ltd** [1955] 3 205, CA.

Grinding of metals—

Obligation to provide appliances for interception of dust in dry grinding—plough buff—Failure to provide appliances for the interception of dust—Whether operation of plough buff was 'dry grinding'—Definitions of grinding, cleaning of castings, and abrasive wheel—Grinding of Metals (Miscellaneous Industries) Regulations 1925 (S R & O 1925 No 904), Definitions, reg 1. **Quinn v Cameron and Robertson Ltd** [1957] 1 760, HL.

Tool sharpening—Wholly or mainly employed in such work—Modification of Factories Act by regulations—Employers' common law liability—Factories Act 1937, s 47(1)—Grinding of Metals (Miscellaneous Industries) Regulations 1925 (S R & O 1925 No 904). **Franklin v Gramophone Co Ltd** [1948] 1 353, CA.

Sand blasting—

Obligation to perform in enclosed chamber having efficient means to prevent escape of dust—Nature of obligation—Absolute duty to maintain to prevent escape of dust—Grinding of Metals (Miscellaneous Industries) Regulations 1925 (S R & O 1925 No 904), reg 13. **Adsett v K & L Steelfounders & Engineers Ltd** [1953] 1 97, QBD.

Wood dust—

Duty to provide adequate ventilation—Duty to prevent 'accumulation' of dust—Factories Act 1937, s 4(1), s 47(1). **Graham v Co-operative Wholesale Society Ltd** [1957] 1 654, QBD.

Safe means of access to place of work—

Duty to provide and maintain—

Breach of duty—Causation—Equipment—Failure to provide proper equipment—Charge-hand steel erector using ladder for repair of net below aerial ropeway—Unusual job—Charge-hand fell from ladder and was killed—Whose conduct caused accident—Apportionment of blame—Factories Act 1937, s 26(1), (2)—Factories Act 1959, s 5. **Ross v Associated Portland Manufacturers Ltd** [1964] 2 452, HL.

Extent of duty—Icy surface at entrance to factory—Result of snowfall—Whether duty to guard against ordinary incidents resulting from vagaries of weather—Factories Act 1937, s 26(1). **Thomas v Bristol Aeroplane Co Ltd** [1954] 2 1, CA.

Extent of duty—Temporary obstruction—Whether duty to eliminate temporary obstruction—Factories Act 1937, s 26(1). **Levesley v Thomas Firth & John Brown Ltd** [1953] 2 866, CA.

Means of access—Movement of injured workman during performance of work—Repair of roof—Removal of iron sheets—Workman's fall through unsafe part of roof while removing sheet—Whether place where accident occurred 'means of access' to place of work—Factories Act 1937, s 26(1). **Dorman, Long & Co Ltd v Hillier** [1951] 1 357, KBD.

Nature of duty—Obstacles left on floor near grinding machine—Practice of doing so to be prevented by employer—Factories Act 1937, s 26(1). **Callaghan v Fred Kidd & Son (Engineers) Ltd** [1944] 1 525, CA.

Passage leading to canteen—Rainwater collected on floor of passage—Whether passage means of access to 'place at which any person has to work'—Factories Act 1937, ss 25(1), 26(1). **Davies v De Havilland Aircraft Co Ltd** [1950] 2 582, KBD.

Persons to whom duty owed—Plank across a duct on factory grounds—Plank placed by contractors for use of their own and occupiers' workmen—Liability of occupier for injury to employee crossing plank—Factories Act 1937, ss 25(1), 26(1). **Hosking v De Havilland Aircraft Co Ltd** [1949] 1 540, KBD.

Working place—

Roof. *See* **Building** (Working places—Safe means of access—Roof).

Safe place of work—

Duty to provide means for ensuring safety of person working above prescribed height—

Duty of occupier—Meaning of 'provided'—Factories Act 1937, s 26(2). **Ginty v Belmont Building Supplies Ltd** [1959] 1 414, QBD.

FACTORY (cont)

Safe place of work (cont)—

Duty to provide means for ensuring safety of person working above prescribed height (cont)—

Duty of occupier—Steel tower crane—Safety belt not available—No instructions or exhortation to experienced steel erector to use safety belt—Practice generally not to use them—Whether occupier liable for employee's accidental fall from tower crane in course of construction—Factories Act 1937, s 26(2). *Cummings (or McWilliams) v Sir William Arrol & Co Ltd* [1962] 1 623, HL.

Secure foot-hold and secure hand-hold—Duty owed to anyone, including independent contractor, working for purposes of factory—Window cleaner on ladder needing to use both hands at once to hold and clean window—Whether ladder afforded secure foot-hold and hand-hold—Factories Act 1937, s 26(2). *Wigley v British Vinegars Ltd* [1962] 3 161, HL.

Obligation to make and keep safe so far as reasonably practicable—

Burden of proof—Whether plaintiff or prosecutor has burden of pleading and proving reasonable practicability to make or keep the place safer—Factories Act 1961, s 29(1). *Nimmo v Alexander Cowan & Sons Ltd* [1967] 3 187, HL.

Safe system of working. *See* Safe system of working.

Sale of machinery—

Machinery not complying with statutory requirements—

Lack of effective guard—Liability of seller to injured workman—Factories Act 1937, s 17(2). *Biddle v Truvox Engineering Co Ltd (Greenwood and Batley Ltd, third party)* [1951] 2 835, KBD.

Staircase—

Handrail—

Obligation to provide handrail—Second handrail—Special circumstances making staircase specially liable to cause accidents—Shiny metal strip at edge of top stair with adjoining hatchway—Factories Act 1937, s 25(2). *Harris v Rugby Portland Cement Co Ltd* [1955] 2 500, CA.

Obligation to provide handrail—Set of three steel steps leading to platform—Steps three feet in height and not built into building—Whether 'staircase'—Factories Act 1937, s 25(2). *Kimpton v Steel Co of Wales Ltd* [1960] 2 274, CA.

Statutory duty—

Civil liability for breach—

Breach of duty caused by act of injured employee—'Delegation'—Factories Act 1937, ss 24(4), (5), 137(1). *Gallagher v Dorman, Long & Co Ltd* [1947] 2 38, CA.

Contributory negligence. *Craze v Meyer-Dumore Bottlers' Equipment Co Ltd* [1936] 2 1150, CA.

Injury to workman—Injury partly caused by breaches outside period of limitation—Materially contributed to by breaches within period of limitation—Measure of damages. *Clarkson v Modern Foundries Ltd* [1958] 1 33, Assizes.

Onus of proof. *Bonnington Castings Ltd v Wardlaw* [1956] 1 615, HL, *Watts v Enfield Rolling Mills Ltd* [1952] 1 1013, CA.

Duty of persons employed—

Duty to use means or appliance provided—Duty not to endanger himself without reasonable cause—Breach—Failure to use duckboards while engaged on roof work—Factories Act 1937, s 119(1), (2). *Ginty v Belmont Building Supplies Ltd* [1959] 1 414, QBD.

Duty to use means or appliance provided—Guard supplied—Instruction by employers not to use guard—Injury to employee—Whether guard 'provided'—Whether employee in breach of statutory duty—Factory and Workshop Act 1901, s 10—Woodworking Machinery Regulations 1922, (S R & O 1922 No 1196), regs 17, 23. *Murray v Schwachman Ltd* [1937] 2 68, CA.

Duty to use means or appliance provided—Safety guard not kept in position by workman—'Provision' of guard—Workman not instructed to use guard—Factories Act 1937, ss 16, 119(1). *Norris v Syndi Manufacturing Co Ltd* [1952] 1 935, CA.

Occupier—

Generating plant—Addition to switchboard—Not handed over by contractor as complete—Responsibility of owner as 'occupier'. *Turner v Courtaulds Ltd* [1937] 1 467, KBD.

Transmission machinery—

Duty to fence—

Parts of transmission machinery. *See* Dangerous parts of machinery—Duty to fence—Parts of transmission machinery, *ante*.

Fencing. *See* Dangerous parts of machinery—Duty to fence—Fencing to be kept in position while machinery in motion or use—Transmission machinery, *ante*.

Mill gearing—

Fencing. *See* Dangerous parts of machinery—Duty to fence—Mill gearing, *ante*.

Ventilation—

Workroom—

Duty to provide adequate ventilation—Breach of duty—Causation—Failure to ventilate—Increase of risk of injury from noxious dust—Factories Act 1937, s 4(1). *Nicholson v Atlas Steel Foundry and Engineering Co Ltd* [1957] 1 776, HL.

Duty to render harmless fumes generated in the course of any process carried on in factory—Boiler room with furnace—Fumes—Employee suffocated—Whether boiler room a 'workroom'—Whether boiler fumes generated in the course of any process carried on in factory—Factories Act 1937, s 4(1), s 47(1). *Brophy v J C Bradfield & Co Ltd* [1955] 3 286, CA.

Vertical spindle moulding machine—

Provision of jig. *See* Woodworking machinery—Vertical spindle moulding machine—Wood to be held in jig or holder for such work as cannot be performed with efficient guard for cutter, *post*.

FACTORY (cont)

Verticle spindle moulding machine—

Duty to provide guard for cutter. *See* Woodworking machinery—Cutter of vertical spindle moulding machine—Duty to provide most efficient guard, *post*.

Warehouse—

Application of Factories Act to warehouses—

Meaning of 'warehouse'—Transit shed used for distribution of cargo but not for long-term storage—Whether 'warehouse'—Factories Act 1937, s 25(1), s 105(1),(3). *Fisher v Port of London Authority* [1962] 1 458, QBD.

Welding—

Protection of eyes. *See* Protection of eyes—Obligation to provide suitable goggles or effective screens—Welding or cutting of metals by electrical oxy-acetylene or similar process, *ante*.

Woodworking machinery—

Circular saw. *See* Circular saw, *ante*.

Cutter of vertical spindle moulding machine—

Duty to provide most efficient guard—'Most efficient guard'—Protection from contact with cutters or from flying broken parts of machine—Woodworking Machinery Regulations 1922, (S R & O 1922 No 1196), reg 17—Factories Act 1937, s 14(1). *Dickson v Flack* [1953] 2 840, CA.

Cutter of verticle spindle moulding machine—

Duty to provide most efficient guard—Whether guard provided 'most efficient guard'—Whether duty extends to employee other than operator—Absolute liability under Factories Act 1937, s 14, modified by Woodworking Machinery Regulations 1922, reg 17—Factories Act 1937, ss 14, 60—Woodworking Machinery Regulations 1922, (S R & O 1922 No 1196), reg 17. *Harrison v Metropolitan Plywood Co* [1946] 1 243, KBD.

Cutter of vertical spindle moulding machine—

Wood to be held in jig or holder for such work as cannot be performed with efficient guard for cutter—Nature of obligation—Woodworking Machinery Regulations 1922, (S R & O 1922 No 1196), reg 18. *Vickers v E Gomme Ltd* [1957] 2 60, CA.

Duty of persons employed on woodworking machine—

Duty to use and maintain in proper adjustment guards provided—Time when duty becomes operative—Woodworking Machinery Regulations 1922, (S R & O 1922 No 1196), regs 20, 21, 23. *Lay v D & L Studios Ltd* [1944] 1 322, KBD.

Working places regulations. *See* Building (Working places).

FACULTY

See Ecclesiastical law (Faculty).

FAIR COMMENT

See Libel and slander (Fair comment).

FAIR DEALING

Literary, dramatic and musical works—

Defence to action for infringement of copyright. *See* Copyright (Infringement—Defence—Fair dealing).

FAIR RENT

Determination of fair rent. *See* Rent restriction (Rent—Determination of fair rent).

Generally. *See* Rent restriction (Fair rent).

Local authority houses. *See* Housing (Local authority houses—Rent—Fair rent).

FAIRS

See Markets and fairs.

FALLING MATERIAL

Protection of workmen from—

Building operations. *See* Building (Building operations—Protection of workman from falling material or article).

FALSE ATTRIBUTION

Authorship. *See* Copyright (False attribution of authorship).

FALSE DECLARATION

Customs and excise. *See* Customs and excise (False declaration).

FALSE DOCUMENT

Forgery. *See* Criminal law (Forgery—False document).

FALSE IMPRISONMENT

Arrest without warrant—

Arrest on suspicion—

Direction to jury in action for false imprisonment—Road Traffic Act 1960, s 6(4). *Wiltshire v Barrett* [1965] 2 271, CA.

Malaysia. *See* Malaysia (False imprisonment).

Need for person arrested to be taken before justice or police officer as soon as reasonably possible—

Delay in bringing accused before justice or police officer—Right of detention for purpose of investigation—Whether delay unreasonable. *John Lewis & Co Ltd v Tims* [1952] 1 1203, HL.

Need to make charge known to person arrested—

Failure to make charge known to person arrested—Charge of unlawful possession under local Act—Charge not justifying original arrest or continuing detention under arrest—Reasonable and probable cause for suspecting felony—Dismissal of charge at police court—Re-arrest inside the court—Subsequent charge of larceny—Charge dismissed—Whether arrest and detention unlawful—Liverpool Corporation Act 1921, ss 507, 513. *Christie v Leachinsky* [1947] 1 567, HL.

FALSE IMPRISONMENT (cont)

Arrest without warrant (cont)—

Power to arrest without warrant—

Statutory power—Local Act—Failure to comply with condition precedent to exercise of power—Effect—Charge of unlawful possession under local Act—Inquiry as to name and address a condition precedent to arrest—Failure to inquire name and address—Action for false imprisonment—Common law plea of justification not available where plaintiff not charged with felony—*Liverpool Corporation Act 1921*, ss 507,513. **Dumbell v Roberts** [1944] 1 326, CA.

Statutory power to apprehend person who shall be found offending against statute—Arrest on charge of indecent exposure—Offence not committed—Whether arrest and detention justified—*Vagrancy Act 1824*, ss 4, 6. **Stevenson v Aubrook** [1941] 2 476, Assizes.

Statutory power to detain offender—Charge of harbouring uncustomed goods with intent to defraud—Accused suspected of having committed offence—Whether 'offender'—Customs Consolidation Act 1876, s 186, s 197, s 199, s 202, s 203, s 205, s 221, s 224, s 229, s 233, s 267. **Barnard v Gorman** [1941] 3 45, HL.

Reasonable suspicion that offence committed—

Question of reasonable cause for judge—Single issue, not all issues, put to jury—Detention of prisoner while taking reasonable steps to investigate matter before taking prisoner to police station. **Dallison v Caffery** [1964] 2 610, CA.

Elements—

Plaintiff suspected by defendants' agent of larceny—

Plaintiff given by defendants' agent into custody—Charge sheet signed by defendants' agent—Plaintiff acquitted of charge of larceny—Whether defendants liable in action for false imprisonment. **Clubb v Wimpey & Co Ltd** [1936] 1 69, KBD.

Enemy aliens—

Action against Home Secretary—

Statement of claim containing arguable point—*See Statement of claim* (Striking out—Action for false imprisonment brought by enemy aliens against Home Secretary).

Kidnapping. *See Criminal law* (Kidnapping).

Merchant ship—

Member of crew—

Right of master, at common law, to arrest and confine. **Hook v Cunard Steamship Co Ltd** [1953] 1 1021, Assizes.

FALSE LABELLINGFood and drugs. *See Food and drugs* (Label—False label).**FALSE PRETENCES**Criminal offence. *See Criminal law* (False pretences).

Mercantile agent—

Possession of goods. *See Agent* (Mercantile agent—Possession of goods—Consent of owner—False pretences).

FALSE STATEMENT

Company—

Criminal liability. *See Criminal law* (Company—False statement).

Immigration—

Statement to person acting in execution of statute. *See Immigration* (False statement—Statement to person lawfully acting in execution of statute).

FALSE TRADE DESCRIPTION*See Trade description.***FALSIFICATION OF ACCOUNTS***See Criminal law* (Falsification of accounts).**FAMILY**

Family enterprise—

Purchase of house as home—

Constructive trust. *See Trust and trustee* (Constructive trust—Purchase of house as home—Family enterprise).

FAMILY ALLOWANCE

Payment—

Wrongful receipt—

Married women lent money by appellant on security of family allowance books—Agents of appellant cashing vouchers for appellant who kept money as repayment of loans with interest—Whether knowledge of illegality by women agents necessary to establish charges of soliciting, and of conspiring to commit, offences contrary to Family Allowances Act 1945, s 9(b). **R v Curr** [1967] 1 478, CA.

Right to claim allowance—

Allowance in respect of child living with parent—

Child not ceasing to live with parent by reason of absence at school—Child received into care of local authority and sent to residential school—Not provided for by parent—Whether child deemed to have ceased to live with parent by reason of absence at school—Family Allowances Act 1945, s 3(2), s 11(2), (3), s 21(7)—Children Act 1948, s 1(1). **Hill v Minister of Pensions and National Insurance** [1955] 2 890, QBD.

FAMILY DIVISION

Appeal—

Adoption proceedings. *See Adoption* (Practice—Appeal—Appeal from magistrates' court to Divisional Court of Family Division).

FAMILY DIVISION (cont)

Applications relating to children—

Fixing of date of hearing—

Applications where court welfare officer's report requested. *See* **Child** (Practice—Matrimonial causes—Applications relating to children—Applications where court welfare officer's report requested—Date of hearing of applications where estimated length of hearing exceeding one half hour).

Blood tests—

Procedure—

Tests to determine paternity. *See* **Paternity** (Blood test—Procedure).

Divorce. *See* **Divorce**.

Jurisdiction—

Grant of remedy or relief where proceedings for such remedy or relief assigned to another Division. *See* **Court** (Jurisdiction—High Court of Justice—Divisions of High Court).

Sale of land—

Practice. *See* **Sale of land** (Sale by court—Family Division).

Ward of court. *See* **Ward of court**.

FAMILY PROVISION

Appeal—

Appeal as to quantum of award—

When appellate court will interfere. **Thornley v Palmer** [1969] 3 31, CA.

Application—

Form—

Affidavit in support—Contents—Particulars of previous proceedings relevant to application—Affidavit of personal representative—Only facts known to deponent to be stated in affidavit—Relevant facts only to be stated—RSC facts only to be stated—RSCx Ord 99, r 5(2)(d). **Practice Direction** [1976] 2 447, ChD and FamD.

Jurisdiction—

Application made more than six months from date on which representation first taken out—Application for order providing for maintenance of 'another dependant'—Testator making no provision for maintenance of applicant daughter in his will—Provision made for another daughter in his will—No dependant already being maintained in pursuance of statute—Whether applicant another dependant—Inheritance (Family Provision) Act 1938, ss 2(1), 4(1)(b). **Re Dorgan (decd)** [1948] 1 723, ChD.

Time for application. *See* Time for application, *post*.

Award—

Appeal as to quantum of award. *See* Appeal—Appeal as to quantum of award, *ante*.

Burden of award—

Whether power to apportion burden unequally between beneficiaries in the same class—Inheritance (Family Provisions) Act 1938, s 3(1), (2) as amended by Intestates Estates Act 1952, Sch 3. **Re Preston (decd)** [1969] 2 961, Lancaster Chancery Court

Compromise—

Jurisdiction—

Application by widow for reasonable provision to be made for her—Application for additional provision—Compromise by parties to summons—No jurisdiction to make order binding persons not before court—Summons to be amended to include prayer for administration of estate. **Re Lofts (decd)** [1969] 1 7, ChD.

Application by widow for reasonable provision to be made for her—Estate of £16,700—Court had no jurisdiction to make lump sum order because of size of estate—Numerous pecuniary legacies, and nothing would remain for residuary legatees—Order giving pecuniary legatee authority to defend proceedings on behalf of numerous other pecuniary legatees not parties to proceedings—Sanction sought for compromise under which £2,000 would be paid to widow and legacies would abate—No jurisdiction to bind person sui juris not party to proceedings—Inheritance (Family Provision) Act 1938, s 1(1), (4), as amended by Intestates' Estates Act 1952, s 7, Sch 3—R S C Ord 104, r 6, Ord 15, r 13(1)(a). **Re Knowles (decd)** [1966] 2 480, ChD.

Contract to make disposition by will. *See* Will—Contract to make disposition by will, *post*.

Daughter—

Daughter incapable of maintaining herself—

Reasonable provision for daughter's maintenance—Will made on footing that State would provide for daughter—Whether provision made by will reasonable—Inheritance (Family Provision) Act 1938, s 1(1). **Re Watkins (decd)** [1949] 1 695, ChD.

Daughter who has not been married—

Application for reasonable provision to be made for maintenance—Locus standi of daughter whose marriage annulled before will made—Retrospective effect of decree—Inheritance (Family Provision) Act 1938, s 1(1)(b). **Re Rodwell (decd)** [1969] 3 1363, ChD.

Application for reasonable provision to be made for her maintenance—Testator making no provision for daughter in his will—Daughter living with married man—Physically incapable of maintaining herself—Whether father under moral obligation towards her—Inheritance (Family Provision) Act 1938, s 1(1)(b). **Re Andrews (decd)** [1955] 3 248, ChD.

Application for reasonable provision to be made for her maintenance—Unmarried daughter of deceased first marriage—Deceased had two persons with calls on his bounty: widow, and daughter by former wife—Daughter aged thirteen in care of local authority—Deceased died intestate—No provision for daughter—Estate, valued at about £4,000, derived principally from daughter's mother—Factor to be taken into account—Inheritance (Family Provision) Act 1938, s 1(1) as amended by Intestates' Estates Act 1952, s 7, Sch 3. **Sivyer v Sivyer** [1967] 3 429, ChD.

FAMILY PROVISION (cont)

Daughter (cont)—

Daughter who has not been married (cont)—

Application for reasonable provision to be made for her maintenance—Unmarried daughter of testator's first marriage—Capable of earning livelihood—No provision made for her by testator's will owing to bitter relations between testator and first wife—Custody of daughter given to first wife on divorce—Daughter some years later wrote letter at mother's dictation wounding testator's feelings—Subsequent attempt by daughter to achieve reconciliation unsuccessful—Daughter's choice of way of life led to her earning little—Whether testator under moral obligation to provide for daughter—Inheritance (Family Provision) Act 1938, s 1, as amended by Intestates' Estates Act 1952, s 7, Sch 3. **Re Ducksbury (decd)** [1966] 2 374, ChD.

Deceased's reasons for making or not making dispositions—

Evidence. *See* Evidence—Deceased's reasons, *post*.

Dependant—

Daughter. *See* Daughter, *ante*.

Husband. *See* Husband, *post*.

Maximum amount of income applicable for dependant—

Factors to be considered—Dependant given capital sum—Reasons for testator's disposition—Statements made by testator—Admissibility—Inheritance (Family Provision) Act 1938, s 1(3), (4), (7). **Pugh v Pugh** [1943] 2 361, ChD.

Reasonable provision for maintenance—

Adequate provision—Material date for determining whether provision adequate—Testator's Family Maintenance and Guardianship of Infants' Act, 1916—1954 (New South Wales), s 5(1). **Dun v Dun** [1959] 2 134, PC.

Infants—Testator leaving all his property to widow—Property to go to children if she predeceased him—Testator dying first—Change of circumstances after death of testator—Effect—Inheritance (Family Provision) Act 1938, s 1(1). **Re Howell (decd)** [1953] 2 604, CA.

Reasonable provision—'Maintenance'—'Conduct of dependant'—Inheritance (Family Provision) Act 1938, s 1(1), (6). **Re Borthwick (decd)** [1949] 1 472, ChD.

Test of reasonableness of provision made by deceased—Objective, not subjective—Provision made for widow—Situation at time of testator's death, but subsequent events also to be regarded—Residue of estate bequeathed to widow—Expected by testator to amount to about £8,000, but in fact only £1,550, of which £1,100 on loan and repayment uncertain—Widow in receipt of social security payments—Order for reasonable provision from date of testator's death, without regarding any consequential adjustments for security payments—Inheritance (Family Provisions) Act 1938, s 1(1) as amended by Intestates' Estates Act 1952, s 7, Sch 3. **Re Goodwin (decd)** [1968] 3 12, ChD.

Son. *See* Son, *post*.

Wife. *See* Widow, *post*.

Discovery—

Right to discovery—

Discovery of documents relating to net value of estate—Practice—RSC Ord 54F, r 14. **Re Borthwick (decd)** [1948] 2 635, CA.

Discretion of court—

Extension of time for application. *See* Time for application—Extension—Discretion of court, *post*.

Review of exercise of discretion on appeal—

Principles governing intervention by appellate court. *See* Court of Appeal (Discretion of judge—Review of exercise of discretion—Principles governing intervention of appellate court—Award under Inheritance (Family Provision) Act 1938).

Small estate. *See* Small estate—Discretion of court, *post*.

Domicile of deceased—

Proof—

Proof of English domicile at date of death—Testator married in England and living in England thereafter—Whether conclusive proof of English domicile—Inheritance (Family Provision) Act 1938, s 1. **Re White** [1941] 1 236, ChD.

Enforcement—

Order for payment to dependant of sum out of capital of testator's estate. *See* Order—Order for payment to dependant of sum out of capital of testator's estate—Enforcement, *post*.

Evidence—

Deceased's reasons—

Evidence of deceased's reason for making no provision for widow—Proof of evidence in maintenance proceedings—Admissibility—Inheritance (Family Provision) Act 1938, s 1(7). **Re Vrint** [1940] 3 470, ChD.

Evidence of deceased's reason for making no provision for widow—Statement in will of reason—Whether other evidence of testator's reason excluded by statement in will—Inheritance (Family Provision) Act 1938, s 1(7). **Re Searle (decd)** [1948] 2 426, ChD.

Evidence of facts from which deceased's reasons to be inferred—Statement, not in writing, made by testator to deponent—Admissibility—Inheritance (Family Provision) Act 1938, s 1(7). **Re Smallwood (decd)** [1951] 1 372, ChD.

Relevant evidence—Evidence of deceased's state of mind admissible—Testamentary capacity not to be investigated—Feebleness of mind did not constitute a reason for deceased's action that was relevant under s 1(7)—Widow not benefiting under deceased's will—Inheritance (Family Provision) Act 1938, s 1, as amended by Intestates' Estates Act 1952, s 7, Sch 3. **Re Blanch (decd)** [1967] 2 468, ChD.

Practice—

Evidence by way of statements exhibited to affidavits. **Practice Direction** [1970] 2 280, ChD.

Extension of time for application. *See* Time for application—Extension, *post*.

FAMILY PROVISION (cont)

Former spouse—

Maintenance from estate of deceased former spouse. *See* **Divorce** (Financial provision—Deceased former spouse—Maintenance for surviving spouse out of deceased's estate).

Former wife—

Provision for former wife out of estate of deceased former husband—

Nullity decree for incapacity of husband—Maintenance in favour of former wife ordered for joint lives—No application to vary—Child born to former wife after decree, of whom husband was not the father—Re-marriage of husband—Children by second wife who survived him—Husband's estate given to her—No provision for former wife in former husband's will—Whether reasonable for the deceased not to make provision for former wife—Matrimonial Causes (Property and Maintenance) Act 1958, s 3(1), (2), (4). **Talbot v Talbot** [1962] 3 174, Prob.

Fund on which provision to be charged—

Division of burden between legacies and residue—

Duty of executor where application to be expected—Duty of executor to file evidence—Need to join legatees as defendants—Inheritance (Family Provision) Act 1938, s 1(1). **Re Simson (decd)** [1949] 2 826, ChD.

Hearing of applications—

Contested and uncontested applications—

Determination by masters and registrars—Reference of applications involving complex issues to judges—RSC Ord 99, r 8. **Practice Direction** [1976] 2 447, ChD and FamD.

Husband—

Reasonable provision for his maintenance—

Testatrix leaving husband small sum in her will—Husband applying for additional provision—Special circumstances—Husband having relinquished employment to attend to home—Husband of advanced years and unlikely to obtain employment—Inheritance (Family Provision) Act 1938, s 1. **Re Silvester** [1940] 4 269, ChD.

Testatrix making no provision for maintenance—Small estate—Husband having relinquished employment to attend to home—Husband of advanced years but in employment—Whether reasonable for testatrix to make no provision for husband's maintenance—Inheritance (Family Provision) Act 1938, s 1. **Re Styler** [1942] 2 201, ChD.

Testatrix making no provision for maintenance—Small estate—Husband crippled but able to maintain himself—Prospect of substantial reduction of his means if he ceased to be employed—No provision made for him by testatrix—Her estate consisting in large part of proceeds of sale of house that had been her own—Married to husband in later life—Whether unreasonable to make no provision for him—Inheritance (Family Provision) Act 1938, s 1, as amended by Intestates' Estates Act 1952, s 7, Sch 3. **Re Clayton (decd)** [1966] 2 370, ChD.

Interim order. *See* **Order**—Interim order, *post*.

Interim payment—

Appropriate procedure for executors where applicant is entitled to benefit under deceased's will—

Leave of court to make payment to applicant. **Re Ralphs (decd)** [1968] 3 285, ChD.

Order—

Interim order—

Maintenance of surviving spouse—Jurisdiction to make order. *See* **Divorce** (Financial provision—Deceased former spouse—Maintenance for surviving spouse out of deceased's estate—Interim order—No jurisdiction to make).

Practice—Family Provision Act 1966, s 6. **Practice Direction** [1967] 1 432, ChD.

Order for maintenance—

Effect—Provision to be regarded as a legacy contained in the will when made—Inheritance (Family Provision) Act 1938, s 3(1)—Finance Act 1941, s 25. **Re Pointer** [1946] 2 409, ChD.

Termination—Order for maintenance of daughter—Statutory provision for termination on marriage or cesser of disability whichever is the later—Daughter married and under disability—Maintenance under Act—When terminable—Inheritance (Family Provision) Act 1938, s 1(1), (2). **Re Pointer** [1940] 4 372, ChD.

Order for payment to dependant of sum out of capital of testator's estate—

Enforcement—No payment made under order—Application for four day order for payment—Whether order enforceable. **Re Jennery (decd)** [1967] 1 691, CA.

Periodical payments—

Annual income of net estate as valued at the date of the order not to be exceeded—No jurisdiction to order whole income of estate to be paid to dependant—Effectiveness of such an order until varied—Variation of order—Substantial change in circumstances of dependant—Increase in income from estate—Inheritance (Family Provision) Act 1938, s 1(1), (2), (3), s 4, s 5(1) as amended by Intestates' Estates Act 1952. In **the Estate of Gale (decd)** [1966] 1 945, CA.

Practice—

Application for reasonable provision—

Conflicting interests—Adding of one applicant as defendant. **Practice Note** [1954] 2 112, ChD.

Hearing—

Day of hearing—Applications for extensions of time or interim order. **Practice Direction** [1967] 1 432, ChD.

Title of proceedings—

Form—Inheritance (Family Provision) Act 1938,—Intestates' Estates Act 1952, s 8, sched. IV **Re Riglar (decd)** [1956] 3 703, ChD.

Form. **Practice Direction** [1963] 1 885, ChD.

Provision for former wife out of estate of deceased former husband—

Divorce. *See* **Divorce** (Financial provision—Deceased former spouse—Maintenance of surviving spouse out of deceased's estate).

FAMILY PROVISION (cont)

Small estate—

Discretion of court—

Limit on Court of Appeal's interference with exercise of discretion. **Re Gregory (decd)** [1971] 1 497, CA.

Son—

Infant son—

Adequate provision for proper maintenance—New South Wales—Inadequate provision for testator's infant sons—Discretion of court to order provision for 'proper maintenance, education, or advancement in life'—Testator's Family Maintenance and Guardianship of Infants Act (New South Wales) 1916, s 3(1). **Bosch v Perpetual Trustee Co Ltd** [1938] 2 14, PC.

Reasonable provision for maintenance—Father dying intestate—Application by illegitimate infant son—Whether a 'dependant'—Inheritance (Family Provision) Act 1938, s 1(1). **Re Makein (decd)** [1955] 1 57, ChD.

Reasonable provision for maintenance—Testatrix making no provision for infant son of second marriage—Testatrix dying at his birth—Provision made for child of first marriage—Whether provision to be made for infant son—Form of order—Inheritance (Family Provision) Act 1938, s 1(1). **Re Franks** [1947] 2 638, ChD.

Son incapable of maintaining himself—

Reasonable provision for son's maintenance—Testator making no provision for maintenance—testatrix leaving whole of her small estate to charity—Testatrix a widow having six surviving children—Testatrix stating at time of making will that child self-supporting and already quarrelling among themselves about possible inheritance—Testatrix not wishing estate to be wasted in costs of legal action—Son suffering from incapacitating and progressive illness at time will made—Son living entirely on state assistance—Inheritance (Family Provision) Act 1938, s 1(1). **Millward v Shenton** [1972] 2 1025, CA.

Time for application—

Date from which time runs—

Lost will—Grant of letters of administration—Will found—Revocation of grant—Grant of probate—Whether material date grant of administration or grant of probate—Inheritance (Family Provision) Act 1938, s 2(1). **Re Bidie (decd)** [1948] 2 995, CA.

Summons issued before representation taken out—Time reckoned from date representation taken out—Inheritance (Family Provision) Act 1938, s 2(1). **Re Searle (decd)** [1948] 2 426, ChD.

Testator leaving all his property to friend—Friend obtaining probate in common form—Testator's widow issuing citation to revoke grant of probate—Pronouncement in solemn form in favour of will—Time reckoned from grant in common form—Extension of time refused—Limitation not operating unfairly—Defending probate action did not preclude issue of a summons—Inheritance (Family Provision) Act 1938, s 2(1A)(c) added by Intestates' Estates Act 1952, s 7 Sch 3. **Re Miller (decd)** [1968] 3 844, ChD.

Time reckoned from issue of summons—Inheritance (Family Provision) Act 1938, s 2(1)—Intestates' Estates Act 1952, s 7, Sch 3. **Re Chittenden (decd)** [1970] 3 562, ChD.

Extension—

Circumstances affecting the administering or distribution of the estate—Affecting—Applicant's erroneous belief that gift to her of the net income of certain premises for life, meant net income free of tax—First payment, subject to deduction of tax, made shortly after expiration of time limit—Whether applicant's erroneous belief was a circumstance affecting administration or distribution of estate—Inheritance (Family Provision) Act 1938, s 2(1A)(c), added by Intestates' Estates Act 1952, s 7, Sch 3. **Re Bluston (decd)** [1966] 3 220, CA.

Circumstances affecting the administration or distribution of the estate—Applicant's ignorance of value of estate—Negotiations by solicitors on her behalf—Executor declining to give information concerning deceased's estate—Limitation period extended—Inheritance (Family Provision) Act 1938, s 2(1A)(c), added by Intestates' Estates Act 1952, s 7, Sch 3. **Re McNare (decd)** [1964] 3 373, ChD.

Circumstances affecting the administration or distribution of the estate—Assertion of claim by widow and agreement by executor's solicitors to accept service were such circumstances—Delay in issuing originating summons nevertheless attributable to inadvertence—No jurisdiction to extend time—Inheritance (Family Provision) Act 1938, s 2(1A)(c), added by Intestates' Estates Act 1952, s 7, Sch 3. **Re Kay (decd)** [1965] 3 724, ChD.

Circumstances affecting the administration or distribution of the estate—Birth of posthumous child of testator—Person having an 'interest in the estate'—Circumstance affecting the administration or distribution of the estate—Jurisdiction to extend time—Inheritance (Family Provision) Act 1938, s 2(1), (1A)(c) (as amended by Intestates' Estates Act 1952, s 7, Sch 3). **Re Trott (decd)** [1958] 2 296, ChD.

Circumstances affecting the administration or distribution of the estate—Form of application for extension—Inheritance (Family Provision) Act 1938, s 2(1A) (added by Intestates' Estates Act 1952, s 7, Sch 3). **Re Greaves (decd)** [1954] 2 109, ChD.

Circumstances affecting the administration or distribution of the estate—Proof that limitation period would operate unfairly in consequence of such circumstances—Inheritance (Family Provision) Act 1938, s 2 (1A)(c) (added by Intestates' Estates Act 1952, s 7, Sch 3). **Re Greaves (decd)** [1954] 2 109, ChD.

Discretion of court—Hardship to applicant if application failed—Loss of advantage of rigid time limit only to defendant—Inheritance (Family Provision) Act 1938, s 2(1) as amended by Intestates' Estates Act 1952, s 7, Sch 3 and Family Provision Act 1966, s 5(2). **Re Ruttie (decd)** [1969] 3 1633, ChD.

Discretion of court—Service of summons delayed—Defendant party to delay. **Re Chittenden (decd)** [1970] 3 562, ChD.

Practice—Family Provision Act 1966, s 6. **Practice Direction** [1967] 1 432, ChD.

FAMILY PROVISION (cont)

Time for application (cont)—

Extension (cont)—

Question as to interest in estate not determined when representation first taken out—Inheritance (Family Provision) Act 1938, s 2(1A)(b) (added by Intestates' Estates Act 1952, s 7, sched 3. **Re Bone (decd)** [1955] 2 555, ChD.

Relief to be expressly claimed in summons—Grounds for application to extend time to be stated in affidavit. **Practice Direction** [1976] 2 447, ChD and FamD.

Widow—

Application to modify provisions of testator's will—

Relevant facts—Whether court should have regard to facts as existed at date of application or to facts as existed at date of testator's death—Testator's Family Maintenance and Guardianship of Infants' Act 1916-1954 (New South Wales), s 5(1). **Dun v Dun** [1959] 2 134, PC.

Deserted wife—

Small estate—Deceased left wife and lived with another woman for over twenty years until his death—He gave a house and made weekly payments to his wife during the period of his desertion—Nearly all his small estate was made up of a death benefit earned while living with the other woman—Four children by her, two of whom were still at school—Not unreasonable for him to make no provision for wife—Effect of a claimant's eligibility for national assistance—Inheritance (Family Provision) Act 1938, s 1, as amended by Intestates' Estates Act 1952, s 7, Sch 3. **Re E (decd)** [1966] 2 44, ChD.

Evidence of deceased's reasons for making no provision for widow. *See* Evidence—Deceased's reasons—Evidence of deceased's reasons for making no provision for widow, *ante*.

Payment of capital—

Jurisdiction of court—Estate not exceeding £2,000—Maximum amount payable—Capitalised value of income—Inheritance (Family Provision) Act 1938, s 1(3)(b), s 1(4). **Re Bates (decd)** [1953] 1 318, ChD.

Proof that person described as 'widow' widow of deceased—

Second marriage—Marriage certificate—Presumption marriage valid—Presumption of death of first husband—Absence for twenty-six years. **Re Watkins** [1953] 2 1113, ChD.

Second marriage—Marriage certificate—Presumption marriage valid—No proof of death of first husband—Effect. **Re Peete (decd)** [1952] 2 599, ChD.

Reasonable provision for her maintenance—

Factors to be considered—Conduct of widow in relation to testator—Testator's reasons for dispositions—Widow and testator estranged for long period—Break-up of marriage testator's fault—Widow not looking to testator for support—Widow providing no service or assistance to testator—Testator's offers of reconciliation towards end of life rejected—Testator's belief that widow had lost interest in him—Whether reasonable for testator to make no provision for widow—Inheritance (Family Provision) Act 1938, s 1(1)(6)(7), as amended. **Re Gregory (decd)** [1971] 1 497, CA.

Large estate—Testator leaving wife life interest in marital home and gift of income—Income insufficient to enable wife to live in marital home—Whether provision made for wife reasonable—Inheritance (Family Provision) Act 1938, s 1. **Re Inns** [1947] 2 308, ChD.

Provision of annuity payable under testator's partnership deed—Payment of annuity contingent on partner's survival and on profits exceeding fixed sum—Whether reasonable provision—Inheritance (Family Provision) Act 1938, s 1, amended by Intestates' Estates Act 1952, s 7, sched 3. **Re Doring (decd)** [1955] 3 389, ChD.

Small estate—Testator making no provision in will for maintenance of wife—Provision made for children born out of wedlock and their mother—Moral obligation—Whether reasonable for testator to make no provision for wife's maintenance—Inheritance (Family Provision) Act 1938. **Re Joslin** [1941] 1 302, ChD.

Small estate—Testator making no provision in will for maintenance of wife—Wife entitled to annuity under separation deed—Annuity ceasing on death of husband—Wife having custody of infant children—Whether reasonable to make no provision for wife—Inheritance (Family Provision) Act 1938, s 1, s 2, s 4. **Re Lidington** [1940] 3 600, ChD.

Small estate—Wife only entitled to life interest in goods worth £15—Value of estate approximately £600—Right to pension on husband's death—Whether provision for wife reasonable—Inheritance (Family Provision) Act 1938, s 1(3), (4). **Re Catmull** [1943] 2 115, ChD.

Widow able to support herself and in fact supporting herself—Married in middle age—Arrangement that spouses should live temporarily only in home of husband's mother, then aged seventy-six—Wife left after seven months—Husband did not respond to her suggestion that they should set up a separate home—By his will husband gave as reason for not making fuller provision for his wife that she had not kept arrangement that their matrimonial home should be in his mother's home—Failure of husband to make reasonable provision for widow—Inheritance (Family Provision) Act 1938, s 1, as amended by Intestates' Estates Act 1952, s 7, Sch 3. **Re Clarke (decd)** [1968] 1 451, ChD.

Widow who had helped testator build up public house and left him four years before his death because of his cruelty—Testator leaving £16,000 net of which public house valued at £8,800 and £1,000 left to mistress—£8 per week annuity to widow—Provision by court for widow involving partial abatement of mistress's legacy—Inheritance (Family Provision) Act 1938, s 1(1), (5), as amended by Intestates' Estates Act 1952, s 7, Sch 3. **Thornley v Palmer** [1969] 3 31, CA.

Small estate—

Deceased making no provision for widow—Application of Act—Inheritance (Family Provision) Act 1938, s 1. **Re Vrint** [1940] 3 470, ChD.

FAMILY PROVISION (cont)**Will—****Contract to make disposition by will—**

Disposition made in performance of contract—Inadequate provision for dependants—Order for further provision out of testator's estate—Whether burden of further provision should be shared by contractual legatee—Testator leaving house and contents to housekeeper in pursuance of contract—Specific pecuniary legacies to daughters—Residue of estate to be shared by sons—Order for further provision in favour of daughters—Whether burden of further provision in favour of daughters—Whether burden of further provision to be borne in part by housekeeper—Testator's Family Maintenance and Guardianship of Infants Act 1916—1954, s 3(1). *Schaeffer v Schuhmann* [1972] 1 621, PC.

Will in due performance of contract—Adequate provision for maintenance and support of widow—Further provision out of estate—Encroaching on contractual devise—Family Provision Act (New Zealand) 1908, s 33(1). *Dillon v Public Trustee of New Zealand* [1941] 2 284, PC.

FARE

Hackney carriage. *See Road traffic* (Hackney carriage—Fare).

Railway—

Travelling with intent to avoid paying fare. *See Railway* (Offence).

Stage carriage. *See Road traffic* (Stage carriage—Fare).

FARMING

Income tax. *See Income tax* (Farming).

FATAL ACCIDENT**Action—****Action by executor or administrator of deceased—**

Title to sue—Claim as administrator—Writ issued before grant of administration—Relation title *Ingall v Moran* [1944] 1 97, CA, *Hilton v Sutton Steam Laundry* [1945] 2 425, CA.

Writ—Indorsement on writ of representative capacity—Widow described in title of writ as 'widow and administratrix'—Writ issued before grant of administration—Validity of writ. *Stebbins v Holst & Co Ltd* [1953] 1 925, Assizes.

Award to dependants—

Action on behalf of deceased's estate—Appropriate award—Recovery of damages under Fatal Accidents Act—Further action under Law Reform (Miscellaneous Provisions) Act 1934—Whether further award made and the amount thereof. *May v Sir Robert McAlpine & Sons (London) Ltd* [1938] 3 85, KBD.

Competency—

Alien—Action by alien against another alien—Collision between foreign vessels on high seas—Death of foreign seaman on board vessel in consequence of collision—Collision caused or contributed to by negligence of other vessel—Action by personal representatives of deceased against owners of other vessel—Whether personal representatives entitled to recover damages on behalf of deceased's dependents from foreign owners—Fatal Accidents Act 1846, ss 1, 2. *The Esso Malaysia* [1974] 2 705, QBD.

Compromise. *See* Compromise, *post*.**Discovery—**

Order for discovery against person not a party to proceedings. *See Discovery* (Discovery against persons not parties to proceedings—Claim in respect of personal injuries or death).

Executor or administrator of deceased—

Indorsement of claim in writ—Claim by widow—Description as 'administratrix' in title of writ—Letters of administration not granted when writ issued—No statement of representative capacity in indorsement—Validity of proceedings—Fatal Accidents Act 1846, s 1. *Bowler v John Mowlem & Co Ltd* [1954] 3 556, CA.

Indorsement of claim in writ—Indorsement 'as administratrix'—Letters of administration obtained in Ireland—Plaintiff stated to be 'widow and administratrix' in statement of claim—Competency of action—Fatal Accidents Act 1846, s 2. *Finnegan v Cementation Co Ltd* [1953] 1 1130, CA.

Irregularities in writ—Representative capacity not shown—Fatal Accidents Acts not mentioned—Claim settled—No statement of claim delivered and no particulars under s 4 of 1846 Act given—Settlement approved by court—Stay of proceedings ordered—Whether order nullity—Fatal Accidents Act 1846, ss 3, 4. *Cooper v Williams* [1963] 2 282, CA.

Writ issued before grant of letters of administration—Relation back—Applicability of doctrine of relation back following grant of letters of administration—Whether action properly constituted. *Ingall v Moran* [1944] 1 97, CA.

Writ issued before grant of letters of administration—Widow claiming as administratrix—Application to amend writ by suing in individual capacity as dependant—Nature of representative capacity required to be stated in indorsement—Limitation of time—Amendment not allowed—Fatal Accidents Act 1846—Fatal Accidents Act 1864—RSC Ord 3, r 4. *Hilton v Sutton Steam Laundry (a firm)* [1945] 2 425, CA.

Limitation to one action only—

Infant dependant's action settled—Widow subsequently bringing action—Consent order staying infant's action on terms of settlement set aside and widow allowed to intervene—Fatal Accidents Act 1846, s 3. *Cooper v Williams* [1963] 2 282, CA.

Recovery of expenses. *See* Administration of estates (Expenses—Recovery as costs—Fatal accident).**Right of action—**

Claim by widow for damages in respect of husband's death—Husband's income obtained from proceeds of criminal offences—Application of maxim *ex turpi causa non oritur actio*—Fatal Accidents Act 1846, ss 1, 2. *Burns v Edman* [1970] 1 886, QBD.

FATAL ACCIDENT (cont)

Action (cont)—

Summary judgment—

Procedure only applicable in unusual cases—Defence mere denial of negligence and damage—Tribunal to assess damages—R S C Ord 14, r 1. **Dummer v Brown** [1953] 1 1158, CA.

Time—

Commencement within three years after death—Computation of three year period—Whether day on which death occurred excluded—Fatal Accidents Act 1846, s 3 (as amended by Law Reform (Limitation of Actions etc) Act 1954, s 3). **Pritam Kaur v S Russell & Sons Ltd** [1973] 1 305, CA. **Sons Ltd** [1973] 1 305, CA.

Writ—

Extension of validity. *See* **Writ** (Extension of validity—Action under Fatal Accidents Acts).

Aircraft—

Damages. *See* **Carriage by air** (Carriage of passengers—International carriage—Damage sustained by death of passenger in air accident—Measures of damages).

Compensation—

Workman—

Amount. *See* **Workmen's compensation** (Amount of compensation—Fatal accident).

Compromise—

Approval by court—

Infant not bound until settlement approved by court—Consent order not perfected—Misrepresentation—Defendants consented to order to pay lump sum for widow and infant child not knowing that widow was re-marrying—Widow re-married before order—Order set aside—R S C (Rev) 1962, Ord 80, r 11—R S C (Rev) 1965, Ord 80, r 10. **Dietz v Lenning Chemicals Ltd** [1967] 2 282, HL.

Validity—

Administratrix, deceased's widow, agreeing lump sum to cover her loss and that of her and the deceased's infant children—Apportionment of lump sum also agreed—After writ issued, stay of action sought by administratrix on terms that defendants pay into court the lump sum apportioned as originally agreed—Refusal by master to approve administratrix' portion of lump sum—Whether master entitled to refuse approval. **Jeffrey v Kent County Council** [1958] 3 155, QBD.

Damages—

Apportionment—

Children—Prospect of deceased's widow remarrying. **Goodburn (Widow and Executrix of the Estate of John William Goodburn (decd)) v Thomas Cotton Ltd** [1968] 1 518, CA.

Method of apportionment—Apportionment between widow and child of damages for tort causing husband's death—Right of defendant to object to method of apportionment—Fatal Accidents Act 1846, s 2. **Eifert v Holt's Transport Co Ltd** [1951] 2 655, CA.

Basis of assessment—

Arithmetical calculation not decisive—Round sum to be awarded—Benefit of receiving lump sum immediately in lieu of income from deceased—Cash included in deceased's estate and passing to widow, his sole dependant—What deductible for that cash benefit—Fatal Accidents Act 1846, s 2. **Whitmore v Coates** [1965] 3 268, CA.

Benefits excluded in assessing damages—

Insurance money paid as a result of the death—Insurance money paid to company on death of director—Increase in value of shares inherited by deceased's widow and sole co-director—Whether amount of benefit derivable by widow from insurance payment to company to be taken into account in assessing damages payable to widow—Fatal Accidents Act 1959, s 2(1). **Malyon v Plummer** [1963] 2 344, CA.

Sum paid or payable on death of deceased under contract of assurance or insurance—

Employee killed in road accident—Sum paid on death under employers' scheme—Contract of group life assurance between trustees and assurance company for employee's benefit—Whether sum 'paid or payable under contract of assurance or insurance'—Fatal Accidents (Damages) Act 1908, s 1. **Bowskill v Dawson** [1954] 2 649, CA.

Sum paid or payable on death of deceased under contract of assurance or insurance—Estate duty—Whether proportion of estate duty attributable to policy moneys should be excluded from deduction—Fatal Accidents (Damages) Act 1908, s 1. **Ward v T E Hopkins & Son Ltd** [1959] 3 225, CA.

Sum paid or payable on death of deceased under contract of assurance or insurance—Flight steward killed in aircraft accident—Death benefit paid under pension scheme—Whether sum 'paid under contract of assurance or insurance'—Fatal Accidents (Damages) Act 1908, s 1. **Smith v British European Airways Corp** [1951] 2 737, KBD.

Sum paid or payable on death of deceased under contract of assurance or insurance—Miner killed in road accident—Weekly benefits payable to dependants under mineworkers' contributory pension scheme—Whether to be taken into account in assessing damages—Fatal Accidents (Damages) Act 1908, s 1. **O'Neill v S J Smith & Co (Bidford) Ltd** [1957] 3 255, Assizes.

Sum paid or payable on death of deceased under contract of assurance or insurance—Policy taken out by employer to insure against injuries to or death of employee—Employee having no contractual right to receive benefit although a reasonable expectation of benefit—Employee and employer killed in fire and policy moneys paid by employer's personal representative to employee's administratrix—Whether amount of benefit deductible from damages payable to administratrix by employer's personal representative—Fatal Accidents (Damages) Act 1908, s 1. **Green v Russell (McCarthy third party)** [1958] 3 44, QBD, [1959] 2 525, CA.

Death of wife—

Loss of services as wife and mother—Services of wife of which account should be taken—'Services' not to be construed narrowly—Services of wife other than conventional services of housekeeping to be taken into account in assessing pecuniary value of loss to dependants. **Regan v Williamson** [1976] 2 241, QBD.

FATAL ACCIDENT (cont)**Damages (cont)—****Deduction from damages—**

Benefit accruing to dependants in consequence of deceased's death—Damages obtained by estate in consequence of death—Damages awarded to estate to be taken into account in assessing damages in fatal accident claim—Fatal Accidents Acts 1846—1908—Law Reform (Miscellaneous Provisions) Act 1934, s 1(5). **Davies and Yelland v Powell Duffryn Associated Collieries Ltd** [1942] 1 657, HL.

Benefit accruing to dependants in consequence of deceased's death—Damages recovered on behalf of deceased's estate in respect of personal injuries suffered by deceased in consequence of fatal accident—Damages for lost earnings and loss of amenities—Deceased having survived fatal accident for four years—Deceased's estate passing to dependants on death—Damages for lost earnings representing belated payment of sum which would have been used for dependants' benefit—Assumption that damages for loss of amenities would have been used for deceased's benefit—Whether damages for lost earnings or loss of amenities deductible from damages in fatal accidents action as benefits accruing to dependants in consequence of deceased's death. **Murray v Shuter** [1975] 3 375, CA.

Benefit accruing to dependants in consequence of deceased's death—Property left by deceased wife to two children—Voluntary payment of one-third of estate to husband—Whether to be taken into account in assessing damages to which husband entitled. **Peacock v Amusement Equipment Co Ltd** [1954] 2 689, CA.

Benefit resulting from death—Cash benefit from estate of deceased. **Whittome v Coates** [1965] 3 268, CA.

Benefit resulting from death—Children—Parents killed in accident—Children deprived of mother's services in caring for them—Grandmother voluntarily taking children into her care—Whether grandmother's services in caring for children benefit resulting from death—Whether value of grandmother's services to be deducted from damages otherwise recoverable in respect of mother's death. **Hay v Hughes** [1975] 1 257, CA.

Contributory negligence—Action brought against defendant for death of plaintiff's husband—Defendant admitting manslaughter of deceased—Defendant alleging death caused partly by deceased's fault—Whether plaintiff's damages to be reduced by reason of contributory negligence of deceased—Law Reform (Contributory Negligence) Act 1945, s 1(4). **Murphy v Culhane** [1976] 3 533, CA.

Deduction from deceased's wages of sum retained for his own use—Deduction in respect of house constituting matrimonial home. **Heatley v Steel Co of Wales Ltd** [1953] 1 489, CA.

Earning capacity of widow—Young widow intending eventually to resume employment—Whether her earning ability factor to be taken into account. **Howitt v Heads** [1972] 1 491, Assizes.

Estate of deceased husband consisting of money and of a house—Death of deceased's wife intestate two years after death of deceased—Infant dependants and administrators of widow's estate—Probable sale of house—Acceleration of benefit—Whether death of wife so soon after husband a factor to be taken into consideration in assessing damages—Fatal Accidents Act 1846, s 2. **Voller v Dairy Produce Packers Ltd** [1962] 3 938, QBD.

Husband and wife—Stability of marriage—Widow separated from deceased—Deduction of one-half from sum that would have been awarded if marriage had been stable. **Gray v Barr (Prudential Assurance Co Ltd, third party)** [1971] 2 949, CA.

Pension—Leading aircraftman killed in motor accident—Probability of widow and children receiving pensions—Pensions to be taken into account in assessment of damages—Fatal Accidents Acts 1846—1908—Law Reform (Miscellaneous Provisions) Act 1934—Royal Warrant, Dec 1943 (Cmd 6489), art 56(1). **Johnson v Hill** [1945] 2 272, CA.

Pension. **Lory v Great Western Ry Co** [1942] 1 230, KBD.

Deductions from damages—

Pension—Voluntary pension paid by employer to widow—Fatal Accidents Act 1846, s 2. **Jenner v Allen West & Co Ltd** [1959] 2 115, CA.

Sub-letting rooms in deceased's leasehold premises—Whether income from sub-letting deductible. **Buckley v John Allen & Ford (Oxford) Ltd** [1967] 1 539, QBD.

Dependency—

Children—Period of dependency—Commencement—Appropriate multiplier—Whether period of dependency starting from date of death or date of trial. **J v JMP Co Ltd** [1975] 1 1030, CA.

Daughter—Daughter having left school and being in employment at time of father's death—Widow's death 17 months after husband's death—Daughter then taken by uncle into his home—Whether benevolence of uncle to be taken into account in computing damages—Prospect of daughter having become housekeeper for father taken as basis of dependency—Fatal Accidents Act 1846, s 2. **Moore v Babcock & Wilcox Ltd** [1966] 3 882, Assizes.

Period of dependency—Calculation of length and value. **Mallett v McMonagle** [1969] 2 178, HL.

Proof—Likelihood—of continued financial support—Reasonable probability of mere speculative possibility—Claim by wife—Parties living apart at time of husband's death—Wife having deserted husband—Prospect of reconciliation—Sufficient for wife to show reasonable probability—Unnecessary to prove reconciliation more likely than not—Reasonable probability even though chances less than even—Degree of probability to be reflected in quantum of damages awarded. **Davies v Taylor** [1971] 3 1259, CA, [1972] 3 836, HL.

FATAL ACCIDENT (cont)

Damages (cont)—

Estate duty liability—

Gifts by deceased to wife and son—Deceased killed within seven years of making gifts—Death caused by defendant's negligence—Wife and son liable to pay estate duty on gifts in consequence of death within seven year period—Whether wife and son entitled to recover amount of duty payable as damages—Fatal Accidents Act 1846, s 2. **Davies v Whiteways Cyder Co Ltd** [1974] 3 168, QBD.

Excessive damages—

Arithmetical calculation—Inflation—Sum awarded sufficient to produce income exceeding double the rate of the dependency at the time of death without resort to the capital—Deceased a machine operator aged 25 earning 12 a week—Effect of inflation—Arithmetical calculation of damages—Fatal Accidents Act 1846, s 2. **Mallet v McMonagle** [1969] 2 178, HL.

Funeral expenses—

Erection of marble memorial over grave—No dependency within Fatal Accidents Acts proved—Law Reform (Miscellaneous Provisions) Act 1934, s 1(2)(c), s 2(3)—Fatal Accidents Act 1846, s 2. **Stanton v Ewart F Youlden Ltd** [1960] 1 429, QBD.

Husband and wife—

Professional relationship—Husband and wife professional dancing partners—Joint earnings shared—Death of wife due to negligence—Fatal Accidents Act 1846, s 2. **Burgess v Management Committee of the Florence Nightingale Hospital for Gentlewomen** [1955] 1 511, QBD.

Professional relationship—Husband and wife sole directors of company—Whether and extent to which wife's salary derived from matrimonial relationship—Fatal Accidents Act 1846, s 2. **Malyon v Plummer** [1963] 2 344, CA.

Inflation—

Effect on award of prospect of inflation. **Taylor v O'Connor** [1970] 1 365, HL.

Future earnings—Evidence of prospective increases in deceased's earnings—Evidence including anticipated increases in consequence of inflation—Whether estimates of future increases attributable solely to anticipated inflation to be taken into account. **Young v Percival** [1974] 3 677, CA.

Money treated as retaining its value. **Mallett v McMonagle** [1969] 2 178, HL.

Multiplier—Inflation not a reason to increase. **Taylor v O'Connor** [1970] 1 365, HL.

Prospect of constant inflation a relevant factor. **Miller v British Road Services Ltd** [1967] 1 1027, QBD.

Marriage prospects—

Son—Claim by mother for death of son—Possibility of son's marriage to be taken into account. **Dolbey v Goodwin** [1955] 2 166, CA.

Widow—Dependent child—Prospects of mother remarrying—Whether prospects of remarriage of mother to be enquired into when calculating damages—Law Reform (Miscellaneous Provisions) Act 1971, s 4(1). **Howitt v Heads** [1972] 1 491, Assizes.

Widow—Possibility of deceased's widow remarrying—Whether a factor to be taken into account and what weight to be attributed to it—Apportionment of damages to young children. **Goodburn (Widow and Executrix of the Estate of John William Goodburn (decd)) v Thomas Cotton Ltd** [1968] 1 518, CA.

Widow—Prospects of remarriage not adverted to in evidence—Widow aged 38 with four children—Whether court should take any such prospect into consideration by way of deduction from damages. **Buckley v John Allen & Ford (Oxford) Ltd** [1967] 1 539, QBD.

Widow—Remarriage or prospects of remarriage—Dependent child—Damages payable for benefit of child—Whether widow's remarriage or prospects of remarriage to be taken into account in calculating damages for child—Law Reform (Miscellaneous Provisions) Act 1971, s 4(1). **Thompson v Price** [1973] 2 846, QBD.

Multiplier—

Considerations relevant to multiplier—Law Reform (Miscellaneous Provisions) Act 1971, s 4(1). **Howitt v Heads** [1972] 1 491, Assizes.

Pecuniary loss—

Calculation—Computation of pecuniary loss a jury question—Arithmetical calculation not productive of just estimate—Other factors—Dependency a question of fact—Multiplier where several children of widely varying age—Acceleration of benefit from deceased's estate on intestacy—Law Reform (Miscellaneous Provisions) Ordinance 1953, ss 7, 8. **Kassam v Kampala Aerated Water Co Ltd** [1965] 2 875, PC.

Children—Illegitimate children—Provision made by deceased father for mother—Father and mother living together but unmarried—Cessation of provision for mother representing pecuniary loss to children—Mother entitled to social security benefits—Father having made provision for family holidays—Social security benefits not covering cost of holidays—Cessation of expenditure by father on mother's holidays representing a pecuniary loss to children—Children entitled to recover damages in respect of loss. **K V JMP Co Ltd** [1975] 1 1030, CA.

Computation of pecuniary loss a jury question—Arithmetical calculation as check by comparison—Assessment of benefits accruing from deceased's death—Fatal Accidents Act 1846, s 2. **Daniels v Jones** [1961] 3 24, CA.

Savings—Capital asset—Loss of future savings—Savings available for expenditure—Deceased husband earning 30 a week and saving 10 a week—Whether loss of future savings to be regarded as loss of capital asset—Whether loss to be taken into account in assessing widow's loss. **Gavin v Wilmot Breeden Ltd** [1973] 3 935, CA.

Possibility of death in war as combatant or as civilian—

Reduction of damages. **Hall v Wilson** [1939] 4 85, KBD.

FATAL ACCIDENT (cont)

Damages (cont)—

Remarriage of widow—

Assessment of loss of infant child of deceased—Remarriage of widow—Acceptance of child into family—Financial position of deceased inferior to that of new step-father—Intention and liability of step-father to provide for child—Assessment of child's loss—Fatal Accidents Act 1846, s 2—Matrimonial Proceedings (Children) Act 1958, s 1(1)—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 2(1)(h), s 16. **Reincke v Gray** [1964] 2 687, CA.

Dependency of infant child of deceased—Re-marriage of widow—Financial position of deceased and child's stepfather similar—Whether child's dependency ceased on mother's re-marriage. **Mead v Clarke Chapman & Co Ltd** [1956] 1 44, CA.

Reduction of damages awarded—Re-marriage of widow after trial but before expiry of time for serving notice of appeal—Chance of re-marriage considered by trial judge, but no evidence of possibility of re-marriage given at trial—Whether damages should be reduced by Court of Appeal. **Curwen v James** [1963] 2 619, CA.

Taxation—

Effect on award of incidence to tax. **Taylor v O'Connor** [1970] 1 365, HL.

War injury—

Fatal injury by aeroplane—Cases unprovided for by scheme—Partial dependency—Funeral expenses—Claim in trespass—Personal Injuries (Emergency Provisions) Act 1939, s 3, s 8—Personal Injuries (Civilians) Scheme 1944, (S R & O 1944 No 369), art 1(8), art 29. **Billings v Reed** [1944] 2 415, CA.

Widow—

Death of widow before trial of action—Relevance in assessing damages. **Williamson v John I Thornycroft & Co Ltd** [1940] 4 61, CA.

Marriage prospects. *See* Damages—Marriage prospects, *ante*.

Private means—Relevance of widow's private means. **Shiels v Cruikshank** [1953] 1 874, HL.

Remarriage—Effect on claim. *See* Damages—Remarriage of widow, *ante*.

Widow's earning capacity—Possibility of widow resuming employment—Whether to be taken into account. *See* Damages—Deduction from damages—Earning capacity of widow, *ante*.

Executor or administrator—

Action by. *See* Action—Executor or administrator of deceased, *ante*.

Limitation of action. *See* Limitation of action (Fatal accident).

Medical examination—

Refusal of dependant to submit to examination—

Stay of proceedings. *See* Practice (Stay of proceedings—Medical examination of plaintiff at defendant's request—Refusal to submit to examination—Claim under Fatal Accidents Acts).

Negligence—

Fellow servant's negligence causing death—

Statutory liability—Proceedings by widow of deceased but not by children—Amount recoverable by widow—Fatal Accidents Act 1846, ss 1, 2, 5—Fatal Accidents Act 1864, s 1—Employers' Liability Act 1880, ss 1, 3. **Avery v London and North Eastern Ry Co.** [1938] 2 592, HL.

Statutory liability—Widow proceeding under Fatal Accidents Act—Children proceeding under Workmen's Compensation Act. **Taylor v Sir William Arrol & Co Ltd** [1937] 1 658, KBD.

Payment out of court of sums paid into court. *See* Practice (Payment out of court—Claims under Fatal Accidents Acts etc).

Person for whose benefit action may be brought—

Relations of deceased—

Wife or husband—Divorce—Wife divorced from deceased—Whether divorced wife a person for whose benefit action may be brought—Fatal Accidents Act 1846, s 2. **Payne-Collins v Taylor Woodrow Construction Ltd** [1975] 1 898, QBD.

Suicide—

Benefit to dependants from felonious act—

Public policy excluding such benefit—Whether rule applicable to statutory cause of action not benefiting estate of deceased—Fatal Accidents Act 1846, s 1. **Pigney v Pointers Transport Services Ltd** [1957] 2 807, Assizes.

Writ—

Amendment after expiry of limitation of period. *See* Writ (Amendment—Amendment after expiry of limitation period—Claim under Fatal Accidents Acts).

Irregularities in writ—

Action by executor or administrator. *See* Action—Executor or administrator of deceased—Irregularities in writ, *ante*.

FEDERAL POWERS

Australia. *See* Australia (Federal powers).

FEE

Arbitrator's or umpire's fees—

Taxation. *See* Arbitration (Umpire—Duty—Fees).

Counsel. *See* Counsel (Fees).

Court fees—

Divorce. *See* Divorce (Fees—Court fees).

Judicial fees—

House of Lords. *See* House of Lords (Judicial fees).

Medical inspection—

Divorce. *See* Divorce (Fees—Medical inspection).

Solicitor. *See* Solicitor (Remuneration).

FEE (cont)

Taxation of costs—

Judicature fee. *See* **Costs** (Taxation—Judicature fee).

Trustee. *See* **Trust and trustee** (Remuneration of trustee).

Unqualified person—

Preparation of documents etc—

Preparation for or in expectation of fee etc. *See* **Solicitor** (Unqualified person—Preparation of documents etc—Preparation for or in expectation of fee etc).

Witness—

Amount—

Married woman not gainfully employed. *See* **Witness** (Fee—Amount—Married woman not gainfully employed).

FEE SIMPLE

Restraint on alienation. *See* **Restraint on alienation** (Fee simple estate).

FEEDING STUFFS

See **Agriculture** (Feeding stuffs).

FELONY

Allocutus. *See* **Criminal law** (Trial—Allocutus—Felony).

Misprision. *See* **Criminal law** (Misprision of felony).

FEME SOLE

Meaning—

Spinster described as feme sole—

Whether feme sole. **Ross v Collins** [1964] 1 861, CA.

FENCE

Easement—

Right to have fence maintained. *See* **Easement** (Fence).

Repair—

Agricultural holding. *See* **Agricultural holding** (Repairs—Fences and hedges).

FENCING

Circular saw—

Factory. *See* **Factory** (Circular saw—Duty to fence).

Dangerous machinery—

Building operations. *See* **Building** (Building operations—Fencing of machinery—Dangerous machinery).

Coal mine. *See* **Coal Mining** (Statutory duty—Machinery—Dangerous machinery—Duty to fence).

Factory. *See* **Factory** (Dangerous parts of machinery—Duty to fence).

Dangers adjoining highway. *See* **Highway** (Dangers adjoining highway—Duty to fence).

Exclusion of animals by. *See* **Animal** (Trespass).

Machinery—

Building operations. *See* **Building** (Building operations—Fencing of machinery).

Coal mine. *See* **Coal mining** (Statutory duty—Machinery—Dangerous machinery—Duty to fence).

Factory—

Duty to fence. *See* **Factory** (Dangerous parts of machinery—Duty to fence).

Opening in factory floor. *See* **Factory** (Floor—Opening—Duty to fence).

FERRY

Franchise ferry—

Mandatory injunction. *See* **Injunction** (Mandatory injunction—Discretion over grant of remedy—Franchise ferry).

Public ferry—

Franchise—

Owner's duty to maintain and operate—Owner sustaining loss—Whether bound to continue operating ferry—Remedy. **Attorney-General (at the relation of Allen) v Colchester Corp** [1955] 2 124, QBD.

FERTILISERS

See **Agriculture** (Fertiliser).

FIDELITY

Duty of servant. *See* **Master and servant** (Fidelity).

FIDELITY INSURANCE

See **Insurance** (Fidelity insurance).

FIDUCIARY DUTY

Company director—

Acknowledgment of debt—

Limitation of action—Debt owed by company to director. *See* **Limitation of action** (Acknowledgment—Acknowledgment in writing—Signature).

Purchaser of goods—

Duty to account for proceeds of sub-sales—

Vendor retaining property in goods. *See* **Sale of goods** (Passing of property—Vendor retaining property in goods—Duty of purchaser to account for proceeds of sub-sales—Fiduciary duty as agent and bailee of goods).

Sale of land—

Vendor's duty to purchaser. *See* **Sale of land** (Vendor—Fiduciary duty to purchaser).

FIDUCIARY DUTY (cont)

Undue influence—

Relationship of parties—

Trust and confidence—Banker and customer. *See* **Equity** (Undue influence—Presumption of undue influence—Banker and customer—Bank seeking to protect interest at expense of customer—Customer relying on bank's advice—Fiduciary duty of bank).

FIDUCIARY RELATIONSHIPPartners. *See* **Partnership** (Relationship between partners—Good faith—Fiduciary relationship).

Power of appointment—

Relationship between donee and objects. *See* **Power of appointment** (Release—Release as regards one particular object—Whether fiduciary relationship between donee and objects).

FIERI FACIASWrit. *See* **Execution** (Writ of fi fa).**FIGHTING**Affray. *See* **Criminal law** (Affray—Unlawful fighting).**FIJI**

Criminal law—

Judge sitting with assessors—

Direction to assessors—Murder—Provocation—Failure of judge to direct assessors on provocation—**Bharat, Son of Dorsamy v R** [1959] 3 292, PC. Nationality

Deportation—

Immigration ordinance—

Repugnancy—Deportation of citizen of United Kingdom and Colonies—Whether ordinance repugnant to British Nationality Act—Immigration Ordinance (No 33 of 1947 Ch 67)—Colonial Laws Validity Act 1865, s 2—British Nationality Act 1948, s 1(1). **Thornton v The Police** [1962] 3 88, PC.

Land—

Dealing with land—

Consent of Native Land Trust Board—Meaning of 'dealing with'—Lessee permitting another person to erect buildings on land—Consent of board not obtained—Buildings erected—Subsequent refusal by lessee to apply for consent—Whether arrangement under which buildings erected was a dealing with land—Native Land Trust Ordinance (cap 104), s 12. **Chalmers v Pardoe** [1963] 3 552, PC.

FILE

Bankruptcy proceedings—

Inspection—

Transcript of private examination. *See* **Bankruptcy** (Record of proceedings—Private examination—Inspection of file).

FILINGAffidavit. *See* **Affidavit** (Filing).**FILM**

Censorship—

Indecent films. *See* **Cinema** (Censorship—Indecent films).

Criminal proceedings—

Best evidence. *See* **Criminal evidence** (Best evidence—Film).

Document—

Production in court—

County court. *See* **County court** (Production of document—Meaning of 'document'—Cinematograph film).

Generally. *See* **Cinema** (Film).

Indecent—

Importation—

Prohibited goods. *See* **Customs and excise** (Importation of prohibited goods—Indecent or obscene prints, etc).

Showing of film to jury in court—

Exclusion of public. *See* **Criminal law** (Trial—Open court—Proceedings to be held in open court—Evidence—Exhibits—Examination by court—Cinematographic films—Imported films alleged to be indecent).

Obscenity—

Test of obscenity—

Publication—Tendency to deprave and corrupt. *See* **Criminal law** (Obscene publications—Test of obscenity—Tendency to deprave and corrupt persons likely to read, see or hear matter contained or embodied in article—Persons reading, seeing or hearing matter as result of publication to them—Film).

Television—

Untransmitted film—

Production in court. *See* **Broadcasting** (Television—Independent television company—Film—Production in court as evidence).

FILM RIGHTS

Copyright—

Grant in 1919 of exclusive licence to produce author's literary and dramatic works in cinematograph or moving picture films—

Whether licence extending to sound motion pictures. *See* **Copyright** (Licence—Exclusive licence—Exclusive licence to produce author's literary and dramatic works in cinematograph or moving picture films).

FILM RIGHTS (cont)

Sale—

Income tax—

Capital or income receipt. *See* **Income tax** (Capital or income receipts—Copyright—Assignment—Sale of film rights of book).

FINANCE

Value added tax—

Exemption—

Financial services. *See* **Value added tax** (Exemptions—Financial services).

FINANCIAL PROVISION

Divorce. *See* **Divorce** (Financial provision).

FINDING

Chattel found on another's property—

Title to chattel. *See* **Possession** (Chattel found on another's property).

Larceny by finding. *See* **Criminal law** (Larceny—Finding).

FINE

Collective fine—

Cyprus. *See* **Cyprus** (Emergency legislation—Collective fine).

Crime—

Child or young person. *See* **Children and young persons** (Fine).

Magistrates. *See* **Magistrates** (Fine).

Sentence. *See* **Sentence** (Fine).

FINGER

Injury—

Damages. *See* **Damages** (Personal injury—Finger on right hand).

FINGERPRINTS

Evidence in criminal proceedings. *See* **Criminal evidence** (Fingerprints).

FIRE

Accidental fire—

Action for damage to property of guest of innkeeper—

Car burnt in garage—Statutory defence in absence of negligence—**Fires Prevention (Metropolis) Act 1774**, s 86. **Williams v Owen** [1956] 1 104, Assizes.

Certificate—

Refusal to issue—

Appeal from refusal to justices—Dismissal of complaint by justices—Appeal to quarter sessions—Jurisdiction to hear appeal—Order—Offices, Shops and Railway Premises Act 1963, ss 31(1), 72. **R v Recorder of Oxford, ex parte Brasenose College** [1969] 3 428, QBD.

Fire brigade. *See* **Fire Brigade**.

Insurance—

Covenant in lease. *See* **Landlord and tenant** (Covenant—Insurance—fire).

Generally. *See* **Insurance** (Fire insurance).

Negligence. *See* **Negligence** (Fire).

FIRE BRIGADE

Brigade order—

Legality of order—

Order instructing brigade drivers to cross red traffic lights after taking certain precautions—Justifiable administrative step taken in the public interest—Order not conferring on drivers discretion to break the law—Order limiting the discretion individually exercised by each driver—Crewmen challenging legality of order—No material interest in order entitling them to challenge it—Conformity with order by drivers reducing risk of traffic offences—London Fire Brigade Order 144/8. **Buckoke v Greater London Council** [1971] 2 254, CA.

Discipline—

Exercise of disciplinary power—

Interference by court—Certiorari—Whether court will grant certiorari to quash order in exercise of disciplinary power—Fire Services (Discipline) Regulations 1948 (S I 1948 No 545), reg 5(1). **Ex parte Fry** [1954] 2 118, CA.

Interference by court—Injunction—Disciplinary proceeding against firemen—Whether firemen entitled to grant of injunction to restrain proceedings against them—Fire Services (Discipline) Regulations 1948 (S I 1948 No 545), reg 1. **Buckoke v Greater London Council** [1971] 2 254, CA.

Fireman—

Injury in course of employment—

Liability of fire authority—Injury by jack insecurely fixed in vehicle. **Watt v Hertfordshire County Council** [1954] 2 368, CA.

Pension—

Professional fireman—Person wholly and Permanently employed on fire brigade duties—Fireman doing additional duties for employers when not actively engaged on fire brigade work—Whether entitled to pension as person wholly and permanently employed on fire brigade duties—Fire Brigade Pensions Act 1925, s 23(2). **Whelan v Billingham Urban District Council** [1937] 3 387, ChD.

Payment for services—

Liability of owner of premises—

Request transmitted through police. **Upton on Severn Rural District Council v Powell** [1942] 1 220, CA.

FIRE BRIGADE (cont)

- Provision of—
 - Charitable purpose—
 - Benefit to community. *See* **Charity** (Benefit to community—Fire brigade).
- Request for services of—
 - Implied promise for payment. *See* **Contract** (Quantum meruit—Implied promise for payment—Request to police to send fire brigade).

FIRE ENGINE

- Traffic sign—
 - Light signals. *See* **Road traffic** (Traffic sign—Light signals—Fire engine).

FIREARMS

- Certificate—
 - Extent of certificate—
 - Certificate for rifle—Rifle having removable telescopic sight—Certificate not mentioning telescopic sight—Whether separate certificate required for telescopic sight—Firearms Act 1937, ss 1, 32(1). *Watson v Herman* [1952] 2 70, QBD.
 - Possession without certificate. *See* Possession—Possession of firearm without a certificate, *post*.
- Refusal—
 - Appeal—Discretion of appellate court—Appeal to quarter sessions against refusal of police to grant or renew—Discretion of quarter sessions—Firearms Act 1937, s 2(8). *Greenly v Lawrence* [1949] 1 241, KBD.
 - Appeal—Evidence—Appeal to Crown Court—Hearing of appeal—Evidence—Hearsay—Court not bound by rules of evidence. *Kavanagh v Chief Constable of Devon and Cornwall* [1974] 2 697, CA.
- Revocation—
 - Shotgun certificate—Chief officer of police satisfied holder cannot be permitted to possess shotgun without danger to public safety or to the peace—Danger to the peace—Danger arising out of possession of shotgun—Likelihood of violence—Relevance—Holder of certificate convicted of poaching—Likelihood of further offences—No likelihood of violence—Whether likelihood of further non-violent offences constituting 'danger...to the peace'—Firearms Act 1968, s 30(2). *Ackers v Taylor* [1974] 1 771, QBD.
- Negligence—
 - Child—
 - Parent's liability. *See* **Child** (Negligence—Parent's liability—Firearms).
- Possession—
 - Child—
 - Negligence—Parent's liability. *See* **Child** (Negligence—Parent's liability—Firearms).
 - Possession of firearm without a certificate—
 - Exemption from requirement of certificate—Authorised dealer or his servant—Meaning of 'servant'—Accused requested to convey weapon to firearms dealers—Accused under no obligation to take weapon and not remunerated for doing so—Whether accused acting as 'servant' of dealer—Firearms Act 1968, s 8(1). *Woodage v Moss* [1974] 1 584, QBD.
 - Exemption from requirement of certificate—Sporting activities—Possession of another's firearm for sporting purposes—Owner of rifle holding firearm certificate lending rifle to person not holding certificate nor exempt from holding certificate—Instruction to shoot rats—Whether for 'sporting purposes only'—Firearms Act 1937, s 4(7). *Morton v Chaney, Same v Christopher* [1960] 3 632, QBD.
 - Firearm—'Lethal weapon'—Possession of signal pistol not designed as weapon but capable of inflicting injury—Whether a 'firearm'—Firearms Act 1937, ss 1(2)(a), 32(1). *Read v Donovan* [1947] 1 37, KBD.
 - Firearm—Starting pistol capable of firing bullets by drilling barrel—Barrel partially drilled—Whether firearm—Firearms Act 1968, ss 1(1)(a), 57(1)(b). *R v Freeman* [1970] 2 413, CA.
 - Member of His Majesty's forces—Firearm not held 'in his capacity as such'—Whether unlawful possession of a firearm—Firearms Act 1937, ss 1, 5. *Tartelin v Bowen* [1947] 2 837, KBD.
 - Possession—Firearm not in physical custody of accused—Firearm kept in house of accused's mother—Firearm under accused's control—Whether firearm 'in his possession'—Firearms Act 1968, s 1(1). *Sullivan v Earl of Caithness* [1976] 1 844, QBD.
 - Possession—Meaning—Man agreeing to surrender weapon to firearms dealer—Accused taking weapon to dealer at latter's request—Whether accused in possession of weapon—Firearms Act 1968, s 1(1). *Woodage v Moss* [1974] 1 584, QBD.
 - Possession of firearms with intent to endanger life—
 - Life of person outside United Kingdom—Possession of firearms in England with intent to endanger life—Jurisdiction—Whether necessary to establish intent to endanger life of person in United Kingdom—Firearms Act 1968, s 16. *R v El-Hakkaoui* [1975] 2 146, CA.
 - Proof of intent—Unnecessary to prove immediate and unconditional intent to use firearms—Sufficient to prove possession of firearms ready for use if and when occasion arises—Firearms Act 1968, s 16. *R v Bentham* [1972] 3 271, CA.
 - Possession within five years of sentence—
 - Suspended sentence. *See* **Sentence** (Firearms offence—Prohibition on possession of firearms within five years of sentence—Suspended sentence).
 - Unlawful possession at time of apprehension for offence—
 - Conviction of offence other than that for which arrest was made—Offence not specified in Firearms Act 1937, Sch 3—Whether there could be conviction of being in possession of firearms contrary to Firearms Act 1937, s 23(2). *R v Baker* [1961] 3 703, CCA.

FIREARMS (cont)

Restrictions on sale—

Sale by person not registered as dealer—

Sale of dummy revolver by person not registered as firearms dealer—Whether dummy revolver a 'firearm'—Firearms Act 1920, s 2(1). **Cafferata v Wilson, Reeve v Same** [1936] 3 149, KBD.

Sale of ammunition to person under 17—

Ammunition—Sale of blank ammunition to child—Whether an offence—Firearms Act 1937, ss 11, 16(2), 19, 32. **Burfitt v A & E Kille** [1939] 2 372, KBD.

Sale of firearm to person under 17—

Firearm—Lethal barrelled weapon—Sale of airgun to person under 17—Whether airgun 'lethal weapon'—Firearms Act 1947, s 19(1), s 32(1). **Moore v Gooderham** [1960] 3 575, QBD.

Meaning of sale—Rifle sold to person under 17 who was not entitled to purchase rifle—

Payment made in cash but possession of rifle retained by dealer—Whether contravention of Firearms Act—Conditional contract to sell and property to pass at some future time—

Whether such agreement for sale is within Firearms Act 1937, s 11(1), s 19(1)—Sale of Goods Act 1893, s 1(3). **Watts v Seymour** [1967] 1 1044, QBD.

Sale—

Restrictions on sale. *See* Restrictions on sale, *ante*.

FIREMAN

Fire Brigade. *See* Fire Brigade (Fireman).

FISH

Grant of fishery—

Proof—

Evidence of title—Several fishery in tidal waters—Necessity to prove existence of grant prior to Magna Carta—Manorial fishery—Boundaries. **Stephens v Snell** [1939] 3 622, ChD.

Salmon and trout—

Licence to fish—

Right to issue—Owner of exclusive right of fishing—Right to issue of general licence to fish—Salmon and Freshwater Fisheries Act 1923, s 61(g). **Mills v Avon and Dorset River Board** [1955] 1 382, ChD.

Prohibition of placing or using fixed engine for taking or obstructing salmon or trout—

Fixed engine—Drifting net with light anchors attached to act as brake—Whether 'fixed engine'—Salmon and Freshwater Fisheries Act 1923, ss 11(1), 92(1)(c). **Percival v Stanton** [1954] 1 392, QBD.

Taking or obstructing in tidal waters—Tidal waters—Extent of tidal waters—Personal knowledge of justices. **Ingram v Percival** [1968] 3 657, QBD.

Restriction on sale or possession for sale of salmon during close season—

Possession of salmon within period of prohibition of sale for selling after end of period—Whether prohibited—Salmon and Freshwater Fisheries Act 1923, s 30(1). **Birkett v McGlassons Ltd** [1957] 1 369, QBD.

Unlawful possession of instrument which could be used in taking of salmon or trout—

Instrument—Person found in possession of inflatable rubber dinghy and basket both containing traces of salmon scales and blood—Whether dinghy or basket was an 'instrument' within meaning of Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951, s 7(1). **Gibson v Ryan** [1967] 3 184, QBD.

Proof—Person found in possession of instrument which could be used in the taking of salmon or trout—Reasonable grounds for suspecting that instrument in his possession for purpose of committing an offence—What must be proved before convicting of offence—Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951, s 7(1)(2). **Ryan v Ross** [1963] 1 853, QBD.

Taking—

Unlawfully taking fish. *See* Fish (Taking—Unlawfully and wilfully taking fish in any water where private right of fishery).

White fish—

Development scheme involving reserve prices. *See* Restrictive trade practices (Justification of restriction—Specific and substantial benefit to public—Distant water fishermen).

FISHING

Rights—

Lease. *See* Landlord and tenant (Lease—Fishing rights).

FIT PERSON ORDER

See Children and young persons (Fit person order).

FITNESS

Contract for work and materials—

Building contract—

Implied warranty. *See* Building contract (Warranty—Implied warranty—Fitness or quality of materials).

Goods—

Implied condition in contract for sale. *See* Sale of goods (Implied condition as to fitness).

Premises—

Landlord and tenant. *See* Landlord and tenant (Fitness of premises).

FITNESS TO PLEAD

Criminal trial. *See* Criminal law (Trial—Fitness to plead).

FIXED COSTS

Taxation—

Divorce. *See* Divorce (Costs—Taxation—Fixed costs).

FIXTURES

- Landlord and tenant—
 - Business premises— *See* Landlord and tenant (Business premises—Fixtures).
- Larceny. *See* Criminal law (Larceny—Property capable of being stolen—Fixtures).
- Lease. *See* Landlord and tenant (Lease—Fixtures).
- Mortgaged property—
 - Degree of annexation necessary. *See* Mortgage (Fixtures).
- Trade—
 - Lease. *See* Landlord and tenant (Lease—Fixtures—Trade fixtures).

FLICK KNIFE—

- Offer to sell or hire—
 - Display for sale. *See* Criminal law (Dangerous weapons—Manufacture sale or hire—Offer to sell or hire—Display for sale—Flick knife).

FLOATING CHARGE

- Company. *See* Company (Charge—Floating charge).

FLOOD

- Insurance—
 - Householder's policy. *See* Insurance (Householder—Storm, tempest or flood).

FLOODING

- Coal mine. *See* Coal Mining (Flooding).
- Highway—
 - Evidence of failure by highway authority to maintain. *See* Highway (Maintenance—Civil liability for non-repairs—Flooding of main road).
- Land drainage—
 - Catchment board—
 - Contract to widen, deepen and make good banks of river—Bursting of banks—Flooding of adjoining land. *See* Land drainage (Catchment board—Contract to widen, deepen and make good banks of river—Bursting of banks—Flooding of adjoining land).
- Protection of land from flooding. *See* Water and watercourses (Flooding—Protection of land from flooding).

F O B CONTRACT

- Credit—
 - Sale of goods. *See* Sale of goods (Payment—Confirmed letter of credit—Fob Contract).

FOLLOWING TRUST PROPERTY

- Money—
 - Mixed with trustee's own money. *See* Trust and trustee (Breach of trust—Mixing trust moneys with trustee's own money).

FOOD

- Rationing. *See* Rationing (Food).

FOOD AND DRUGS

- Analysis of samples. *See* Samples, *post*.
- Defence to proceedings—
 - Contravention due to act or default of third party—
 - Act or default—Need for defendant to prove contravention of Act by third party—Food and Drugs Act 1938, s 83(1). *Moore v Ray* [1950] 2 561, KBD.
 - Act or default—Sale of tins of food—Labels bearing untrue statement of minimum weight—Sale by agents 'for account of' foreign principals—Liability of agents for 'act or default'—Pre-packed Foods (Weights and Measures : Marking) Order 1950, (S I 1950 No 1125), art 6(3). *Lester v Balfour Williamson Merchant Shippers Ltd* [1953] 1 1146, QBD.
 - Information laid by defendant against third party—Summons not served—Availability of defence—Time at which information must be laid—Food and Drugs Act 1938, s 83(1). *Malcolm v Cheek* [1947] 2 881, KBD.
 - Information laid by defendant against third party—Time limit—Information against defendant laid within six months of commission of offence—Information against third party laid more than six months after commission of offence—Whether proceedings against third party barred—Whether defendant entitled to rely on act or default of third party as defence—Magistrates' Courts Act 1952, s 104—Food and Drugs Act 1955, s 113(1). *R v Bicester Justices, ex parte Unigate Ltd* [1975] 1 449, QBD.
- Warranty by supplier—
 - Prosecution for sale of food not of substance demanded. *See* Sale—Not of substance demanded—Defence—Warranty by supplier, *post*.
- Examination and seizure of suspected food—
 - Hearing before justices. *See* Natural justice (Duty to act openly, impartially and fairly).
- False labelling. *See* Label—False label, *post*.
- False warranty—
 - Prosecution—
 - Limitation of time—Goods sampled but proceedings taken against wholesaler for false warranty—Food and Drugs Act 1938, ss 80(a),(b), 85(2). *Herman Jennings & Co Ltd v Slatcher* [1942] 2 1, KBD.
- Food hygiene—
 - Regulations for the protection of public health—
 - Protection of food from risk of contamination—Whether enactment extends to contamination not injurious to public health—Food and Drugs Act 1955, s 13—Food Hygiene Regulations 1955, (S I 1955 No 1906), reg 8. *Macfisheries (Wholesale & Retail) Ltd v Coventry Corp'n* [1957] 3 299, QBD.

FOOD AND DRUGS (cont)

Food unfit for human consumption—

Condemnation—

Order—Appeal against order—Right of appeal—Food condemned by justice—Executive act, and not judicial process—No right of appeal—Food and Drugs Act 1938, ss 10(3), 88. **R v Cornwall Quarter Sessions Appeal Committee, ex parte Kerley** [1956] 2 872, QBD.

Sale. *See* Sale—Food unfit for human consumption, *post*.

Label—

False label—

Time limit for prosecution—Defence Regulations 1939. **D P MacDonald & Sons Ltd v Sharpe** [1947] 1 271, KBD.

Misleading label—

Chain transactions—Original proceedings against retailer—Bringing in middlemen and manufacturer—Food and Drugs Act 1938, ss 65, 83, 93. **British Fermentation Products Ltd v British Italian Trading Co Ltd** [1942] 2 256, KBD.

Proceedings against manufacturer—Limitation of time—Subsequent offence—Material date of offence—Label submitted to public analyst—‘Reasonable diligence’—Food and Drugs Act 1938, ss 6(1), 79, 80, 83(3). **Concentrated Foods Ltd v Champ** [1944] 1 272, KBD.

Proceedings against manufacturer—No portion of sample delivered to manufacturer—Food and Drugs Act 1938, ss 6(1), 70, 83. **Cummings v British Fermentation Products Ltd** [1942] 2 271, KBD.

Marks of origin—

Imported food—

Display of mark—Imported meat—Mark not visible to purchaser—Merchandise Marks Act 1926, s 5—Merchandise Marks (Imported Goods) No 7 Order 1934, (S R & O 1934 No 727), arts 2, 3, 4. **Robinson v R C Hammett Ltd** [1938] 1 191, KBD.

Milk—

Adulteration of milk—

Possession of adulterated milk for purpose of sale—Possession—Possession by producer—Milk at place on farm agreed as collecting point with retailer—Food and Drugs (Milk, Dairies and Artificial Cream) Act 1950, s 9(1)(c). **Challand v Bartlett** [1953] 2 832, QBD.

Possession of adulterated milk for purpose of sale—Possession—Milk tested while standing at appointed collecting point—Contract completely executed by producer—Whether milk still in producer’s possession—Possession—Food and Drugs Act 1938, s 24. **Oliver & Goodger** [1944] 2 481, KBD.

Presumptive evidence of adulteration—Presumption until contrary proved article sampled not genuine milk—Milk solids—Evidence that deficiency due to natural causes—Evidence excluding possibility of interference with milk. **Churcher v Reeves** [1942] 1 69, KBD.

Sale of adulterated milk—Time of sale—Standard agreement with Milk Marketing Board—Milk left at roadside by producer for collection by Board’s carrier—Agreement providing property and risk in milk passing to Board at place of delivery—Milk tested after delivery by carrier—Whether sale effected at time of collection or at place of delivery—Sale of Goods Act 1893, s 1—Agricultural Marketing Act 1933—Food and Drugs Act 1938, ss 24, 68. **Watson v Coupland** [1945] 1 217, KBD.

Cleanliness of container—

Person on whom obligation to ensure cleanliness rests—Milk bottled and delivered to customer by agent of distributor—Unclean container—Liability of distributor—Milk and Dairies Regulations 1949, (S I 1949 No 1588), reg 26(1). **Quality Dairies (York) Ltd v Pedley** [1952] 1 380, KBD.

Person on whom obligation to ensure cleanliness rests—Milk bottled by producer—Bottle cleaned and supplied to producer by dealers—Whether dealers liable—Milk and Dairies (General) Regulations 1959, (S I 1959 No 277), reg 27(1). **United Dairies (London) Ltd v Beckenham Corpn, Same v E Fisher & Sons Ltd** [1961] 1 579, QBD.

Cream—

Marketing scheme—Fixing prices—Sterilised cream put into bottles—Price fixed for ‘tinned cream’—Whether applicable to sterilised cream in bottles. **Dried Milk Products Ltd v Milk Marketing Board** [1938] 2 534, CA.

Licence to sell—

Necessity for licence—Milk produced outside but sold inside jurisdiction. **Gallagher v Lynn** [1937] 3 598, HL.

Sample—

Procurement of sample for analysis. *See* Samples—Procurement of sample for analysis—Sample of milk, *post*.

Standard of quality—

Guernsey milk. *See* Sale—Not of quality demanded—Milk—Standard of quality—Sale of ‘Guernsey’ milk, *post*.

Misleading label. *See* Label—Misleading label, *ante*.

Offence—

Prosecution—

Food and drugs authority—Discretion whether to prosecute—Public interest—Duty to consider whether prosecution in public interest. **Smedleys Ltd v Breed** [1974] 2 21, HL.

Limitation of time—Bottle of milk deposited with customer—Handed by customer to sanitary inspector—Sanitary inspector also sampling officer—Food and Drugs Act 1938, s 80(1)(a). **Leach v United Dairies Ltd** [1949] 1 1023, KBD.

Limitation of time—Milk—Bulk taken not sample—Whether time limit applicable—Food and Drugs Act 1955, s 108(1)(a)(i). **Dwerryhouse v United Co-operative Dairies Ltd** [1962] 1 936, QBD.

Prepacked foods—

Packaging. *See* **Weights and measures** (Prepacked goods—Meat exposed for sale on bit of paper slightly larger than piece of meat).

Short weight. *See* **Weights and measures** (Prepacked goods—Short weight).

FOOD AND DRUGS (cont)**Preparation and sale of injurious foods—****Possession for purposes of sale—**

Onus of proof—Unsound meat—Meat in possession of respondents—Whether on premises for purpose of sale and intended for food of man—Statutory onus of proof on respondents—Whether onus discharged—Public Health Act 1875, ss 116, 117—Public Health Acts Amendment Act 1890, s 28. *Cant v Alexander Harley & Sons Ltd* [1938] 2 768, KBD.

Proceedings against third party—**Contravention due to act or default of third party—**

Act or default—Meaning—Original sale by manufacturer of article of food complying with current regulations—Subsequent alteration in law—Sale of article by retailer—Substance and quality of article of food not complying with new regulations—Liability of manufacturers—Food and Drugs Act 1938, s 83—Defence (Sale of Food) Regulations 1943, (S R & O 1943 No 1553), reg 1, reg 2. *Noss Farm Products Ltd v Lilico* [1945] 2 609, KBD.

Act or default—Need to prove mens rea or negligence—Food and Drugs Act 1938, ss 3(1), 83(3). *Lindley v George W Horner & Co Ltd* [1950] 1 234, KBD.

Act or default—Need to prove mens rea or negligence—Food and Drugs Act 1938, s 83(3). *Lamb v Sunderland and District Creamery Ltd* [1951] 1 923, KBD.

Dismissal of informations—

Case stated at request of prosecutor—Inclusion of third party essential—Food and Drugs Act 1938, s 83(1). *Elkington v Kesley* [1948] 1 786, KBD.

Information—

Form of information—Food and Drugs Act 1938, s 83(3). *Challand v Bartlett* [1953] 2 832, QBD.

Information by retailer against supplier—

Dismissal of information against retailer—Whether retailer a proper party to appeal by supplier to quarter sessions—Food and Drugs Act 1955, s 113(1). *Oxo Ltd v Chappell and Turner* [1966] 3 168, QBD.

Procedure—

Production of sample at hearing—Sample divided into three portions—Part of portion retained by inspector sent to manufacturer—Failure to produce whole portion at the hearing—Effect—Food and Drugs Act 1938, ss 3, 70, 80(4), 83(3). *British Fermentation Products Ltd v Teal* [1943] 1 331, KBD.

Proceedings against third party for offence against regulations made under statute—

Regulations not expressly incorporating section providing for proceedings against third party—Whether proceedings maintainable where regulations did not expressly incorporate section of Act—Food and Drugs Act 1955, s 113—Milk and Dairies (General) Regulations 1959, (S I 1959 No 277). *United Dairies (London) Ltd v Beckenham Corp'n, Same v E Fisher & Sons Ltd* [1961] 1 579, QBD.

Proceedings brought while proceedings against retailer pending—

Propriety—Food and Drugs Act 1938, s 83(3). *Fisher v Santovin Ltd, Same v Yardley's London and Provincial Stores Ltd* [1953] 2 713, QBD.

Sale—**Drug—**

Supply by chemist under National Health Service. *See National health service* (Pharmaceutical services).

Food unfit for human consumption—

Prosecution—Procedure—Proceedings against manufacturer—Food and Drugs Act 1938, s 9(1)(a),(2), s 83(3). *Fisher v Barrett & Pomeroy (Bakers) Ltd* [1954] 1 249, QBD.

Milk—

Adulterated milk. *See Milk—Adulteration of milk—Sale of adulterated milk, ante.*

Misrepresentation as to quantity—Sale by farmer to marketing board—Resale by board to dairy. *See Weights and measures* (Misrepresentation as to quantity of goods—Misrepresentation in connection with sale of goods—Sale of milk by farmer to marketing board—Resale by board to dairy).

Not of nature or not of substance or not of quality demanded—

Defence—Deficiency caused by manufacturing process—Common repute—Food and Drugs Act 1938, ss 3(1), 4, 83(3). *Breed v British Drug Houses Ltd* [1947] 2 613, KBD.

Evidence—'Cordial'—Evidence must show what an ordinary purchaser expects to receive. *Collins Arden Products Ltd v Barking Corp'n* [1943] 2 249, KBD.

Information—Validity—Charge of selling food 'not of the nature or not of the substance or not of the quality demanded'—Disclosure of more than one offence—Information bad for duplicity—Food and Drugs Act 1938, s 3(1). *Bastin v Davies* [1950] 1 1095, KBD.

Information—Validity—Charge of selling milk 'not of the nature, substance, and quality' of the article demanded—Information bad for duplicity—Food and Drugs Act 1938, s 3(1). *Moore v Ray* [1950] 2 561, KBD.

Piece of metal in bun—Bun not unfit for human consumption—Whether food not of the nature, substance or quality demanded—Food and Drugs Act 1938, s 3(1), s 9. *J Miller Ltd v Battersea Borough Council* [1955] 3 279, QBD.

Not of quality demanded—

Adulterated gin sold by barmaid, who was a servant of company owning hotel, without licensee's knowledge—Licensee manager of hotel—Whether barmaid sold on behalf of licensee—Whether licensee guilty of offence—Food and Drugs Act 1955, s 2. *Goodfellow v Johnson* [1965] 1 941, QBD.

Defence—Prepacked perishable food—Natural deterioration—Whether food when sold by retailer was in same state as when he purchased it—Food and Drugs Act 1955, ss 2(1), 115(1)(c). *Watford Borough Council v Maypole Ltd, Watford* [1970] 1 554, QBD.

FOOD AND DRUGS (cont)

Sale (cont)—

Not of quality demanded (cont)—

Defence—Warranty by supplier—Food in same state as when defendant purchased it—State—Meaning—Article of food cut into pieces by defendant after purchase and before sale—Food not otherwise tampered with by defendant—Whether at time of sale food 'in the same state' as when purchased—Food and Drugs Act 1955, s 115(1)(c). **Tesco Stores Ltd v Roberts** [1974] 3 74, QBD.

Defence—Warranty by supplier—Watered whisky—Excise certificate—Spirits Act 1880, ss 105(5), 108(2), Sch IV—Food and Drugs Act 1938, s 84(1)(a). **Follett v Luke** [1947] 1 35, KBD.

Evidence—Standard of quality—'Cordial'—Character of article—No statutory or recognised standard—Certificate of public analyst—Evidence not contradicted—Article sold to prejudice of purchaser—Food and Drugs Act 1938, s 3(1). **Broughton v Whittaker** [1944] 2 544, KBD.

Evidence—Standard of quality—No standard prescribed by law—Standard to be fixed in accordance with evidence—Vinegar—Deficiency in acetic acid content—Food and Drugs Act 1938, s 3(1). **Webb v Jackson Wyness Ltd** [1948] 2 1054, KBD.

Milk—Standard of quality—Sale of 'Guernsey' milk—Butterfat content less than that prescribed for 'Channel Islands milk'—Whether offence under Food and Drugs Act 1938, s 3(1)—Milk (Control and Maximum Prices) (Great Britain) Order 1947, (S R & O 1947 No 2032), art 1(1). **Higham v Turier** [1951] 2 850, KBD.

Prejudice to purchaser—Sale of milk—Water added to milk—Milk of good quality after addition of water—Whether sale to prejudice of purchaser. **Evans v Jones** [1953] 2 701, QBD.

Remedy—Statutory provision for imposition of penalty for breach of statutory duty—Action for damages—Whether remedy restricted to penalty—Infected milk—Sale of Goods Act 1893, ss 13, 14—Food and Drugs (Adulteration) Act 1928, s 2. **Square v Model Farm Dairies (Bournemouth) Ltd** [1939] 1 259, CA.

Not of substance demanded—

Defence—Warranty by supplier—Food in same state as when defendant purchased it—Milk from cow containing more than recommended maximum of penicillin—Milk purchased from Milk Marketing Board under written warranty—Subsequent pasteurisation, testing and bottling by wholesaler—Whether milk when sold by wholesaler to retailer was in same state as when wholesaler purchased it—Food and Drugs Act 1955, ss 2(1), 115(1)(c). **Hall v Owen-Jones and Jones (trading as Central Dairies)** [1967] 3 209, QBD.

Defence—Warranty by supplier—Milk Marketing Board—Milk sold by farmers to board under warranty—Milk purchased by wholesaler from board under warranty—Pasteurisation, testing and bottling by wholesalers—Subsequent sale to retailer—Sale by him to sampling officer—Excess of penicillin in milk—Board brought into proceedings consequent on defence of wholesalers relying on warranty—Whether defence of warranty by farmers available to board—Food and Drugs Act 1955, s 115(1). **Milk Marketing Board v Hall** [1968] 2 259, QBD.

Evidence—'Mock salmon cutlette'—No recognised standard of quality—Evidence that, whatever fair view of minimum content of fish may be, content of article below it—Whether sufficient evidence to prove offence—Food and Drugs Act 1955, s 2(1). **Tonkin v Victor Value Ltd** [1962] 1 821, QBD.

Extraneous matter—Defence—Presence of extraneous matter unavoidable consequence of process of collection or preparation—Reasonable care taken by defendant to avoid presence of extraneous matter—Whether sufficient to establish defence—Food and Drugs Act 1955, ss 2(1), 3(1). **Smedleys Ltd v Breed** [1974] 2 21, HL.

Possession for purposes of sale—

Adulterated milk. *See* Milk—Adulteration of milk—Possession of adulterated milk for purposes of sale, *ante*.

Samples—

Certificate of analysis—

Copy of any certificate of analysis obtained by prosecutor to be served with summons—'Any certificate of analysis'—Only the certificates in respect of the article which is the subject matter of the prosecution need be served—Food and Drugs Act 1938, s 80(3). **Sherwood v Cox, Same v Day** [1945] 2 92, KBD.

Evidence of analysis—

Certificate of analyst—Certificate that water added in milk—Statement of opinion—Admission of certificate in evidence—Food and Drugs Act 1938, s 81(1)—Public Analysts Regulations 1939, (S R & O 1939 No 840), reg 4. **McCulloch v Hannam** [1951] 1 402, KBD.

Certificate of analyst—Conclusiveness—Analyst not required to be called by defence—Right to produce rebutting evidence—Food and Drugs Act 1938, s 81(1). **Preston v Fennell** [1950] 1 1099, KBD.

Certificate of analyst—Form of certificate—Need of standard for comparison—Food and Drugs Act 1938, s 81(1). **Gammack v Jackson Wyness Ltd** [1948] 2 1056, KBD.

Procedure as to samples taken for analysis—

Delivery of sample to consignee—Consignor's name, but no address, appearing on container—Consignor's address known to sampling officer—Whether part of sample to be sent to consignee—Food and Drugs Act 1938, s 70(2). **Fenn v Gaze** [1950] 2 819, KBD.

Division into parts—Unwrapped meat pies—Test for meat content—Purchase by sampling officer of six meat pies—Division into three lots of two pies each—Submission of one lot of two pies to public analyst—Analysis of content of both pies showing that at least one deficient in meat content—Prosecution and conviction in respect of one meat pie—Validity—Whether six meat pies a 'sample' in relation to one pie in respect of which prosecution brought—Food and Drugs Act 1955, s 93(1), Sch 7, Part I, paras 1, 9. **Skeate v Moore** [1971] 3 1306, QBD.

FOOD AND DRUGS (cont)

Samples (cont)—

Procedure as to samples taken for analysis (cont)—

Proceedings against manufacturer at retailer's request—Sample taken at retailer's premises—Sample divided into three portions—No portion of sample delivered to retailer—Procedure—Food and Drugs Act 1938, s 70(1),(2)—Defence (Sale of Food) Regulations 1943, (S R & O 1943 No 1553), reg 1. **Southwell v Ross** [1945] 2 590, KBD.

Samples taken after delivery at purchaser's premises—Name and address of consignor not appearing on container—Right of consignor to have part of sample submitted to him—Evidence of public analyst—Food and Drugs Act 1938, ss 70(1),(2), 81(1). **S Stone & Sons (Hounslow) Ltd v Pugh** [1948] 2 818, KBD.

Procurement of sample for analysis—

Sample of milk—Bottle of milk delivered to customer and partially consumed—Remainder handed to sampling officer—One half given to sellers, other half to public analyst—Whether sample procured under the Act—Whether defence of container being opened before sample taken available—Food and Drugs Act 1955, s 91(4), s 94(4). **Dwerryhouse v United Co-operative Dairies Ltd** [1962] 1 936, QBD.

Sample of milk—Taking of sample at place of delivery—Meaning of 'place of delivery'—Milk sold to Milk Marketing Board—Surplus to requirements—Delivery taken at farm collecting point—Sample taken later at diversion point—Whether in accordance with Act—Food and Drugs Act 1938, ss 24(1), 68(4). **Evans v Rogers** [1946] 2 64, KBD.

Slaughterhouse—

Licensing—

Premises used in connection with the business of slaughtering animals—Cow slaughtered in unlicensed shippen—Whether shippen 'premises used in connection with the business of slaughtering animals'—Food and Drugs Act 1938, ss 57(1), 100(1). **Perrins v Smith** [1945] 2 706, KBD.

FOOD HYGIENE

See Food and drugs (Food hygiene).

FOOTBALL

Newspaper competition—

Forecasts of result of a future event. *See* Gaming (Prize competition—Forecast of result of future event—Newspaper competition—Football pool).

Tribunal—

Natural justice—

Right to legal representation. *See* Natural justice (Domestic tribunal—Legal representation—Appeal to tribunal on point of law).

FOOTBALL BETTING COUPON

Copyright—

Whether coupon original literary work. *See* Copyright (Literary work—Compilation) Originality—Approach to determining whether copyright exists—Compilation regarded as a whole—Skill, labour and judgment involved—Football betting coupon).

FOOTBALL GROUND

Public order—

Public place—

Premises or place to which public have or are permitted to have access. *See* Public order (Public place) Premises or place to which public have or are permitted to have access—Public denied access to certain parts of premises—Football ground).

FOOTBALL POOL

Fraudulent claim to winnings—

Letter posted abroad and received in England—

Jurisdiction. *See* Criminal law (Jurisdiction—Attempt—Attempt to obtain property by deception—Letter posted abroad addressed to persons in England—Letter containing fraudulent claim to football pool winnings).

Newspaper competition—

Forecast of result of future event. *See* Gaming (Prize competition—Forecast of result of future event—Newspaper competition—Football pool).

FOOTBALLER

Signing-on fee—

Income tax—

Capital or income. *See* Income tax (Capital or income receipts—Professional sportsman).

FOOTPATH

Diversion. *See* Highways (Diversion—Footpaths and bridleways).

Road used as public path—

Classification. *See* Highway (Classification—Definitive map—Road used as public path).

FORCE MAJEURE

Charterparty—

Frustration. *See* Contract (Frustration—Force majeure—Charterparty).

Contract—

Agreement subject to force majeure conditions—

Variety of force majeure conditions in trade—Whether concluded agreement—Whether enforceable. **British Electrical & Associated Industries (Cardiff) Ltd v Patley Pressings Ltd, Reid Bros (Glasgow) Ltd (third party), Douglas Scott Ltd (fourth party)** [1953] 1 94, QBD.

FORCE MAJEURE (cont)

Contract (cont)—

Non-performance—

Direct and deliberate interference by defendants to prevent performance—Whether defendants exonerated from liability by force majeure clause. *Torquay Hotel Co Ltd v Cousins* [1969] 1 522, CA.

Sale of goods—

Force majeure clause—

Cif contract for sale of Egyptian cottonseed oil—London Oil and Tallow Traders Association form of contract—Time of shipment to be extended 'should the shipment be delayed by ... prohibition of export'—Prohibition on export of cottonseed oil for part of time for shipment—Whether shipment 'delayed'. *Fairclough Dodd & Jones Ltd v J H Vantol Ltd* [1956] 3 921, HL.

Cif contract for sale of groundnuts—Incorporated Oil Seed Association's form of Contract—Extension of time of shipment in cases of force majeure—'Shipment'. *Tsakiroglou & Co Ltd v Noble Thorl GmbH* [1961] 2 179, HL.

Cif contract for sale of groundnuts—Incorporated Oil Seed Association Form 38, cl 8—Closing of Suez Canal—Whether force majeure clause brought into operation. *Albert D Gaon & Co v Société des Oleagineux Fluides Alimentaires* [1960] 2 160, CA.

Contract for sale of cotton crop—Contract subject to rules of Liverpool Cotton Association—Contract providing cases where 'timely fulfillment of contract... rendered impossible owing to... force majeure'—Whether sellers relieved from liability—Rules of Liverpool Cotton Association, r 48, r 53, r 227(8). *Podar Trading Co Ltd Bombay v Francois Tagher, Barcelona* [1949] 2 62, KBD.

Delivery of goods 'subject to export licence'—Minimum export prices fixed in excess of contract prices—Whether sellers relieved from liability by force majeure clause. *Brauer & Co (Great Britain) Ltd v James Clark (Brush Materials) Ltd* [1952] 2 497, CA.

FORCIBLE DETAINER

See Criminal law (Forcible entry and detainer).

FORCIBLE ENTRY

See Criminal law (Forcible entry and detainer).

FORECLOSURE

Mortgage—

Generally. *See Mortgage* (Foreclosure).

Power of court to authorise sale of mortgaged property in action for foreclosure. *See Mortgage* (Sale—Power to authorise sale in action for foreclosure).

FOREIGN ADOPTION

See Adoption (Foreign adoption).

FOREIGN ASSIGNMENT

Chose in action. *See Chose in action* (Assignment—Foreign assignment).

FOREIGN AWARD

Arbitration—

Enforcement. *See Arbitration* (Award—Enforcement—Foreign award).

FOREIGN COMPANY

Generally. *See Company* (Foreign company).

Taxation. *See Income tax* (Foreign company).

Writ—

Service on company. *See Writ* (Service on company—Foreign company).

FOREIGN COMPENSATION

Claim—

Nationalisation or expropriation—

Compensation for property nationalised or expropriated by foreign government—Egypt—Deprivation of property under laws promulgated by Egyptian government—Laws in respect of 'expropriation or nationalisation'—Sequestration of property followed by sale to state corporations—Applicants' property sequestered under proclamation of Egyptian government—Property subsequently sold to state corporations by ministerial decision under powers incorporated in proclamation—Whether property having been expropriated or nationalised—Whether expropriation or nationalisation effected under 'laws promulgated by Egyptian government—Foreign Compensation (Egypt) Order 1971 (S I 1971 No 2104), arts 2(2), 9(1)(d). *Benin v Whimster* [1975] 3 706, CA.

FOREIGN COMPENSATION COMMISSION

Finality of determination—

Certiorari. *See Certiorari* (Statutory tribunal—Determination of tribunal to be final—Application to Foreign Compensation Commission).

FOREIGN CORPORATION

Injunction—

Breach of contract—

Submission to jurisdiction. *See Injunction* (Breach of contract—Foreign corporation—Submission to English jurisdiction).

FOREIGN COURT

Conviction—

Autrefois acquit. *See Criminal law* (Autrefois acquit—Conviction by foreign court).

FOREIGN COURT (cont)

Jurisdiction—

Judgment—

Enforcement. *See* **Conflict of laws** (Foreign judgment—Enforcement—Action in England—Jurisdiction of foreign court).**FOREIGN CURRENCY**

Arbitration—

Award—

Jurisdiction of arbitrators to make award for payment of sum expressed in foreign currency. *See* **Arbitration** (Award—Payment of sum of money—Foreign currency).

Damages—

Interest—

Rate of interest. *See* **Interest** (Damages—Award in foreign currency—Rate of interest).

Debt in foreign currency—

Claim in winding-up of company. *See* **Company** (Compulsory winding-up—Distribution of assets—Debt in foreign currency).

Conversion into sterling—

Rate of exchange. *See* **Currency control** (Debt in foreign money—Rate of exchange—Date of conversion.)Exchange control. *See* **Currency control** (Exchange control—Foreign currency).

Interest payable in foreign currency—

Deduction of tax. *See* **Income tax** (Interest—Deduction of tax by payer—Foreign currency).

Judgment—

Jurisdiction to order payment of sum of money expressed in foreign currency. *See* **Judgment** (Payment of sum of money—Foreign currency).Payment of sum expressed in foreign currency. *See* **Judgment** (Payment of sum of money—Foreign currency).**FOREIGN DECREE**Divorce. *See* **Divorce** (Foreign decree).

Recognition—

Nullity decree. *See* **Nullity** (Recognition of foreign decree).**FOREIGN EMPLOYMENT**Income tax. *See* **Income tax** (Foreign employment).**FOREIGN EXCHANGE CONTROL***See* **Currency control** (Exchange control—Foreign exchange control).**FOREIGN GOVERNMENT**Adding as defendant. *See* **Practice** (Parties—Adding defendant—Foreign government).

Recognition—

Generally. *See* **International law** (Recognition of foreign government).Validity of laws. *See* **Conflict of laws** (Foreign government—Recognition—Law as declared by courts of foreign country).

Representative of foreign government on trade mission—

Whether entitled to diplomatic immunity. *See* **Constitutional law** (Diplomatic privilege—Immunity from legal process—Acceptance of diplomat by receiving country—Member of permanent mission).

Treaty obligations—

Extradition—

Presumption that no breach by friendly State intended. *See* **Extradition** (Treaty—Breach—Whether presumption that no breach by friendly State intended).**FOREIGN JUDGMENT**Action on foreign judgment. *See* **Conflict of laws** (Foreign judgment—Enforcement—Action in England).

Administration action—

Claim based on foreign judgment. *See* **Administration of estates** (Administration action—Claim based on foreign judgment).Conclusiveness in English proceedings. *See* **Conflict of laws** (Foreign judgment—Conclusiveness in English proceedings).Divorce proceedings. *See* **Divorce** (Foreign decree).Issue estoppel arising from. *See* **Estoppel** (Issue estoppel—Foreign judgment).

Patent—

Rights of English company in regard to English patents. *See* **Patent** (Foreign judgment—Recognition).Recognition. *See* **Conflict of laws** (Foreign judgment—Recognition by English courts).Registration in England. *See* **Conflict of laws** (Foreign judgment—Registration in England).Res judicata. *See* **Estoppel** (Res judicata—Foreign judgment).**FOREIGN LAW**

Expert witness—

Whether court can reject opinion of expert witness. *See* **Statute** (Foreign—Construction—Opinion of expert witness).Proof. *See* **Evidence** (Foreign law—Proof).Recognition. *See* **Conflict of laws** (Foreign law—Recognition).**FOREIGN MARRIAGE***See* **Marriage** (Foreign marriage).**FOREIGN PLAINTIFF**Security for costs. *See* **Costs** (Security for costs—Plaintiff ordinarily resident out of jurisdiction).

FOREIGN POSSESSIONS

Income tax. *See* **Income tax** (Foreign possessions).

FOREIGN PROCEEDINGS

Discovery against persons not parties to foreign action. *See* **Evidence** (Foreign tribunal—Examination of witness in relation to matters pending before foreign tribunal—Production of documents—Discovery against persons not parties to foreign action).

Judgments, orders and other documents for use in. *See* **Practice** (Document—Documents for use abroad).

Privilege—

Documents prepared for foreign litigation. *See* **Discovery** (Legal professional privilege—Communications with foreign lawyers—Documents coming into existence for the purposes of proceedings contemplated in foreign court).

Restraint of foreign proceedings. *See* **Conflict of laws** (Foreign proceedings—Restraint of foreign proceedings).

Witness—

Examination in relation to matters pending before foreign tribunal. *See* **Evidence** (Foreign tribunal—Examination of witness in relation to matters pending before foreign tribunal).

FOREIGN SECURITIES

Income tax. *See* **Income tax** (Foreign securities).

FOREIGN SOVEREIGN

Impleading. *See* **Constitutional law** (Foreign sovereign state—Immunity from suit).

FOREIGN STATE

Armed forces. *See* **Constitutional law** (Foreign sovereign state—Armed forces of foreign state).

Immunity from suit. *See* **Constitutional law** (Foreign sovereign state—Immunity from suit).

See **Constitutional law** (Foreign sovereign state—Immunity from suit).

FOREIGN TAX

Company—

Claim by foreign government to tax due from company—

Voluntary winding-up of company. *See* **Company** (Voluntary winding-up—Distribution of company's property—Foreign tax).

Credit against income tax. *See* **Income tax** (Double taxation relief—Credit of foreign tax against income tax).

FOREIGN TRIBUNAL

Production of English company documents before. *See* **Company** (Documents—Production of documents—Production before foreign tribunal).

FOREIGN TRUST

Variation of trusts by the court. *See* **Variation of trusts** (Jurisdiction—Trust containing foreign element).

FOREIGN WILL

Probate—

Generally. *See* **Probate** (Foreign will).

Grant. *See* **Probate** (Grant—Foreign will disposing only of property abroad).

Revocation—

Revocation by written instrument. *See* **Will** (Revocation—Revocation by written instrument—Foreign will).

FOREIGNER

Extradition. *See* **Extradition**.

FORESEEABLE HARM

Damage—

Tort. *See* **Damages** (Remoteness of damage—Foreseeability).

Negligence—

Duty of care. *See* **Negligence** (Duty to take care—Foreseeable harm).

Remoteness of damage. *See* **Negligence** (Remoteness of damage—Foreseeable harm).

FORESHORE

Adverse possession—

Limitation of action. *See* **Limitation of action** (Land—Adverse possession—Foreshire).

Pollution—

Discharge of oil to lighten vessel stranded in estuary—

Nuisance—Need to prove negligence. *See* **Nuisance** (Negligence—Need to prove—Pollution of shore—Ship—Discharge of oil to lighten vessel stranded in estuary).

Public nuisance. *See* **Nuisance** (Public nuisance—Pollution of shore—Discharge of oil to lighten vessel stranded in estuary).

Rights over foreshore—

Acquiring sea-borne coal—

Bathing—County Palatine of Durham—Inhabitants of county alleged to have right to take sea-borne coal and for that purpose to have access to foreshore—Alleged usage based on prescription or custom—Taking as of right not the only explanation—Tolerance of owner—Whether alleged rights a profit-à-prendre. *Alfred F beckett Ltd v Lyons* [1967] 1 833, CA.

FORESIGHT

Murder. *See* **Criminal law** (Murder—Mens rea—Foresight).

FORESTRY

Timber control. *See* **Timber control**.

FORFEITURE

- Gaming machine. *See* **Gaming** (Gaming machine—Forfeiture and destruction).
- Goods improperly imported. *See* **Customs and excise** (Forfeiture—Imported goods).
- Lease—
 - Generally. *See* **Landlord and tenant** (Forfeiture of lease).
 - Relief. *See* **Landlord and tenant** (Relief against forfeiture).
- Obscene publications—
 - Criminal proceedings. *See* **Criminal law** (Obscene publications—Forfeiture).
 - Procedure—
 - Magistrates. *See* **Magistrates** (Obscene publication—Forfeiture).
- Recognisance—
 - Appeal against order for forfeiture. *See* **Quarter sessions** (Appeal to—Appeal against order for forfeiture of recognisance).
 - Bail. *See* **Criminal law** (Bail—Recognisance—Forfeiture).
- Relief against forfeiture—
 - Generally. *See* **Equity** (Forfeiture—Relief).
 - Landlord and tenant. *See* **Landlord and tenant** (Relief against forfeiture).
- Settlement—
 - Generally. *See* **Settlement** (Forfeiture).
 - Mental patient—
 - Forfeiture clause. *See* **Mental health** (Patient's property—Settlement—Forfeiture clause).
- Shares. *See* **Company** (Shares—Forfeiture).
- Trust—
 - Forfeiture clause. *See* **Variation of trusts** (Benefit—Benefit not restricted to financial, educational and social benefit—Forfeiture clause).
- Will—
 - Forfeiture clause. *See* **Will** (Forfeiture clause).

FORGERY

- Cheque—
 - Duty of paying bank.
 - See* **Bank** (Cheque—Forgery—Duty of paying bank).
- Conversion of trust securities—
 - Breach of trust. *See* **Trust and trustee** (Breach of trust—Conversion of trust securities—Forgery).
- Criminal proceedings. *See* **Criminal law** (Forgery).
- Will—
 - Evidence—
 - Conviction—Admissibility. *See* **Evidence** (Conviction—Admission as evidence in civil proceedings—Subsisting conviction—Conviction subject to appeal—Adjournment of civil proceedings pending appeal—Probate—Will—Validity—Allegation that will a forgery).

FORM

- Application for new tenancy—
 - Business premises. *See* **Landlord and tenant** (Business premises—Application for new tenancy—Form).
- Case stated. *See* **Case stated** (Form).
- Census return. *See* **Census** (Form of return).
- Claim—
 - Compensation for goodwill in respect of business premises. *See* **Landlord and tenant** (Compensation for goodwill in respect of business premises—Claim—Form).
- Leasehold enfranchisement—
 - Tenant's notice—
 - Prescribed form—Failure to delete mutually exclusive alternatives. *See* **Landlord and tenant** (Leasehold enfranchisement—Tenant's notice—Prescribed notice—Notice of desire to have 'the freehold or an extended lease'—Failure to delete alternative).
- Notice to quit—
 - Business premises. *See* **Landlord and tenant** (Validity of notice to quit—Business premises—Prescribed form).
- Signed in blank—
 - Non est factum. *See* **Document** (Non est factum—Reasonable care—Form signed in blank.)

FORMATION

- Contract—
 - Certainty of terms. *See* **Contract** (Enforceability—Certainty of terms).

FORTUNE-TELLING

- Offence. *See* **Criminal law** (Vagrancy—Fortune-telling).

FORUM CONVENIENS

- Wardship proceedings. *See* **Ward of court** (Jurisdiction).

FOSTER CHILD

- Discrimination on ground of colour. *See* **Race relations** (Unlawful discrimination—Discrimination by person concerned with provision of goods etc to a section of the public—Persons seeking to obtain or use goods etc—Children in care of local authority).
- Generally. *See* **Child** (Foster child).

FRAUD

- Agent—
 - Liability of principal. *See* **Agent** (Liability of principal—Tort—Fraud).

FRAUD (cont)

- Certiorari. *See* **Certiorari** (Fraud).
- Concealment of right of action—
 - Limitation of action. *See* **Limitation of action** (Concealment of right of action by fraud).
- Conspiracy—
 - Crime. *See* **Criminal law** (Conspiracy—Fraud).
- Criminal liability. *See* **Criminal law** (Fraud).
- Declaration of legitimacy obtained by fraud. *See* **Legitimation** (Declaration of legitimacy—Declaration obtained by fraud).
- Evasion of prohibition or restriction on importation of certain goods. *See* **Customs** (Importation of prohibited goods—Evasion of prohibition).
- Evidence of similar offences. *See* **Criminal evidence** (Improper conduct of accused on other occasions—Similar offences—Fraud.)
- Identity of party to contract. *See* **Contract** (Mistake—Identity of party—Deception as to identity).
- Income tax—
 - Additional assessment. *See* **Income tax** (Additional assessment).
 - Return. *See* **Income tax** (Penalty—Fraudulent return).
- Judgment obtained by fraud—
 - Setting aside. *See* **Judgment** (Setting aside—Judgment obtained by fraud).
- Misrepresentation—
 - Company prospectus. *See* **Company** (Prospectus—Misrepresentation—Fraud).
- Partnership—
 - Allegation akin to allegations of fraud—
 - Arbitration clause in partnership agreement—Application for stay of court proceedings. *See* **Arbitration** (Stay of court proceedings—Refusal of stay—Grounds for refusal—Fraud).
 - Power of appointment. *See* **Power of appointment** (Fraud on a power).
- Proceedings involving allegation of fraud—
 - Originating summons. *See* **Originating summons** (Fraud).
- Rectification of land register on ground of fraud. *See* **Land registration** (Rectification of register—Circumstances justifying rectification—Entry obtained by fraud).
- Take-over of company—
 - Civil liability—
 - Constructive trust. *See* **Trust and trustee** (Constructive trust—Participation in dishonest design).
- Trial by jury. *See* **Practice** (Trial—Trial by jury—Fraud).
- Undisclosed principal. *See* **Agent** (Contract—Undisclosed principal—Fraud of principal).
- Vehicle excise licence—
 - Fraudulent use of licence. *See* **Road traffic** (Excise licence—Fraudulent use of licence).
- Wagering. *See* **Gaming** (Fraud in wagering).

FRAUDULENT CONVERSION

- See* **Criminal law** (Fraudulent conversion).

FRAUDULENT CONVEYANCE

- Conveyance of property with intent to defraud creditors—
 - Intent to defraud—
 - Requirement of dishonesty—Intent to deprive creditors of timely recourse to property otherwise applicable for their benefit—Property subject to legal charge in favour of bank—Grant of lease of premises by mortgagor to wife at rack rent—Lease granted after issue of summons by bank for possession—Purpose of lease to enable mortgagor and wife to continue living in property—Mortgagor not appreciating that bank could sell property with vacant possession for higher price than if subject to lease—Mortgagor appreciating that bank attributed value to property with vacant possession—Whether intent to defraud requiring dishonesty—Whether mortgagor guilty of intent to defraud—Law of Property Act 1925, s 172(1). **Lloyds Bank Ltd v Marcan** [1973] 3 754, CA.
- Deception of public authority—
 - Conveyance of property with intent to deceive public authority—
 - Transfer of land by father to son for purpose of avoiding disclosure of ownership to public authority—Transaction ostensibly a sale—No consideration paid and father remaining in possession after transfer—Fraudulent purpose effected—Whether father could enforce transfer of land by son. **Chettiar v Chettiar** [1962] 1 494, PC.
- Validity—
 - Bona fide purchaser—
 - Conveyance for valuable consideration and in good faith—Conveyance to person not having notice of intent to defraud creditors—'Notice' including constructive notice—Law of Property Act 1925, s 172(3). **Lloyds Bank Ltd v Marcan** [1973] 2 359, ChD.

FRAUDULENT EVASION

- Prohibition on importation of prohibited goods.
 - See* **Customs and excise** (Importation of prohibited goods—Evasion of prohibition).

FRAUDULENT INDUCEMENT

- Investment of money. *See* **Criminal law** (Inducement to invest money—Fraud).

FRAUDULENT MISREPRESENTATION

- See* **Misrepresentation** (Fraudulent misrepresentation).

FRAUDULENT PREFERENCE

- Bankruptcy. *See* **Bankruptcy**—(Fraudulent preference).
- Company—
 - Winding-up. *See* **Company** (Winding-up—Fraudulent preference).

FRAUDULENT TRADING

- Company—
 - Winding-up. *See* **Company** (Winding-up—Fraudulent trading).

FRAUDULENT TRADING (cont)

Indictment—

Duplicity. *See* **Indictment** (Duplicity—Fraudulent trading).**FREEDOM OF EXPRESSION**Antigua. *See* **Antigua** (Fundamental rights and freedoms—Freedom of expression).**FREEDOM OF MOVEMENT**Workers. *See* **Immigration** (Workers—Freedom of movement).**FREEDOM OF PUBLICATION**

Ward of court—

Protection—

Publication of matter likely to be harmful to ward. *See* **Ward of court** (Jurisdiction—

Protection of ward—Freedom of publication).

FREEHOLDAcquisition by long leaseholder. *See* **Landlord and tenant** (Leasehold enfranchisement).**FREIGHT**

Cargo owners—

Payment on arrival of ship. *See* **Sale of goods** (C and F contract—Cif contract. *See* **Sale of goods** (Cif contract).Goods sold on C and F terms. *See* **Sale of goods** (C and F contract).Insurance. *See* **Marine insurance** (Freight).Shipping. *See* **Shipping** (Freight).**FREQUENTING**

Public place—

Frequenting with intent. *See* **Criminal law** (Vagrancy—Frequenting public place with intent).**FRESH EVIDENCE**

Affiliation—

Second application. *See* **Affiliation** (Application for order—Jurisdiction—Second application—First application dismissed on merits—Fresh evidence produced by complainant on second application).

Appeal—

Administration action. *See* **Administration action** (Appeal—Fresh evidence).Criminal proceedings. *See* **Criminal law** (Appeal—Fresh evidence).

Criminal proceedings—

Jury having retired. *See* **Criminal law** (Trial—Retirement of jury—Further evidence).

Prosecution—

Adducing evidence before close of case. *See* **Criminal evidence** (Prosecution evidence—

Adducing evidence before close of case—Fresh evidence after prosecution's case closed).

FRESHWATER FISHERIES*See* **Fish** (Salmon and trout).**FRIENDLY SOCIETY**

Accounts of officers—

Neglect to deliver—

Order by justices to deliver—Appeal—High Court jurisdiction—Decision of justices 'final and conclusive'—No appeal by case stated—Friendly Societies Act 1896, s 55(2). **Hall v Arnold** [1950] 1 993, KBD.

Action against trustees—

Tort—

Libel—Competence—Friendly Societies Act 1896, s 94(1). **Longdon-Griffiths v Smith** [1950] 2 662, KBD.

Chief Registrar—

Reference of dispute—

National Savings. *See* **National savings** (National development bonds).

Investment of funds—

Investment in 'any other security expressly directed by the rules of the society'—

Investment of preference stocks and shares in chartered or statutory companies—Whether permissible—Friendly Societies Act 1896, s 44(1)(e). **Re United Law Clerks Society** [1946] 2 674, ChD.

Legal proceedings by society or branch—

Proceedings touching or concerning property, right or claim of society or branch—

Proceedings by parent society against local branch—Alleged improper purchase of property by local branch—Right of parent society to sue for a declaration—Friendly Societies Act 1896, s 94(1). **Tomley v Shreeve** [1937] 3 75, ChD.

Life assurance society—

Amendment of rules—

Machinery for amendment contained in two rules—Amendment of rule providing for election of rules revision committee but no corresponding amendment of rule providing for special general meeting to amend rules—Validity of amendments made by special general meeting. **Yeo v Stewart** [1947] 2 28, KBD.

Trustee—

Appointment as sole trustee. *See* **Trust and trustee** (Corporate trustee—Friendly society—

Appointment as sole trustee of pension fund).

Trustees—

Appointment—

Validity—Appointment of body corporate—Friendly Societies Act 1896, s 25(1), (3). **Re Pilkington Bros Ltd Workmen's Pension Fund** [1953] 2 816, ChD.

FROSTBITE—**Damages—**

Remoteness of damage. *See* **Damages (Remoteness of damage—Foreseeability—Type of injury reasonably foreseeable but precise nature of injury not reasonably foreseeable—Frostbite).**

FRUSTRATION

Cif contract. *See* **Sale of goods (Cif contract—Frustration).**

Contract. *See* **Contract (Frustration).**

Contract of service. *See* **Master and servant (Contract of service—Frustration).**

FUGITIVE OFFENDER

Generally. *See* **Extradition (Fugitive offender).**

Leave to appeal—**House of Lords—**

Certificate. *See* **Criminal law (House of Lords—Leave to appeal—Certificate—Fugitive offender).**

FUNCTUS OFFICIO**Jury—****Criminal trial—**

Verdict announced by foreman. *See* **Jury (Verdict—Verdict announced by foreman—Jury not functus officio).**

FUNDAMENTAL BREACH OF CONTRACT

See **Contract (Fundamental breach).**

FUNDAMENTAL RIGHTS

Jamaica. *See* **Jamaica (Constitutional law—Fundamental rights and freedoms).**

FUNDS**Friendly society—**

Investment. *See* **Friendly society (Investment of funds).**

FUNDS IN COURT**Investment—**

Public Trustee. *See* **Public trustee (Investment of funds in court).**

FUNERAL EXPENSES**Damages in respect of—**

Claim under Fatal Accidents Acts. *See* **Fatal accident (Damages—Funeral expenses).**

FUNFAIR

Licence. *See* **Entertainment (Funfair—Obligation to obtain licence).**

FURNISHED HOUSES RENT CONTROL**Rent tribunal—**

Reference of contract. *See* **Rent tribunal (Reference of contract).**

FURNISHED PREMISES

Rent restriction. *See* **Rent restriction (Furnished letting).**

FURNITURE**Storage for reward—**

Liability of bailee for loss of furniture. *See* **Bailment (Bailment for reward—Liability of bailee—Storage of furniture).**

Will—**Gift—**

Personal chattels. *See* **Will (Gift—Personal chattels—Articles of personal use).**

GAMBIA**Counsel—****Professional misconduct—**

Striking name off roll of court by judge—Whether exercise of judicial power—Supreme Court Ordinance (Laws of the Gambia 1955 c 5), s 7. **Attorney-General of the Gambia v N'Jie [1961] 2 504, PC.**

Elections—**Retroactive validation—**

Order in Council validly made retroactively in relation to protectorate as well as colony under statutory power—Prerogative power to revoke and amend constitutional Order in Council not impliedly renounced by omission of express reservation, if legislative institutions proposed by the order not effectively set up—British Settlements Act 1887, s 5—Foreign Jurisdiction Act 1890, s 1—Gambia (Constitution) Order in Council 1962 (S I 1962 No 826), s 28(3)—Gambia (Validation) Order in Council 1963 (S I 1963 No 1051). **Sabally v Attorney-General [1964] 3 377, CA.**

GAMBLING**Income tax—**

Gambling transactions. *See* **Income tax (Profits—Trading receipts—Gambling transactions).**

GAME**Deer—****Offence—**

Wilfully killing deer during close season—Killing of deer on any cultivated land, pasture or enclosed woodland—Exemption from liability—Killing by occupier or person having occupier's written authority to be on that land—Action necessary to prevent damage to crops etc on that land—Whether an offence if person killing deer to prevent damage on adjoining land—Deer Act 1963, ss 1, 4, 10(3). *Trail v Buckingham* [1972] 2 389, QBD.

Licence—**Exceptions and exemptions from need to hold licence—**

Coursing with greyhounds—Greyhounds chasing and killing hare—No licence—No organised meeting—Whether 'coursing'—Game Licences Act 1860, s 5(3). *Dolby v Halmshaw* [1936] 3 229, KBD.

Deer—Taking or killing deer on enclosed lands by direction or permission of owner or occupier—Enclosed lands—Farmland—Accused shooting deer on farm with owner's permission—Deer shot on owner's land crossing boundary and dying on neighbouring land—Whether accused had no permission to shoot—Whether farmland 'enclosed lands'—Whether killing of deer on owner's land—Game Licences Act 1860, ss 4, 5. *Jemmison v Priddle* [1972] 1 539, QBD.

Taking and killing deer without a licence—

Information—Duplicity. *See Magistrates* (Information—Duplicity—Taking or killing game without a licence).

Poaching—

Information. *See Magistrates* (Information—Defect—No offence disclosed).

GAMING**Amusements with prizes—****Gaming machine installed in licensed betting office—**

Bookmaker—Business of betting. *See Betting—Bookmaker—Business of bookmaker receiving or negotiating bets—Bet—Offence for bookmaker to carry on business other than bookmaking in licensed office—Bookmaker installing fruit machines on licensed premises, post.*

Permit for provision of amusements with prizes—

Application—Refusal—Local authority—Policy—General policy to refuse such applications—Local authority entitled to adopt general policy provided not applied inflexibly and without regard to merits of particular application—Betting, Gaming and Lotteries Act 1963, Sch 6, para 2. *Sagnata Investments Ltd v Norwich Corp'n* [1971] 2 1441, CA.

Application—Refusal—Appeal—Permit granted on appeal subject to restrictions agreed by applicant—Whether power to grant conditional or limited permit—Betting and Gaming Act 1960, s 24, Sch 3, para 2. *Hewison v Skegness Urban District Council* [1963] 1 205, QBD.

Application—Refusal—Appeal—Quarter sessions—Jurisdiction of quarter sessions on appeal—Betting, Gaming and Lotteries Act 1963, s 49(1), Sch 6, para 6. *Godfrey v Bournemouth Corp'n* [1968] 3 315, QBD.

Application—Refusal—Appeal—Quarter sessions—Jurisdiction of quarter sessions on appeal—Rehearing—Quarter sessions entitled to decide application on totality of evidence before it—Quarter sessions not bound by local authority's decision or reasons therefor—Duty to have due regard to local authority's decision—Local authority refusing application for permit for amusement arcade—Evidence before quarter sessions that permit refused on grounds of general policy without regard to merits of application—No evidence to support local authority's stated reasons for refusal—Quarter sessions on rehearing entitled to find that applicants have made out case for permit—Betting, Gaming and Lotteries Act 1963, Sch 6, paras 2 and 6. *Sagnata Investments Ltd v Norwich Corp'n* [1971] 2 1441, CA.

Grant—Effect existing activities at premises—Exclusive codes under s 32, s 33 and under s 49 of the Betting, Gaming and Lotteries Act 1963—Permit obtained under s 49 of, and Sch 6 to, 1963 Act for installation of gaming machines—These gaming machines complied with the conditions of s 49(3)—Existing activities at premises included gaming lawful under s 32 or s 33, but incapable of complying with conditions of s 49(3)—Whether continuance of these existing activities after the grant of the permit was an offence under s 49(2)—'Amusements with prizes'—Betting, Gaming and Lotteries Act 1963, s 32, s 33, s 49(2). *Fox v Adamson* [1967] 3 902, QBD.

Resolution by local authority not to grant or renew permits—Statutory exception—Resolution not applicable to premises used or to be used wholly or mainly for the purposes of a pleasure fair consisting wholly or mainly of amusements—Pleasure fair—Local authority resolving not to grant or renew permits—Local authority refusing applicant permit for premises to be used for prize bingo—Whether premises to be used for that purpose to be used for purposes of 'pleasure fair consisting wholly or mainly of amusements'—Betting, Gaming and Lotteries Act 1963, Sch 6, para 4 (as substituted by the Gaming Act 1968, s 53, Sch 11, Part II). *Walker v Leeds City Council* [1976] 3 709, HL.

Provision on premises in respect of which local authority permit obtained—

Observance of statutory requirements—Fruit machine or one armed bandit installed in public house with local authority's permit—Machine operated by discs purchased for money—Winnings in form of discs exchangeable for goods—Betting, Gaming and Lotteries Act 1963, ss 33(1), 49(1)(a) (2) (3). *Capper v Baldwin* [1965] 1 787, QBD.

Observance of statutory requirements—Gaming machine installed in public house with local authority's permit—Machine operated by pulling lever after insertion of sixpence or disc token purchased for money—Winning jackpot of tokens gave advantage of better odds of receiving further jackpots in four more games—Whether a further opportunity to win money or money's worth within Betting, Gaming and Lotteries Act 1963, s 49(3)(d)—Whether a 'benefit' for the purposes of Betting, Gaming and Lotteries Act 1964, s 2(3). *Cronin v Grierson* [1968] 1 593, HL.

GAMING (cont)

Amusements with prizes (cont)—

Provision on premises in respect of which local authority permit obtained (cont)—

Observance of statutory requirements—Permit obtained under s 49(1) of, and Sch 6 to, the Betting, Gaming and Lotteries Act 1963 for installation of gaming machines—These gaming machines complied with the conditions of s 49(3)—Previously existing activities, lawful under s 32 and s 33, comprising bingo, French boule and two gaming machines were continued—Whether these previously existing activities were ‘amusements with prizes’ and whether their continuance contravened s 49(2)—Betting, Gaming and Lotteries Act 1963, ss 32, 33, 49—Betting, Gaming and Lotteries Act 1964, s 2. *Fox v Adamson* [1968] 2 411, HL.

Betting—

Bookmaker—

Business of bookmaker receiving or negotiating bets—Bet—Offence for bookmaker to carry on business other than bookmaking in licensed office—Bookmaker installing fruit machines on licensed premises—Machines operated by insertion of coin by player—Chance for player to receive payout—Bookmaker receiving guaranteed percentage of total input—Whether player placing bet with bookmaker by inserting coin into machine—Whether bookmaker carrying on business other than bookmaking—Betting and Lotteries Act (Northern Ireland) 1957, ss 13(1)(a), 20. *Seay v Eastwood* [1976] 3 153, HL.

Licensed track—Charges to bookmakers. *See* Betting—Licensed track—Charges to bookmakers, *post*.

Bookmaker's permit—

Whether each partner must hold a permit. *See* Betting—Licensed betting office—Partnership, *post*.

Football pool betting scheme. *See* Pool betting—Football pool betting scheme, *post*.

House, office, room or other place kept for betting—

Persons resorting thereto—Use of office for betting with persons resorting thereto—Company providing automatic clocks for timing of bets—Betting slips taken by ‘runners’ and timed by clock outside office—Clocks later taken to office by runners—Money and betting slips in clocks—Whether company using office for purpose of betting with persons resorting thereto—Whether runners ‘resorting thereto’ on behalf of punters—Betting Act 1853, ss 1, 3. *R v Way* [1949] 2 365, CCA.

Use of room for betting—Saloon bar of public house—Need of permission of licensee—Whether necessary to prove that licensee knew or permitted him to be there—Betting Act 1853, s 3. *R v Porter* [1949] 1 646, CCA.

Licensed betting office—

Advertisement—Elsewhere than inside building comprising licensed premises—‘Licensed premises’—Betting (Licensed Offices) Regulations 1960, (S I 1960 No 2332), reg 2—Betting, Gaming and Lotteries Act 1963, s 10(5). *Maurice Binks (Turf Accountants) Ltd v Huss* [1971] 1 104, QBD.

Advertisement—Indicating premises licensed betting office—Notice showing company's registered name—Registered name incorporating ‘Turf Accountants’—Whether offence—Betting, Gaming and Lotteries Act 1963, s 10(5)(a), (b). *Maurice Binks (Turf Accountants) Ltd v Huss* [1971] 1 104, QBD.

Advertisement—Premises giving access to licensed betting office—Outside wall not such premises—Betting (Licensed Offices) Regulations 1960, (S I 1960 No 2332), reg 2—Betting, Gaming and Lotteries Act 1963, s 10(5). *Maurice Binks (Turf Accountants) Ltd v Huss* [1971] 1 104, QBD.

Application for licence—Evidence of demand in locality—Willingness of applicant to invest further capital and desire to open another betting shop—Whether capable of being evidence of demand in locality for licensed betting offices—Betting, Gaming and Lotteries Act 1963, Sch 1, para 19(b)(ii). *R v Essex Quarter Sessions, ex parte Thomas* [1966] 1 353, QBD.

Application for licence—Notice advertising making of application—Insertion of notice of application in sporting newspaper with limited circulation in licensing area—Whether application complied with Betting and Gaming Act, 1960 Sch 1, para 6. *R v Westminster Betting Licensing Committee, Ex parte Peabody Donation Fund (Governors)* [1963] 2 544, QBD.

Application for licence—Notice advertising making of application—Validity—Content of notice—Notice containing matter additional to that required by statute—Notice printed with note stating that premises already operating as a licensed betting office—Whether additional matter invalidating notice—Whether licensing committee having jurisdiction to hear application—Betting, Gaming and Lotteries Act 1963, Sch 1, para 6. *R v Inner London Area (West Central Division) Betting Licensing Committee, ex parte Percy* [1972] 1 932, QBD.

Application for licence—Refusal—Appeal—Grounds of appeal not set out in notice of appeal—Whether quarter sessions had jurisdiction although grounds of appeal not set out in notice of appeal—Quarter Sessions Act 1849, s 1—Betting, Gaming and Lotteries Act 1963, Sch 1, para 21. *R v Middlesex Justices, ex parte Shock* [1965] 2 68, QBD.

Application for licence—Two licences in respect of same premises—Licence holder having valid licence in respect of premises—Whether justices having power to grant licence in respect of same premises to another person—Betting, Gaming and Lotteries Act 1963, Sch 1, para 20. *R v Wenlock Betting Licensing Committee, ex parte Pooler* [1973] 3 654, QBD.

Conduct—Advertisement. *See* Betting—Licensed betting office—Advertisement, *ante*.

Conduct—Contravention of rules—Admitting and allowing to remain on the premises a person apparently under the age of eighteen years—Separate offences—Duplicity—Mens rea—Whether knowledge, actual or constructive, necessary ingredient of the offences—Betting and Gaming Act 1960, s 5(1), Sch 2, r 2. *Mallon v Allan* [1963] 3 843, QBD.

GAMING (cont)**Betting (cont)—****Licensed betting office (cont)—**

Conduct—Exhibition of written matter on premises—Licensee prohibited from exhibiting inside premises notices other than prescribed notices—prohibited notice on inside of window facing outwards towards street—Whether offence committed—*Betting, Gaming and Lotteries Act 1963*, s 10(1), Sch 4, para 3—*Betting (Licensed Offices) Regulations 1960*, (S I 1960 No 2332), reg 3(2). *Dunsford v Pearson* [1970] 1 282, QBD.

Conduct—Exhibition of written matter on premises—Prohibited matter—Whether fixed odds coupons containing entry form for betting transaction with another bookmaker could be exhibited—*Betting, Gaming and Lotteries Act 1963*, s 10(1), Sch 4, r 3(c)—*Betting (Licensed Offices) Regulations, 1960*, (S I 1960 No 2332), reg 3(2)(a). *Heaney v Smith* [1964] 2 342, QBD.

Conduct—Exhibition of written matter on premises—Prohibited matter—Encouragement of persons on premises to bet—'Encourage'—Written matter must be shown to have reached person who is said to have been encouraged to bet—Whether customers encouraged to bet—*Betting, Gaming and Lotteries Act 1963*, Sch 4, r 4. *Wilson v Danny Quastel (Rotherhithe) Ltd* [1965] 2 541, QBD.

Conduct—User outside closing hours—Offence to use premises at any time for purpose other than betting transactions—Private meeting held on premises after closing hours—*Betting, Gaming and Lotteries Act 1963*, s 10(1), Sch 4, para 1. *Anderson v Gradidge* [1969] 2 206, QBD.

Partnership—Defendant partner alone held betting office licence—Plaintiff partner had no bookmaker's permit—Plaintiff partner did not take bets over counter of office—Legality of partnership—Dissolution of partnership—*Betting and Gaming Act 1960*, ss 2, 3(1)—*Betting, Gaming and Lotteries Act 1963*, ss 2 3(1). *Dungate v Lee* [1967] 1 241, ChD.

Licensed track—

Charges to bookmakers—Authorised charges—Excessive charge—Recovery of excess by bookmaker—*Betting and Lotteries Act 1934*, s 13(1) (2). *Green v Portsmouth Stadium Ltd* [1953] 2 102, CA.

Charges to bookmakers—Authorised charges—Charges other than authorised charges—Charges demanded or received as a consideration for facilities being given to bookmaker—Facilities—Charges made for provision of betting boards and accessories and maintenance, lighting, storage, etc—Charge made for use of licensee's copyright in betting lists—Whether charges made as consideration for facilities—*Betting, Gaming and Lotteries Act 1963*, s 18(1) (2). *Midland Greyhound Racing Co Ltd v Foley* [1973] 2 324, QBD.

Charges to bookmakers—Authorised charges—Charge to bookmakers on tracks for betting facilities—Not exceeding five times amount of highest charge made to public—Basis of calculation—*Betting and Lotteries Act 1934*, s 13(1) (2). *Pearson v Wandsworth Stadium Ltd* [1939] 3 93, KBD.

Permission for amusements with prizes—

Appeal against refusal. *See Quarter sessions* (Appeal to—Betting and gaming appeal).

Pool betting. *See* Pool betting, *post*.**Prohibition of betting in streets and public places—**

Frequenting street for purpose of 'Receiving bets'—Negotiation of bets by agent of bookmakers in factory—Betting slips thrown over factory gate by agent to manager of bookmakers in street—Manager frequented street for the purpose of receiving betting slips—Whether that was for purposes of receiving bets within Street Betting Act 1906, s 1(1). *Bland v Cowan* [1963] 2 184, QBD.

Public place—Bets taken in public house—Whether 'public place'—Street Betting Act 1906, s 1 (4)—Police—Conduct. *Brannan v Peek* [1947] 2 572, KBD.

Public place—

Byelaw prohibiting betting in public place—Validity. *See Byelaw* (Validity—Repugnant to statute—Byelaw prohibiting betting in public place).

Restriction on use of premises for betting transactions—

Assisting in conducting the business of a betting house—Money and betting slips received in street and delivered at betting house—Whether assisting in conducting business of betting house—*Betting Act 1853*, s 3, s 4. *Baxter v Keldon* [1955] 1 361, QBD.

Club—Used for bookmaker—Special user—*Betting Act 1853*, s 3. *Milne v City of London Police Comr.* [1939] 3 399, HL.

Licensed premises—Licensee permitting betting—Wording of information—Omission of 'knowingly and wilfully'—Validity of information—*Betting Act 1853*, s 3—Criminal Justice Act 1925, s 32(3). *Lomas v Peek* [1947] 2 574, KBD.

Prohibition on receiving money as deposit for bets—'Deposit'—Receiving money on deposit—Information giving three dates—Duplicity—Summary Jurisdiction Act 1848, s 10—*Betting Act 1853*, s 4. *Joel v Barclay* [1937] 1 309, KBD.

Totalisators on dog racecourses. *See* Totalisators on dog racecourses, *post*.

Betting office—

Conduct of licensed betting office. *See* Betting—Licensed betting office—Conduct, *ante*.

Licensing. *See* Betting—Licensed betting office—Application for licence, *ante*.

Betting scheme. *See* Lottery—Nature of—Betting scheme, *post*.**Club—****Card games—**

Counters sold on credit to member—Winner paid by club on behalf of loser—Action by proprietor of club against loser for amounts so paid and price of counters—*Gaming Act 1845*, s 18—*Gaming Act 1892*, s 1. *Woolf v Freeman* [1937] 1 178, KBD.

Registration—

Registration for purpose of having gaming machines—Refusal to register or renew registration—Proprietary club—Whether registration applicable only to members' clubs—*Gaming Act 1968*, Sch 7, para 8. *Tehrani v Roston* [1971] 3 790, CA.

GAMING (cont)

Club (cont)—

Registration (cont)—

Registration for purpose of having gaming machines—Refusal to register or to renew registration—Cancellation of registration—Discretion—Circumstances in which exercisable—Gaming Act 1968, Sch 7, paras 8, 18. *Tehrani v Rostron* [1971] 3 790, CA.

Common gaming house. *See* Gaming house—Common gaming house, *post*.

Contract by way of gaming or wagering—

What constitutes a contract by way of wagering—

Credit betting with Tote Investors Ltd—Bets placed with Horserace Totalisator Board—Whether contract of wagering within Gaming Act 1845, s 18. *Tote Investors Ltd v Smoker* [1967] 3 242, CA.

Cotton futures. *See* Time or difference bargains—Cotton futures, *post*.

Debt—

Debt secured by deed of charge—

Illegal consideration. *See* Mortgage (Illegal consideration—Betting debt secured by deed of charge).

Recovery of money alleged to be won on wager—

New consideration—Forbearing to report to Tattersalls—Reporting to trade protection societies and social club—Threat—Distinction between promise to pay and promise to make a proposal to pay. *Norreys v Zeffert* [1939] 2 187, KBD.

New contract—Undertaking to pay by father of loser—Promise by bookmaker not to report to Tattersall's committee—Enforceability of agreement—Consideration—Undertaking not security for gaming liability—Gaming Act 1710, s 1—Gaming Act 1845, s 18. *Coral v Kleyman* [1951] 1 518, KBD.

Recovery of money lent—

Lawful gaming—Club providing members with chips and debiting members' accounts with face value of chips—Chips usable as cash in the club whether for purchase of food or for gaming—Members' losses paid by club forthwith—Accounts sent to members subsequently for settlement—Implied promise of member to repay when settling account—Action by club for balance of a member's account—Gaming Act 1892, s 1. *C H T Ltd v Ward* [1963] 3 835, CA.

Promise to pay person money paid by him in respect of gaming contract—Loan to repay lost bets—Terms that loan should be applied in payment of betting debt—Whether enforceable agreement—Gaming Act 1892, s 1. *Macdonald v Green* [1950] 2 1240, CA.

Enforcement of law—

Police—

Mandamus. *See* Mandamus (Chief Officer of police—Enforcement of law).

Fraud in wagering—

Ingredients of offence—

Betting transactions with bookmaker—Bookmaker induced to accept bets by false pretence as to identity—No winnings paid out by bookmaker—Whether an offence under Gaming Act 1845, s 17. *R v Harris, R v Turner* [1963] 2 294, CCA.

Betting transactions with bookmaker—Bookmaker induced to accept bets by false pretence as to identify—Intention not to pay losses—Whether accused guilty of offence under Gaming Act 1845, s 17. *R v Clucas, R v O'Rourke* [1959] 1 438, CCA.

Non-payment of betting losses—Intention to defraud—Obtaining credit by false pretences or fraud—Actionable debt—Winning money by fraud in wagering—'In the course of the game'—Gaming Act 1845, ss 17, 18—Debtors Act 1869, s 13(1). *R v Leon* [1945] 1 14, CCA.

Gaming licence—

Application for licence. *See* Licensing of premises—Application for licence, *post*.

Offence by body corporate committed with consent etc of director etc—

Offence attributable to neglect—Obtaining of licence left to co-director—Liability of directors—Customs and Excise Act 1952, s 305(3)—Finance Act 1966, s 13(1). *Huckerby v Elliott* [1970] 1 189, QBD.

Gaming machine—

Amusements with prizes. *See* Amusements with prizes, *ante*.

Exemption—

Purposes other than 'private gain'—Fruit machines retaining twenty per cent of stakes hazarded, owner taking part for hiring charges, maintenance, etc, balance being retained by hirer—Whether part of stakes hazarded applied for purposes other than purposes of 'private gain'—Betting and Gaming Act 1960, s 17(2)(c). *Cookson v Bowles* [1962] 2 760, QBD.

Stake required to be hazarded to play game once not exceeding 6d—Fruit machine—Club—Player given choice of hazarding either 6d or any multiple thereof up to 2s 6d—Whether stake 'required' to be hazarded exceeded 6d—Betting and Gaming Act 1960, s 17(2)(b). *Rosenbaum v Burgoyne* [1964] 2 988, HL.

Forfeiture and destruction—

Jurisdiction of justices to order destruction of gaming machines—Gaming Act 1845, s 8. *Eyre v Brumfield* [1936] 2 1, KBD.

Production of machines at hearing—Machines in court-house but not in court-room—Counsel for owners of machines allowed to address court in opposition to order for destruction—Whether machines 'produced' to the court—Whether sufficiently identified—Betting, Gaming and Lotteries Act 1963, s 52(4). *R v Edmonton Justices, ex parte Stannite Automatics Ltd* [1965] 2 750, QBD.

GAMING (cont)**Gaming machine (cont)—****Guarantee of earnings—**

Owner of machines agreed to let them at weekly rental to club—Guaranteed that yearly earnings of the machines should be not less than £1,900—Earnings represented part of stakes—Whether all stakes hazarded applied for purposes other than private gain—Whether agreement illegal and unenforceable—*Betting, Gaming and Lotteries Act 1963, s 33(2)(c), s 54(1). Avals v Hartford Shankhouse and District Workingmen's Social Club and Institute Ltd [1969] 1 130, HL.*

Gaming-house—**Common gaming-house—**

Special warrant of arrest and search—Person not found on premises—Subsequent arrest elsewhere—Destruction of gaming instruments—Validity of order—*Gaming Act 1845, ss 3 8. Coughtrey v Porter [1950] 1 257, KBD.*

Unlawfully resorting to common gaming-house—

Evidence—Person found on premises—Innocent purpose—Conviction—Grounds for quashing of conviction—*Unlawful Games Act 1541, s 9. Roden v Brett [1936] 2 136, KBD.*

Lawful and unlawful gaming—**Bingo—**

Allied and club bingo—Notice that no visitors allowed in club and no one to be paid his winnings unless membership card produced—Police officers gaining access to club on payment of 6d entry fee and buying tickets for and taking part in both types of bingo played—Intention of officers to claim money should they win although not in possession of membership cards—Whether officers taking part in gaming in club—*Betting, Gaming and Lotteries Act 1963, ss 32(2), 36(c). Wheeler v Gibbins [1970] 1 323, QBD.*

Allied and club bingo—Payment in money or money's worth required for persons not members of club to take part—Some players holding more than one card in a game—Jackpot prize including stake money taken from players in previous games who are not present when jackpot won—Whether unlawful—*Betting and Gaming Act 1960, s 16(1)(a) (b) (c) (7). Rogers v Cowley [1962] 2 683, QBD.*

Golden Scoop—Is stake purchased at first game of each session—Half stake used for ordinary club game and balance retained by club as a contribution to national Golden Scoop game in which five hundred affiliated clubs participated—No communication between players of different affiliated clubs—Whether individuals playing a local bingo game were at relevant time playing in a second game, a national Golden Scoop game—*Betting, Gaming and Lotteries Act 1963, s 32(1)(b), (4). Adcock v Wilson [1968] 1 929, HL.*

Card games—

Card games not specifically stated by statute to be unlawful—Test of unlawfulness—*Gaming Houses Act 1854, s 4. R v Tompson, R v Poteliachow, R v Harrison [1943] 2 130, CCA.*

Stud poker—Whether lawful—*Gaming Houses Act 1854, s 4. Dalton v Adelphi Club Ltd [1938] 4 556, KBD.*

Chemin de fer—

Charge fixed and determined before participant took part in playing of shoe—No other charge apart from annual membership fee—Natural break between each shoe—Whether payment of a fixed sum determined before the gaming began—*Betting and Gaming Act 1960, s 16(7)(b). Mills v MacKinnon [1964] 1 155, QBD.*

Kittyscoop. See Lawful and unlawful gaming—Variant of roulette—Kittyscoop, post.**Payment required with each stake—**

Payment made to organisers of club and not returned to winners—Whether payment of a 'fixed sum' determined before the gaming began—*Betting and Gaming Act 1960, s 16(7) (b). Quinn v Mackinnon [1963] 1 570, QBD.*

Poker—

Unlawful gaming—Gaming house conducted by company—Sale of shares—Contract founded on illegality—*Gaming Act 1845, s 2—Gaming Houses Act 1854, s 4. Goodchild v Wellborne [1941] 2 449, KBD.*

Roulette—

Fixed payment required before start of each 'session' of twenty minutes—One and a half minutes interval between sessions—Whether a natural break—Whether gaming unlawful—*Betting and Gaming Act 1960, s 16(7)(b)—Betting, Gaming and Lotteries Act 1963, s 36(b). Kelland v Raymond [1964] 1 564, QBD.*

Odds at 36 to 1 resulting in chances equally favourable to all players—Payment at 35 to 1 and differential in marker chips—Invitation to players to return marker chips to players—Inference of players returning marker chips—Chances not equally favourable to all players—Dice played in like manner—Gaming unlawful—*Betting, Gaming and Lotteries Act 1963, s 32(1)(a) (ii), (b). Victoria Sporting Club Ltd v Hannan [1969] 1 369, HL.*

Odds favouring bank—Bank available to be taken by any player—Whether gaming so conducted that chances equally favourable to all Players—Inference of knowledge of director other than managing director—Offences by company and others—*Betting, Gaming and Lotteries Act 1963, ss 32(1)(a) (iii) (4), 53. Crickett v Kursaal Casino Ltd (No 2) [1968] 1 139, HL.*

Odds favouring bank—Players given option of taking bank provided they could meet commitments if bank lost—Stakes on single spin of the wheel might amount to £500—Whether gaming so conducted that chances equally favourable to all players—*Betting, Gaming and Lotteries Act 1963, s 32(1)(a) (ii). Kursaal Casino Ltd v Crickett [1966] 2 639, QBD.*

Variant of roulette—Kittyscoop. *See* Lawful and unlawful gaming—Variant of roulette—Kittyscoop, *post*.

GAMING (cont)

Lawful and unlawful gaming (cont)—

Roulette Royale—

Fixed payment required on each bet, but regardless of stake, payable before spin of wheel—Whether payment of a fixed sum determined 'before the gaming began'—*Betting and Gaming Act 1960, s 16(7)(b)*. *J M Allan (Merchandising) Ltd v Cloke* [1963] 2 258, CA.

Super Legalite—

Fixed service charge for entire session, but not paid before game commenced—All winning bets paid out of players' pool and all losing bets paid into it—Odds weighted in favour of players' pool—Whether players' pool a player—Whether gaming unlawful—*Betting, Gaming and Lotteries Act 1963, ss 32(1)(a) 55(1)*. *Director of Public Prosecutions v Essoldo Circuit (Control) Ltd* [1965] 3 421, QBD.

Variant of roulette—

Kittyscoop—Odds four to one—Equal odds five to one—Players becoming members of syndicate—Syndicate holder of pool—Members entitled to syndicate profits whether or not staking money—Whether chances equally favourable to all players—*Betting, Gaming and Lotteries Act 1963, s 32(1)(a) (b)*. *I & N Weston Ltd v Metropolitan Police Comr* [1969] 2 897, QBD.

Licensed premises. *See* **Licensing** (Gaming on licensed premises).

Licensing of premises—

Application for licence—

Certificate of consent for purposes of application for licence—Whether Gaming Board for Great Britain bound to observe rules of natural justice—Duties of board on consent application—Whether board bound to give reasons for decision—*Gaming Act 1968, Sch 2, para 4(5), (6)*. *R v Gaming Board for Great Britain, ex parte Benaim* [1970] 2 528, CA.

Notice advertising making of application—Notice as printed containing typographical error—Validity of notice—Jurisdiction of licensing committee to hear application—*Gaming Act 1968, Sch 2, para 6*. *R v Dacorum Gaming Licensing Committee, ex parte EMI Cinemas and Leisure Ltd* [1971] 3 666, QBD.

Notice advertising making of application—Particulars to be included in notice specified by statute—Prohibition of inclusion of additional particulars in notice—Notice including additional matter—Validity of notice—Jurisdiction of licensing committee to entertain application—*Gaming Act 1968, Sch 2, para 6(2), (4)*. *R v Leicester Gaming Licensing Committee, ex parte Shine* [1971] 3 1082, CA.

Time limit—Failure to comply with statutory provisions as to time limit—Whether statutory provisions mandatory or declaratory—*Gaming Act 1968, Sch 2, paras 8 to 11*. *R v Pontypool Gaming Licensing Committee ex parte Risca Cinemas Ltd* [1970] 3 241, QBD.

Loan for lawful gaming—

Money knowingly lent for lawful gaming in England—

Whether recoverable by action—*Gaming Act 1710, s 1—Gaming Act 1835, s 1*. *C H T Ltd v Ward* [1963] 3 835, CA.

Lottery—

Advertisement—

Distribution of advertisement of lottery—Bingo prize competition—Label attached to tin of proprietary cat food—Label containing bingo card of sixteen digits with prize values which might be won if line completed from adjoining rectangle containing eighteen digits—No skill required to complete line—Matter of luck in obtaining a winning label—Easy puzzle then to be solved before competitor could claim prize—Element of skill in solving this—Whether scheme one entire scheme severable into two stages—Whether scheme involved a lottery—*Betting, Gaming and Lotteries Act 1963, s 42(1)(c) (i)*. *Director of Public Prosecutions v Bradfute and Associates Ltd* [1967] 1 112, QBD.

Alternative methods of betting—

Optional bet—Scheme with provision for credit betting—Legality—*Betting and Lotteries Act 1934, s 22*. *Barker v Mumby* [1939] 1 611, KBD.

Exemption—

Lawful gaming—'Playing a game of chance'—Postal Bingo Club—Numbers allotted to members—Members permitted to apply for particular numbers if not already allotted—Members entering for weekly draw on payment of subscription and stake money—Choice of entering one or more sets of numbers—Draw taking place on premises in absence of members—Results announced over radio and in weekly paper—Whether there was gaming, viz the playing of a game of chance—*Betting and Lotteries Act 1934, s 22—Betting and Gaming Act 1960, s 21, s 28(1)*. *Armstrong v Director of Public Prosecutions* [1965] 2 745, HL.

Lawful gaming—'Playing of a game of chance'—Society with six million members conducting lottery by means of numbers on members' membership cards—Members having no choice of numbers—Members requiring to do nothing to participate in lottery beyond payment of weekly subscription to society—Whether participating in lottery also playing a game of chance—*Betting and Lotteries Act 1934, ss 21, 22(1)—Betting and Gaming Act 1960, ss 21(1), 28*. *Director of Public Prosecutions v Regional Pool Promotions Ltd* [1964] 1 65, QBD.

Lawful gaming—Purposes other than 'private gain'—Tombola played at club and profits paid into general funds to meet general expenses of club—Whether profits were applied for purposes other than purposes of 'private gain'—*Betting and Lotteries Act 1934, ss 21, 22—Small Lotteries and Gaming Act 1956, s 4(1)(c)*. *Payne v Bradley* [1961] 2 882, HL.

Football pool betting scheme—

Option to choose numbers in place of allocated numbers—Option exercised by only 1 per cent—Option collateral to lottery and not destructive of character—Whether scheme a lottery—Whether requirements of Parts I and III of *Betting, Gaming and Lotteries Act 1963* conflicting. *Singette Ltd v Martin* [1970] 3 938, HL.

GAMING (cont)

Lottery (cont)—

Forecast of scores of football teams—

Prizes for forecast of highest scores, lowest scores, and combinations of high and low scores—Betting and Lotteries Act 1934, s 22(1)(b), (f). **Boucher v Rowsell** [1947] 1 870, KBD.

Nature of—

Betting scheme. **Gordon, Mackay & Co Ltd v Watson** [1936] 2 33, KBD.

Offence—

Printing, possessing or distributing tickets in connection with the lottery—Meaning of 'the lottery'—Tickets printed for use in lotteries and held in stock for sale—Tickets sold to purchaser but not for use in a particular lottery—Tickets later used in an illegal lottery—Whether printers committing offence—Betting and Lotteries Act 1934, s 22(1)(a) (b). **Mckay v Gillies** [1956] 3 583, QBD.

Participation in lottery—

Whether participating in lottery gaming. **Smith v Wyles** [1958] 3 279, QBD.

Private lottery—

Lottery conducted by supporters' club to provide funds for football club—Whether 'private lottery'—Betting and Lotteries Act 1934, s 24(1). **Maynard v Williams** [1955] 1 81, QBD, **Pearse v Hart** [1955] 1 91, QBD.

Promotion and conduct—Breach of statutory conditions—Names and addresses of promoters on tickets—Liability of printer—Betting and Lotteries Act 1934, ss 21, 22, 24. **Stacey v Wilkins** [1946] 1 293, KBD.

Prize fund—

Scheme whereby contributions to prize paid direct to winner by participants—Whether existence of identifiable prize fund in hands of promoters an essential feature of a lottery—Betting, Gaming and Lotteries Act 1963, s 41. **Atkinson v Murrell** [1972] 2 1131, HL.

Receipt of money by chance—

Existence of identifiable prize fund—Chain letter scheme—Participant buying envelope and entering name at bottom of list—Participant sending £1 to person whose name at top of list—Deletion of name at top of list after money sent—Further envelopes sent out—Possibility if chain not broken that participant would receive £729 from new participants—Whether receipt of money by choice of new participants or by chance—Whether existence of prize fund an essential feature of a lottery—Betting, Gaming and Lotteries Act 1963, s 42(1). **Atkinson v Murrell** [1972] 2 31, QBD.

Scheme involving distribution of prizes by chance—

No payment or contribution by participants towards prizes or prize fund—Whether scheme capable of constituting lottery—Betting, Gaming and Lotteries Act 1963, s 42. **Whitbread & Ltd v Bell** [1970] 2 64, QBD.

Payment as contribution by participants to obtain chance of winning prize—Significant number of participants obtaining chances without payment or contribution—Whether scheme a lottery—Betting, Gaming and Lotteries Act 1963, s 41 (as amended by the Gaming Act 1968, s 53(1), Sch 11, Part I). **Reader's Digest Association Ltd v Williams** [1976] 3 737, QBD.

Unlawfully conducting lottery, contrary to Betting and Lotteries Act 1934, s21—

Whether any substantive offence created by Betting and Lotteries Act 1934, s 21. **Sales-Matic Ltd v Hinchliffe** [1959] 3 401, QBD.

Use of premises for purposes connected with conduct of lottery—

Football pool club—Formation of club for supplying members with forecast of results—Forecast based partly on expert knowledge—Members of club making financial contributions only—Whether premises used for purposes connected with the conduct of a lottery—Element of skill—Betting and Lotteries Act 1934, s 22(1)(f). **Moore v Elphick** [1945] 2 155, KBD.

Permitting premises to be used for unlawful gaming—

'Unlawful gaming'—

Whether legality of game a question for the judge or for the jury. **R v Salisbury** [1939] 1 250, CCA.

Pool betting—

Bets made by way of pool betting—

Duty—'Bet'—Football supporters' association—Membership on payment of 1s—Issue of membership cards bearing code numbers—Weekly sale of tickets to members for 1s—Football teams arbitrarily allocated by code numbers—Monetary prize awarded by association if teams so allocated to member scored most goals or fewest in next Saturday's matches—Whether pool betting duty recoverable—Finance (No 2) Act 1947, s 6(1), (2), (5), (6)—Finance Act 1948, s 14(2)—Finance Act 1950, s 17 (1)—Finance Act 1952, s 4(1), (5). **Comrs of Customs and Excise v Dodd** [1961] 1 269, QBD.

Duty leviable—

Expenses and profits—Matters other than activities connected with the promotion and management of the betting—Association of pool betting with other activities—Separate bodies—Profits and expenses of common collecting and distributing agent—Scheme whereby agent acts on behalf of both pool promoter and separate club which makes donations to charities and organises prize and benefit schemes amongst members—Economic interdependence of each—Whether profits and expenses of agent referable to matters other than the activities connected with the promotion and management of the betting—Finance Act 1964, s 7(2). **Commissioners of Customs and Excise v Top Ten Promotions Ltd** [1969] 3 39, HL.

GAMING (cont)

Pool betting (cont)—

Duty leviable (cont)—

Expenses and profits—Matters other than activities connected with the promotion and management of the betting—Association of pool betting with other activities—Separate bodies—Expenses of separate club which makes donations to charities and organises prize and benefit schemes amongst members—Club and pool promoter using common agent for collection and distributions—Economic interdependence of each—Whether expenses of club referable to matters other than activities connected with the promotion and management of betting—Finance Act 1964, s 7(2). **Commissioners of Customs and Excise v Top Ten Promotions Ltd** [1969] 3 39, HL.

Percentage of amount of stake money paid—Collector appointed by promoters of pool to receive stake money from bettor and pay it to promoters less commission—Whether duty chargeable on gross amount of stake money received by collector—Finance (No 2) Act 1947, s 6(1). **Customs and Excise Comrs v Pools Finance (1937) Ltd** [1952] 1 775, CA.

Person benefiting from the promotion of betting—Association of pool betting with other activities—Separate bodies—Use of common collecting and distributing agent—Scheme whereby agent acts on behalf of both pool promoter and separate club which makes donations to charities and organises prize and benefit schemes—amongst members—Economic interdependence of each—Whether club person benefiting from the promotion of the betting—Finance Act 1964, s 7(2). **Commissioners of Customs and Excise v Top Ten Promotions Ltd** [1969] 3 39, HL.

Person concerned with and benefiting from the promotion of the betting—Association of pool betting with other activities—Separate bodies—Common collecting and distribution agent—Scheme whereby agent acts on behalf of both pool promoter and separate club which makes donations to charities and organises prize and benefit schemes amongst members—Economic interdependence of each—Whether agent a person concerned with and benefiting from the promotion of the betting—Finance Act 1964, s 7(2). **Commissioners of Customs and Excise v Top Ten Promotions Ltd** [1969] 3 39, HL.

Football pool betting scheme—

Credit basis—Breach of instructions by collector—Liability of promoter. **Wilson v Murphy** [1937] 1 315, KBD.

Necessity for element of skill in forecasting to comply with statutory requirements—Scheme providing option to exercise skill—Exercise of skill by only one per cent of participants—Whether statutory requirement complied with—Betting, Gaming and Lotteries Act 1963, Sch 2, para 13(a). **Singette, Ltd v Martin** [1970] 3 938, HL.

Restriction on use of premises for pool betting transactions—

'Pool betting transactions'—Collector appointed by football pool promoters—House used to receive coupons and stake money—Whether used for 'pool betting transaction'—Betting and Lotteries Act 1934, s 3(2). **Zeidman v Owen** [1950] 1 290, KBD.

Premises used to 'effect' betting transactions—Meaning of 'effect'—Coupons accepted at premises other than those of respondent—Betting and Lotteries Act 1934, s 3(2). **Stovell v Jameson** [1939] 4 76, KBD.

Prize competition—

Forecast of result of future event—

Future event—Newspaper competition—Spot-ball—Competitors marking position of football on photograph—Winning positions selected by panel—Whether forecast of result of future event involved—Betting, Gaming and Lotteries Act 1963, s 47(1)(a)(i). **Ladbroke (Football) Ltd v Perrett** [1971] 1 129, QBD, **The News of the World Ltd v Friend** [1973] 1 422, HL.

Newspaper competition—Football pool—Pools conducted on credit system—Whether a prize competition 'for forecasts of the result of a future event'—Whether proviso as to conducting a 'competition' in connection with a bookmaker's trade applicable—Betting and Lotteries Act 1934, s 26. **Bretherton v United Kingdom Totalisator Co Ltd** [1945] 2 202, KBD.

Newspaper competition—Football pool—Pools conducted on credit system—Whether a prize competition 'for forecasts of the result of a future event'—Whether pari-mutual or betting operations—Betting and Lotteries Act 1934, s 26. **Elderton v United Kingdom Totalisators Co Ltd** [1945] 2 624, CA.

Newspaper competition—Spot-ball. *See* Prize competition—Forecast of result of future event—Future event—Newspaper competition—Spot-ball, *ante*.

Success not depending on skill—

Competition in connection with trade or business—Scheme involving completion of words by attaching letters to coupons—Each participant striving against others for limited number of letters—Whether scheme a competition—Whether a competition in which success did not depend to a substantial degree on the exercise of skill—Betting, Gaming and Lotteries Act 1963, s 47. **Whitbread & Co Ltd v Bell** [1970] 2 64, QBD.

Unlawfully conducting competition in connection with trade or business—

'In connection with'—Nexus between competition and trade or business—Football pool coupons sold by newsagents and tobacconist by agreement with promoters—No nexus between competition and trade or business—Betting and Lotteries Act 1934, s 26(1)(a). **I T P (London) Ltd v Winstanley** [1947] 1 177, KBD.

Proprietary club—

Registration. *See* Club—Registration—Refusal to register or to renew registration—Proprietary club, *ante*.

Registration—

Club. *See* Club—Registration, *ante*.

Street betting—

Prohibition on. *See* Betting—Prohibition of betting in streets and public places, *ante*.

Time or difference bargains—

Cotton futures—

Principal and broker. **Woodward v Wolfe** [1936] 3 529, KBD.

GAMING (cont)

Totalisators on dog racecourses—

Provision for space for bookmakers—

Breach of statutory duty—Competence of civil action at suit of injured bookmaker—*Betting and Lotteries Act 1934*, ss 11(2), 30 (1). *Cutler v Wandsworth Stadium Ltd* (in liquidation) [1949] 1 544, HL.

Trade or business—

Competition in connection with. *See* Prize competition, *ante*.

Unlawful gaming. *See* Lawful and unlawful gaming, *ante*.

Winnings—

Recovery—

Alleged overpayment of winnings—Whether recoverable—*Gaming Act 1845*, s 18—*Gaming Act 1892*, s 1. *Morgan v Ashcroft* [1937] 3 92, CA.

Competence of action—Account stated—Bookmakers' weekly statement—Balance in plaintiff's favour. *Day v William Hill (Park Lane) Ltd* [1949] 1 219, CA.

New consideration—Forbearing to report default to Tattersalls—Whether illegal as extortion—*Larceny Act 1916*, s 31. *Burden v Harris* [1937] 4 559, KBD.

GAMING MACHINE

See Gaming (Gaming machine).

GANGWAY

Building operations. *See* Building (Building operations—Gangways).

Iron and steel foundries, in—

Regulations. *See* Factory (Gangways and pouring aisles).

GARAGE

Petrol station with land used for sale of cars—

Change of use for planning purposes. *See* Town and country planning (Development—Material change of use—Petrol filling station).

Repairs bill unpaid—

Possession or control of proprietor over vehicle. *See* Criminal law (Theft—Property belonging to another—Possession or control of another—Owner leaving car at garage for repairs).

Sunday closing. *See* Shop (Sunday closing—Garage).

Theft of petrol—

Garage attendant filling tank of car with petrol—

Accused driving away without paying for petrol. *See* Criminal law (Theft—Property belonging to another—Sale of goods—Passing of property—Appropriation of unascertained goods—Reservation of right of disposal until payment—Sale of petrol).

Tied—

Agreement. *See* (Restraint of trade by agreement (Petrol filling station)).

GARDEN

Sale—

Capital gains tax—

Private residence—Land occupied with residence as garden. *See* Capital gains tax (Exemptions and reliefs—Private residences—Land occupied and enjoyed with residence as its garden or grounds).

GARNISHEE ORDER

Generally. *See* Execution (Garnishee order).

Insolvent estate—

Order obtained by judgment creditor. *See* Administration of estates (Order of application of assets—Judgment debt—Priority—Judgment creditor obtaining garnishee order against executors).

GARNISHEE PROCEEDINGS

Costs. *See* Costs (Garnishee proceedings).

Equitable right of set-off—

Cross-claim. *See* Set-off (Cross-claim—Equitable right of set off).

Legal aid fund, against. *See* Legal aid (Legal aid fund—Garnishee proceedings).

GAS

Contract—

Frustration—

Change of circumstances—Nationalisation of industry. *See* Contract (Frustration—Change of circumstances—Vesting of undertaking on nationalisation of industry—Service agreement with gas company).

Cylinder—

Negligence—

Duty to take special precautions. *See* Negligence (Dangerous things—Duty to take special precautions—Gas cylinder).

Escape—

Fitness of premises—

Landlord and tenant. *See* Landlord and tenant (Fitness of premises—Escape of gas).

Gas board—

Corruption of officer—

Whether gas board a public body. *See* Criminal law (Corruption—Public body—Meaning).

Powers of entry for purposes of inspection—

Extent of powers—Whether including right of forcible entry to collect money from meter—*Gas Act 1948*, Sch III, para 34(1). *Grove v Eastern Gas Board* [1951] 2 1051, CA.

GAS (cont)

Nationalisation—

Compensation—

Appointment of stockholder's representative in connection with determination of compensation—Expenses of stockholder's representative—Right to costs of arbitration—Gas Act 1948, s 27(1)(3). **Studholme v Minister of Fuel and Power** [No 2] [1951] 2 612, CA.

Compensation to holders of securities—'Securities'—Debenture—Redeemable mortgage debenture—Gas Act 1948, s 74(1). **Pearl Assurance Co Ltd v West Midlands Gas Board** [1950] 2 844, ChD.

Compensation to holders of securities—Unquoted securities—Assessment of value—Relevant date—Effect of impending nationalisation—Relevancy of agreement as to value of other securities—Gas Act 1948, s 25(2)(10). **Studholme v Minister of Fuel and Power** [1951] 2 371, CA.

Issue of gas stock for purpose of satisfying rights to compensation—Loan capital—Gas stock issued to area board—Money borrowed by Gas Council and lent to area board—Gas Act 1948, ss 43(1)(a), 44(2)(a). **Studholme v South Western Gas Board** [1954] 1 462, QBD.

Financial adjustment—

Power of local authority to apply surplus revenue in aid of general rate—Unappropriated profit of working period up to vesting date—Liability of area gas board to remit—Hinckley Local Board Gas Act 1880, s 43, as amended Hinckley Gas Order 1922 (S R & O 1922 No 608)—Interpretation Act 1889, s 38(2)(c)—Gas Act 1948, ss 19(1), 56(2). **Hinckley Urban District Council v West Midlands Gas Board** [1951] 1 788, CA.

Undertaking formerly maintained by local authority—

Expenses and receipts of undertaking to be paid out of and into general rate fund—Authority directed 'to show under a separate heading or division' accounts of their undertakings—Power to provide reserve fund in respect of undertaking—Deficit in undertaking's account on date of property vesting in gas board under Gas Act 1948—Liability of authority to account to gas board for surplus revenue of undertaking transferred in 1947 to general rate fund—Leeds Corporation (Consolidation) Act 1905, s 54, s 337, s 338. **North-Eastern Gas Board v Leeds Corpn** [1952] 2 326, ChD.

Recovery of sums transferred from gas undertaking accounts to other accounts—Amounts 'debited...in the accounts of the gas undertaking...and credited...in...other account'—Expenses and receipts of undertaking to be paid out of and into general rate fund—Authority directed to 'show under a separate heading or division' accounts of gas undertaking—Transfers from gas undertaking section to general rate fund—Liability of authority to account to gas board for sums transferred—Finality of determination by Minister of Health—Doncaster Corporation Act 1926, ss 71, 72—Gas Act 1948, s 37(1)(2). **East Midlands Gas Board v Doncaster Corpn** [1953] 1 54, QBD.

Vesting of rights, liabilities and obligations—

Disclaimer of rights, liabilities and obligations under agreement—Agreement made after 19th November 1945, but before 23rd January 1948—Disclaimer by area gas board—Reference to Gas Arbitration Tribunal—Disclaimer not allowed by tribunal—Jurisdiction of court—Gas Act 1948, s 36(5). **O'Meara v South Eastern Gas Board** [1950] 2 481, CA.

Right to bring legal proceedings—Period of limitation—Action against gas board—Alleged tort by undertaking before transfer to board—Whether period of limitation three or six years—Gas Act 1948, ss 14(2), 17(5). **Coote v Eastern Gas Board** [1953] 1 762, QBD.

Vesting of liability—Service agreement with gas company—Remuneration calculated on capital of company—Frustration of agreement as from vesting date—Gas Act 1948, s 17(3)(b). **Studholme v South Western Gas Board** [1954] 1 462, QBD.

Supply of gas—

Neglect to pay rate, rent or sum of money due—

Recovery of charges—Cutting off supply—Gas charges prepaid by slot meter—Only outstanding charges for rent of apparatus—Right of company to cut off supply—South Metropolitan Gas, Light and Coke Company Act 1842, ss 159, 161. **Perry v South Metropolitan Gas Co** [1940] 1 591, ChD.

Support of gas mains—

Right of support—

Local authority owning gas pipes laid under public highways by virtue of statutory powers—Right to subjacent support—Damage to pipes from subsidence of surface land caused by mining operations—Right of authority to damages—Gasworks Clauses Act 1847, s 6—Public Health Act 1875 (Support of Sewers) Amendment Act 1883, ss 4, 5. **Newcastle-under-Lyme Corpn v Wolstanton Ltd** [1947] 1 218, CA.

Undertakers—

Negligence—

Defence—Act of third party—Breakage of main by reason of subsidence due to mining operations—Mining company entitled to let down surface—Liability of undertakers. **Hanson v Wearmouth Coal Co Ltd, and Sunderland Gas Co** [1939] 3 47, CA.

GAS BOARD

See Gas (Gas Board).

GENERAL AVERAGE

See Shipping (General average).

GENERAL COMMISSIONERS

Income tax. *See* Income tax (General Commissioners).

GENERAL EQUITABLE CHARGE

Charge on land. *See* Land charge (General equitable charge).

GENERAL EQUITABLE CHARGE (cont)

Estate agents' commission—

Registration as land charge—

Vacation of entry in land charges register. *See* **Land charge** (Vacation of entry in register—General equitable charge—Entry of general equitable charge for estate agents' commission charged on purchase money).

GENEVA CONVENTIONPrisoners of war. *See* **War** (Prisoners of war).**GERMAN ENEMY PROPERTY**Distribution. *See* **Enemy** (Enemy property—German enemy property).**GHANA**

Intestacy—

Grant of administration—

Wife—Potentially polygamous marriage—Intestate married first under marriage ordinance and then under customary native law—Application of English statutes—Meaning of 'wife' and 'widow'—Marriage Ordinance (Laws of the Gold Coast 1951, c 127), s 48(1)—Courts Ordinance (Laws of the Gold Coast, 1951, c 4), s 83—Interpretation Ordinance (Laws of the Gold Coast, 1951, c 1), s 3(31), (45)—Statute 21 Henry 8 (1529), s 2—Statute of Distribution (1670), s 3. *Coleman v Shang alias Quarthey* [1961] 2 406, PC.

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Criminal law—

Special courts—

Death sentence—Special provision for review of death sentence—Review only necessary where special court created under defence regulations—Necessity for special leave to appeal to Privy Council—Emergency Powers (Defence) Act 1939, ss 1(2), 4—Emergency Powers (Defence)(No 2) Act 1940, ss 1, 2—Trial of Special Offences Ordinance (Gibraltar) 1943, para 2. *Cordon-Cuenca v R* [1944] 1 411, PC.

GIFT

Acceptance—

Advancement—

Shares vested in children of donor—Children ignorant of transfers—Validity of gift. *Shephard v Cartwright* [1954] 3 649, HL.

Intention of donor—

Relevance—Delivery by donor with intention that donee should receive thing given as gift—Donee intending to treat it merely as a loan—No agreement by donor that it should be treated as a loan—Whether a valid gift. *Dewar v Dewar* [1975] 2 728, ChD.

Annuity—

Will. *See* **Will** (Annuity—Duration—Gift of £2750 a year).

Charitable. *See* **Charity**.

Conditional bequest—

Will. *See* **Will** (Condition—Conditional bequest).

Contingent—

Gift contingent on attaining age of 25—

Beneficiary pre-deceasing testator. *See* **Will** (Lapse—Beneficiary pre-deceasing testator—Gift contingent on attaining age of 25).

Death of donor—

Proof of intention—

Donee's account of events to be approached with suspicion—Burden of proof on donee. *Thomas v The Times Book Co Ltd* [1966] 2 241, ChD.

Donee's own statement in writing of deceased's intention insufficient evidence after his death. *Re Tyler's Fund Trusts* [1967] 3 389, ChD.

Delivery—

Chattels—

Possession obtained, with the consent of the donor, by finding—Whether delivery. *Thomas v The Times Book Co Ltd* [1966] 2 241, ChD.

Donatio mortis causa. *See* **Donatio mortis causa**—Delivery, *post*.

Disclaimer—

Knowledge of nature of donee's possible claim—

Finality of oral disclaimer of attempted gifts inter vivos—Disclaimer operating by way of avoidance not by way of disposition of equitable interest—Writing not required under Law of Property Act 1925, s 53. *Re Paradise Motor Co Ltd* [1968] 2 625, CA.

Donatio mortis causa—

Condition—

Reversion of subject-matter to donor in case of recovery—Certainty of imminence of death. *Re Lillingston (decd)* [1952] 2 184, ChD.

Delivery—

Bank balances—Deposit accounts—Animus donandi—Sufficiency of deposit books as indicia of title. *Birch v Treasury Solicitor* [1950] 2 1198, CA.

Chattels—Choses in action—Bank deposit book. *Delgoffe v Fader* [1939] 3 682, ChD.

Document of title handed over—War Savings Certificates and National Savings Certificates. *Darlow v Sparks* [1938] 2 235, ChD.

Giving of power of attorney—Instructions to use power of attorney to transfer property into donee's name—Sufficiency of delivery. *Re Craven's Estate* [1937] 3 33, ChD.

Handing over of key of safe deposit containing jewellery—Safe deposit containing key to further safe deposit containing jewellery—Sufficiency of delivery of jewellery. *Re Lillingston (decd)* [1952] 2 184, ChD.

Post Office Savings Bank book—Words of gift together with instruction to pay donor's funeral expenses out of the money in the account. *Re Ward* [1946] 2 206, ChD.

GIFT (cont)

Double gift—

Will—

Residue. *See Will* (Residue—Double gift).

Estate duty—

Exemption—

Marriage settlement. *See Estate duty* (Exemption—Marriage settlement).Gift inter vivos. *See Estate duty* (Gift inter vivos).

Gift cum onere—

Administration of estate. *See Administration of estates* (Gift—Gift cum onere).

Gift of realty—

Ademption—

Will. *See Will* (Ademption—Gift of realty).

Gift of shares—

Ademption—

Will. *See Will* (Ademption—Gift of shares).

Heir of survivor of two beneficiaries—

Will. *See Will* (Gift—Specific donee—Heir-at-law of survivor of two beneficiaries).

Husband to wife—

Delivery—

Furniture purchased by husband, brought into matrimonial home and shown to wife and words of present gift uttered—Whether perfected gift. *Re Cole (a Bankrupt), ex parte The Trustees v Cole* [1963] 3 433, CA.

Hire-purchase acquisition—

Motor car being acquired by husband on hire-purchase—Whether effectively given to wife by way of simple gift—Whether equitable assignment of benefit of hire-purchase agreement by conduct—Whether intention to create legal relationship. *Spellman v Spellman* [1961] 2 498, CA.

Income tax—

Gift to employee. *See Income tax* (Emoluments from office or employment—Personal gifts distinguished from emoluments).Voluntary payment to employee. *See Income tax* (Emoluments from office or employment—Voluntary payment).

Incomplete gift—

Perfecting gift—

Appointment of intended donee as executrix of intending donor—Investments held by intending donor as beneficial owner—No continuing intention to hold investments for benefit of intended donee. *Re Wale (decd)* [1956] 3 280, ChD.Appointment of intended donee as executrix of intending donor—Object of gift lent by intending donor to third person. *Jackson v Rodger* [1952] 1 16, CA.Legal owner of investments trustee both of will and of settlement—Settlor beneficially entitled at date of settlement to reversionary interest under will—After-acquired property provision in settlement—Capacity in which trustee became owner of investments irrelevant—Beneficiaries under settlement volunteers—Whether reversionary interest of settlor under will held by trustee on trusts of settlement or whether settlor's legal personal representatives entitled as representing her estate. *Re Rall's Will Trusts* [1963] 3 940, ChD.Possession—Conveyance of property two years prior to donor's death—Deed of sale but no consideration in fact passed—Parties living together before and after deed—Whether sufficient transfer of possession. *Gulab v Khaleq* [1963] 3 824, PC.Right to allotment of shares of limited company—Direction to company to allot to donees—When gift is complete. *Letts v Inland Revenue Comrs* [1956] 3 588, ChD.

Transfer of shares—

Intending transferor resident outside sterling area—Regulation prohibiting transfer without consent of Treasury—Transfer executed, but death of intending transferor before licence from Treasury obtained—Intended transferee not entitled to shares—Defence (Finance) Regulations 1939, reg 3A(1), (4)(as amended by S R & O 1940 No 1254). *Re Fry* [1946] 2 106, ChD.

Ineffective gift—

Will. *See Will* (Gift—Ineffective gift).

Inter vivos—

Donor 84 years of age—

Presumption of undue influence by companion/secretary. *See Equity* (Undue influence—Presumption of undue influence—Secretary/companion).

Estate duty—

Exemption—Marriage settlement. *See Estate duty* (Exemption—Marriage settlement).Generally. *See Estate duty* (Gift inter vivos).

Lapse—

Will. *See Will* (Lapse).

Legacy to hospital—

Diversion of gift. *See National Health Service* (Legacy to hospital—Diversion of gift).

Mental disorder—

Gift by patient. *See Mental health* (Patient's property—Gift).

Mental hospital—

Undue influence. *See Equity* (Undue influence—Presumption of undue influence—Mental hospital and patient—Gift by patient to private independent mental hospital).

Presumption of advancement—

Father and children—

Evidence to rebut presumption of advancement—Property bought by father—Conveyance in name of daughter—Title deeds retained by father—Contemporaneous declaration by father of wish to divide property between children—Claim by daughter to be beneficial owner of property—Claim for possession of title deeds against executors of father's estate—Whether presumption rebutted. *Warren v Gurney* [1944] 2 472, CA.

GIFT (cont)

Presumption of advancement (cont)—

Father and children (cont)—

Evidence to rebut presumption of advancement—Subsequent acts or events—Allotments of shares in names of children—Shares subsequently sold and proceeds treated by father as his own moneys—Other provision made for children. **Shephard v Cartwright** [1954] 3 649, HL.

Presumption of resulting trust—

Husband and wife—

Husband joining as surety in mortgage—Required by mortgagees to pay as surety—Proof in wife's estate—Whether payments by husband gift. **Re Salisbury-Jones** [1938] 3 459, ChD.

Residue—

Legacy to hospital. *See* **National Health Service** (Legacy to hospital).

Will. *See* **Will** (Residue).

Rule against perpetuities. *See* **Rule against perpetuities**.

Solicitor—

Gift by client to solicitor. *See* **Solicitor** (Gift by client to solicitor).

Stamp duty—

Voluntary disposition inter vivos. *See* **Stamp duty** (Voluntary disposition inter vivos).

Substitutional gift. *See* **Will** (Gift—Substitutional gift).

Will—

Construction—

Intention of testator. *See* **Will** (Construction—Intention of testator).

Generally. *See* **Will** (Gift).

GIRL

Abduction of unmarried girl. *See* **Criminal law** (Abduction—Unmarried girl under 18).

Procuring. *See* **Criminal law** (Procurator of girl under 21).

Rape—

Consent. *See* **Criminal law** (Rape—Consent—Girl under 16 years of age).

Sexual intercourse—

Unlawful intercourse. *See* **Criminal law** (Sexual intercourse—Girl under 16).

GLEBE LAND

See **Ecclesiastical law** (Glebe land).

GOGGLES

Protection of eyes—

Building operations. *See* **Building** (Building operations—Protection of eyes of persons employed in specified processes).

Factory. *See* **Factory** (Protection of eyes—Obligation to provide suitable goggles or effective screens).

GOING EQUIPPED FOR STEALING

See **Criminal law** (Going equipped for stealing).

GO-KART

Motor vehicle. *See* **Road traffic** (Motor vehicle—Vehicle intended or adapted for use on road—Go-kart).

GOLD

Exchange control. *See* **Currency control** (Gold).

GOLD COAST

Concession of timber rights. *See* **West Africa** (Gold Coast—Concession of timber rights).

GOLD PLATE

See **Plate**.

GOLF COURSE

Town and country planning—

Resumption of normal use. *See* **Town and country planning** (Development—Resumption of normal use—Disused golf course).

GOOD FAITH

Abortion—

Defence—

Medical practitioner. *See* **Criminal law** (Abortion—Defence—Medical practitioner—Opinion formed in good faith that termination of pregnancy necessary).

GOODS

Carriage by air. *See* **Carriage by air** (Carriage of goods).

Carriage by sea—

Bill of lading—

Limitation of liability. *See* **Shipping** (Bill of lading—Limitation of liability).

Breach of contract—

Loss of or damage to goods. *See* **Shipping** (Carriage by sea—Damages for breach of contract—Loss of or damage to goods).

Freight. *See* **Shipping** (Freight).

Carriage of goods—

Contract. *See* **Carriers** (Contract—Carriage of goods).

Controlled goods—

Supply of. *See* **Control of goods** (Supply of controlled goods).

Dealing with dutiable goods. *See* **Customs and excise** (Dealing with goods chargeable to duty which has not been paid).

GOODS (cont)

Disparagement. *See* **Slander of goods** (Disparagement of trader's goods).

Export—

Prohibited goods. *See* **Customs and excise** (Exportation of prohibited goods).

False trade description. *See* **Trade description**.

Handling stolen goods. *See* **Criminal law** (Handling stolen goods).

Hire-purchase. *See* **Hire-purchase**.

Insurance—

Goods in transit. *See* **Insurance** (Property insurance—Goods in transit).

Loss at sea—

Insurance. *See* **Marine insurance** (Loss).

Misrepresentation as to quantity—

Weights and measures legislation. *See* **Weights and measures** (Misrepresentation as to quantity).

Prohibited—

Importation. *See* **Customs and excise** (Importation of prohibited goods).

Prohibited goods—

Export. *See* **Customs and excise** (Exportation of prohibited goods).

Sale of. *See* **Sale of goods**.

Seizure under writ of fi fa. *See* **Execution** (Writ of fi fa—Seizure of goods).

Shipping and unshipping—

Harbour, dock and pier to be open to public for. *See* **Harbour** (Harbour, dock and pier to be open to public for shipping and unshipping goods).

Trade mark—

Infringement—

Sale of reconditioned goods. *See* **Trade mark reconditioned** Infringement—Sale of reconditioned goods).

Trespass. *See* **Trespass to goods**.

Trespass to goods—

Conversion. *See* **Conversion**.

Trespass—

Generally. *See* **Trespass to goods**.

Uncustomed goods—

Carrying of, with intent to defraud. *See* **Customs and excise** (Carrying uncustomed goods with intent to defraud).

Harbouring of. *See* **Customs and excise** (Harbouring uncustomed goods).

Value added tax—

Supply of goods—

Input tax. *See* **Value added tax** (Input tax—Tax on supply to a taxable person of goods or services for purpose of business carried on by him).

GOODS VEHICLE

See **Road traffic** (Goods vehicle).

GOODWILL

Compensation—

Business premises—

Tenancy. *See* **Landlord and tenant** (Compensation in respect of goodwill of business premises).

Will—

Specific bequests. *See* **Will** (Gift—Specific bequest—Goodwill of rug business and stock and plant).

GOVERNMENT

Contractor—

Wages paid by government contractor to employees. *See* **Master and servant** (Wages—Wages paid by government contractors to employees).

Foreign—

Recognition—

Validity of laws. *See* **Conflict of laws** (Foreign government—Recognition—Law as declared by courts of foreign country).

Local—

Elections.

See **Elections** (Local government).

Generally. *See* **Local government**.

Northern Ireland—

Powers—

Taxation. *See* **Northern Ireland** (Reference—Taxation—Powers of Government of Northern Ireland).

GOVERNMENT SECURITIES

Exemption from estate duty while in foreign ownership. *See* **Estate duty** (Exemption—Government securities).

GOVERNMENT SUBSIDY

Income tax—

Trading receipt. *See* **Income tax** (Profits—Trading receipts—Government subsidy).

GRANDCHILD

Adoption. *See* **Adoption** (Grandchild).

Will—

Gift to grandchildren—

Specific donees. *See* **Will** (Gift—Specific donees—Grandchildren).

GRANDPARENTS

Custody of orphan grandchild—

Conflict as to religious upbringing. *See* **Minor** (Custody—Orphan—Religious upbringing).**GRANT**

Administration—

Generally. *See* **Administration of estates** (Grant of administration).Ghana. *See* **Ghana** (Intestacy—Grant of administration).Derogation from grant. *See* **Derogation from grant**.

Government grant—

Income tax—

Capital or income receipt. *See* **Income tax** (Capital or income receipts—Government grant).

Implied—

Tenancy agreement. *See* **Landlord and tenant** (Tenancy agreement—Implied grant).Probate. *See* **Probate** (Grant).

Student—

Supplementary benefit—

Calculation of benefit. *See* **Supplementary benefit** (Calculation of benefit—Deduction of resources from requirements—Notional or actual resources—Student awarded grant).**GRANT OF REPRESENTATION**Commorientes. *See* **Administration of estates** (Commorientes).**GRATUITOUS BAILMENT***See* **Bailment** (Gratuitous bailment).**GRAVESTONE**

Inscription—

Charge for—

Burial board, by. *See* **Burial** (Burial ground—Charge for monumental inscription—Right of burial board to charge for permission to cut inscriptions on gravestone).**GRAZING RIGHTS**

Easement—

Prescription. *See* **Easement** (Grazing—Right to graze—Prescription).Palestine. *See* **Palestine** (Grazing rights).Profit à prendre. *See* **Profit à prendre** (Sheep rights).**GREYHOUND RACING**

Inquiry—

Matter affecting licence holder's reputation and livelihood—

Natural justice. *See* **Natural justice** (Domestic tribunal—Legal representation—Inquiry into matter affecting licence-holder's reputation and livelihood).**GRIEVOUS BODILY HARM***See* **Criminal law** (Grievous bodily harm).**GRINDING MACHINES**Regulations. *See* **Factory** (Grinding machines—Regulations).**GRINDING OF METALS**Removal of dust. *See* **Factory** (Removal of dust—Grinding of metals).**GROSS INDECENCY***See* **Criminal law** (Gross indecency).**GROSS NEGLIGENCE**Manslaughter. *See* **Criminal law** (Manslaughter—Recklessness or gross negligence).**GUARANTEE**

Bank—

Disclosure of information to guarantor by bank. *See* **Bank** (Guarantee—Disclosure of information to guarantor by bank).

Bankruptcy—

Proceedings for declaration of fraudulent preference in respect of debt guaranteed—

Joinder of surety. *See* **Bankruptcy** (Fraudulent preference—Joinder of parties—Bankrupt's account guaranteed by surety).

Co-sureties—

Action for contribution—

Counterclaim in respect of damages recoverable if at all by principal debtor against creditor—Availability of counterclaim. **Wilson v Mitchell** [1939] 2 869, KBD.

Agreement between co-sureties that one to be primarily liable—

Effect—Whether equitable charge created in favour of co-surety secondarily liable on property of co-surety primarily liable. **Pratt's Trustees in Bankruptcy v Pratt** [1936] 3 901, ChD.

Discharge of guarantee—

Repudiation of contract by principal debtor—

Acceptance of repudiation by creditor—Creditor's debt transformed into right to damages—Whether guarantor's liability discharged in respect of future liabilities under principal contract. **Moschi v Lep Air Services Ltd** [1972] 2 393, HL.

Variation of terms of principal contract—

Repudiation of contract by principal debtor—Whether acceptance of repudiation constituting a variation in terms of contract. **Moschi v Lep Air Services Ltd** [1972] 2 393, HL.

Due performance—

Building contract. *See* **Building contract** (Guarantee of due performance).

GUARANTEE (cont)

Hire-purchase. *See* Hire-purchase (Guarantee).

Husband and wife—

Presumption of advancement—

Husband surety for wife's banking account—Payment by husband of overdraft—Right of husband to be reimbursed—Whether presumption of advancement arising. *Anson v Anson* [1953] 1 867, QBD.

Illegality—

Gaming machine's earnings. *See* Gaming (Gaming machine—Guarantee of earnings—Owner of machines agreed to let them at weekly rental to club—Guaranteed that yearly earnings of the machine should be not less than £1,900).

Indemnity distinguished. *See* Indemnity (Guarantee distinguished).

Insurance. *See* Insurance (Guarantee distinguished).

Meaning of 'guarantee'—

Vendor's undertaking to furnish a guarantee—

Whether personal guarantee of vendor a good discharge of undertaking. *Heisler v Anglo-Dal Ltd* [1954] 2 770, CA.

Payment under—

Deduction for tax purposes. *See* Income tax (Deduction in computing profits—Expenses wholly and exclusively laid out for purposes of trade—Guarantee—Payment under guarantee).

Enforcement against estate of deceased person—

No grant of representation—Application for order appointing official solicitor representative of estate—Application for declaration that property charged with payment of moneys vesting in trustee—Jurisdiction of court—RSC Ord 16, r 46—Trustee Act 1925, s 51(1)(v). *Re Deans (decd)* [1954] 1 496, ChD.

Loss—

Recovery—Guarantors entitled to 90 per cent of 'sums recovered... in respect of a loss to which this Guarantee applies'—Guarantee relating to export contract between merchant and foreign buyer—Occurrences covered including delay in payment by foreign buyer—Guarantors undertaking to pay 90 per cent of loss—Amount of loss—Payment under contract in foreign currency—Rate of exchange—Loss to be calculated according to rate of exchange at date of export—Delay in payment caused by exchange control restrictions imposed by buyer's country—Payment by guarantors in respect of loss—Subsequent payment by buyers—Sterling proceeds of payment exceeding loss calculated under guarantee because of devaluation of sterling—Whether guarantors entitled to recover sum in excess of amount paid in respect of loss. *L Lucas v Export Credits Guarantee Department* [1974] 2 889, HL.

Nature of payment—

Interest—Guarantor guaranteeing payment of principal and interest—Default by principal debtor—Sum paid by guarantor in respect of interest due from principal debtor—Whether payment ranking as payment of 'interest' or of a sum in lieu of interest. *Re Hawkins (decd)* [1972] 3 386, ChD.

Period of limitation—

Time from which period runs—Continuing guarantee for balance at any time owing—Limitation to run from time when balance sued for had been constituted. *Wright v New Zealand Farmers' Co-operative Assn of Canterbury Ltd* [1939] 2 701, PC.

Sale agreement—

Stamp duty. *See* Stamp duty (Mortgage, bond, debenture or covenant—Principal or primary security for the payment or repayment of money—Guarantee of sale agreement).

Severability of guarantee—

General guarantee in respect of unspecified series of transactions—

Guarantee of payment of goods by debtor—No terms of credit agreed upon between debtor and seller of goods—Bills of exchange accepted by seller without knowledge of guarantor—Extent to which guarantor released from guarantee. *W R Simmons Ltd v Meek* [1939] 2 645, KBD.

GUARANTEE

Solicitor—

Practice—

Whether giving of temporary guarantees to clients ordinary activity of practice. *See* Solicitor (Practice—Guarantees—Ordinary activity of practice).

Surety—

Liability of surety—

Extent of liability—Mortgage—Surety—Building society—Proviso that surety's liability should cease of 'amount owing in respect of the advance' reduced below certain amount—Inclusion of bonus, interest and fines in 'amount'. *Eastern Counties Building Society v Russell* [1947] 2 734, CA.

Joint and several liability—Contracts of principal debtor and surety several unless contained in single promise—Undertakings of principal debtor and surety contained in same agreement—Whether a single promise. *LEP Air Services Ltd v Rolloswin Investments Ltd* [1971] 3 45, CA.

Right of surety to exoneration from liability—

Demand by creditor—Liability of surety only to arise on demand by creditor—No demand made—Guarantee by director of company's overdraft with bank—Director resigning and notifying bank to determine guarantee—No demand made by bank against director—Whether director entitled in equity to require club to exonerate him from liability to bank by paying off overdraft. *Thomas v Notts Incorporated Football Club Ltd* [1972] 1 1176, ChD.

GUARANTEE (cont)

Surety (cont)—

Right of surety to exoneration from liability (cont)—

Joint and several liability of surety and principal debtor—Both treated as principal debtors of the mortgagee—Supplemental agreement that each liable for one moiety of amount of mortgage—Provision against compulsion to repay by either if payment of interest not 30 days overdue—Whether right arises as soon as interest is 30 days overdue, although subsequently paid. *Tate v Crewdson* [1938] 3 43, ChD.

Plaintiff became surety for defendant's indebtedness to bank and gave legal charge—Bank demanded payment—Gave notice of intention to enforce legal charge—Quia timet action—Judgment in default—Order made with direction that, if defendant failed to obey, plaintiff should be at liberty to apply. *Watt v Mortlock* [1963] 1 388, ChD.

Rights against debtor—

Reimbursement—Circumstances in which surety entitled to reimbursement even though guarantee given voluntarily—Surety giving guarantee to bank to secure defendants' overdraft—Guarantee given to release original guarantor—Guarantee given without defendants' knowledge or consent—Bank having recourse to guarantee for repayment of defendants' debt—Whether guarantor entitled to reimbursement by defendants. *Owen v Tate* [1975] 2 129, CA.

Time for issue of guarantee—

Contract silent as to time when guarantee to be issued—

Contract for sale of goods—Buyers' obligation to provide bank guarantee—Obligation to provide guarantee within reasonable time. *Sinason-Teicher Inter-American Grain Corp v Oilcakes and Oilseeds Trading Co Ltd* [1954] 3 468, CA.

Void contract of principal debtor—

Illegal debenture charging assets of company to secure loan to purchaser of shares—

Purchaser guaranteeing debenture—Whether guarantee enforceable. *Heald v O'Connor* [1971] 2 1105, QBD.

Infant's overdraft at bank—

Liability of surety. *Coutts & Co v Browne-Lecky* [1946] 2 207, KBD.

GUARDIAN

Child or young person—

Court's power to order guardian to pay fine incurred by child. *See Children and young persons* (Fine—Imposition—Court's power to order parent or guardian to pay fine instead of child or young person).

Compensation order—

Offence committed by child. *See Sentence* (Compensation—Parent or guardian's liability).

Consent to adoption. *See Adoption* (Consent—Parent or guardian).

Minor—

Generally. *See Minor* (Guardian).

GUARDIAN AD LITEM

Adoption proceedings—

Directions—

Duty to apply for. *See Adoption* (Practice—Application for adoption order—Filing and service of affidavit in support—Appointment for hearing—Duty of guardian ad litem to apply for directions if appointment not taken within fourteen days).

Disclosure of contents of confidential report—

Dispensing with parent's consent. *See Adoption* (Dispensing with consent of parent or guardian—Application—County court—Guardian ad litem's confidential report).

Disclosure of report. *See Adoption* (Practice—Reports—Disclosure—Confidential reports—Report of guardian ad litem).

Generally. *See Adoption* (Guardian ad litem).

Practice. *See Adoption* (Practice—Guardian ad litem).

Divorce—

Insanity. *See Divorce* (Insanity—Guardian ad litem).

Paternity—

Blood test. *See Paternity* (Blood test—Divorce—Guardian ad litem).

Official Solicitor. *See Official Solicitor* (Guardian ad litem).Variation of trusts. *See Variation of trusts* (Infant—Guardian ad litem).**GUARDIANSHIP**

Minor—

Originating summons—

Form. *See Originating summons* (Guardianship of infant—Form).

Minors. *See Minor* (Guardianship).**GUARDRAIL**

Stairs—

Building operations. *See Building* (Building operations—Stairs).

Working place—

Building. *See Building* (Working places—Guardrails).

GUILTY

Plea. *See Criminal law* (Trial—Plea—Guilty).

GUYANA

Crown servant—

Contract of service—

Termination or variation of contract—School teacher's appointment rescinded but teacher re-employed at reduced salary. *Attorney-General for Guyana v Nobrega* [1969] 3 1604, PC.

HABEAS CORPUS

Application for habeas corpus in criminal matter—

Application by person in execution—

Right of applicant to be heard in person. **Re Wring, Re Cook** [1960] 1 536, QBD.

Courts to which application may be made—

Refusal of application by Divisional Court of Queen's Bench Division—Second application to differently constituted Divisional Court of same Division—Whether second or subsequent application should be heard. **Re Hastings (No 2)** [1958] 3 625, QBD.

Refusal of application by Divisional Court of Queen's Bench Division—Whether right to apply to Divisional Court of Chancery Division. **Re Hastings (No 3)** [1959] 1 698, ChD.

Extradition. *See* **Extradition** (Habeas corpus).

Grounds for grant of writ of habeas corpus—

Denial of right to appeal—

Appeal to Court of Criminal Appeal on point of law—Right of appeal allegedly denied—Whether such denial a ground for granting habeas corpus. **Ex parte Hinds** [1961] 1 707, QBD.

Unlawful detention—

Applicant serving prison sentence—Applicant alleging wrongly convicted—Availability of writ. **Ex parte Corke** [1954] 2 440, QBD.

Warrant for arrest of applicant issued in Ireland—Warrant endorsed and executed in England—Whether applicant's detention in England illegal—Indictable Offences Act 1848, s 12—Petty Session (Ireland) Act 1851, s 27(3). **R v Comr of Police, ex parte Nalder** [1947] 2 611, KBD.

Immigrant—

Refusal of admission to United Kingdom—

Whether appropriate remedy. *See* **Commonwealth immigrant** (Admission—Refusal of admission—Discretion of immigration officer—Duty to act fairly).

Unlawful detention. *See* **Immigration** (Detention—Unlawful detention—Remedy—Habeas corpus).

Interned enemy alien—

Availability of writ—

Declaration of Government as to state of war—Whether conclusive. **R v Bottrill, ex parte Kuechenmeister** [1946] 2 434, CA.

Jurisdiction—

Divisional Court. *See* Application for habeas corpus in criminal matter—Courts to which application may be made, *ante*.

Places to which writ may run—

Foreign territory—Arrest and detention in protectorate. **Re Mwenya** [1959] 3 525, CA.

Northern Ireland—Arrest and detention in Northern Ireland—English courts having no jurisdiction to issue writ in respect of persons detained in Northern Ireland. **Re Keenan** [1971] 3 883, CA.

Return to writ—

Enquiry into truth of facts set out in return—

Onus of proof—Detention—Evidence that detention unlawful—Gaoler's return valid on its face—Immigrant—Detention pending deportation—Detention on ground entry of immigrant unlawful—Immigrant alleging he had to leave to enter—Immigrant unable to produce passport showing leave given—Immigrant alleging passport lost—Whether onus on Home Office to establish that immigrant had not obtained leave. **Re Wajid Hassan** [1976] 2 123, QBD.

Power of court—Habeas Corpus Act 1816, ss 3, 4. **Greene v Secretary of State for Home Affairs** [1941] 3 388, HL. **R v Board of Control, ex parte Ratty** [1956] 1 769, QBD.

To whom writ will issue—

Constructive custodian—

Detention in protectorate—Whether writ will issue to Secretary of State. **Re Mwenya** [1959] 3 525, CA.

HABITUAL CRIMINAL

See **Criminal law** (Habitual criminal).

HACKNEY CARRIAGE

See **Road traffic** (Hackney carriage).

HAGUE RULES

Incorporation in charterparty—

Paramount clause.

SeeS **Shipping** (Charterparty—Incorporation of paramount clause—No qualifying words included—Whether Hague Rules incorporated into charterparty).

HAIRDRESSER

Contract of service—

Restraint of trade. *See* **Restraint of trade by agreement** (Master and servant—Hairdressing salon).

Negligence. *See* **Negligence** (Hairdresser).

HANDLING STOLEN GOODS

SeeS **Criminal law** (Handling stolen goods).

HANDRAIL

Staircase—

Building operations. *See* **Building** (Building operations—Stairs).

Factory.

SeeS **Factory** (Staircase—Handrail—Obligation to provide handrail).

HANDS

- Loss of hands—
- Damages. *See* **Damages** (Personal injury—Hand).

HAND-TOOL

- Powered hand-tool—
- Use in building operations—
- Duty to fence. *See* **Building** (Building operations—Fencing of machinery—Dangerous machinery—Powered hand-tool).

HANDWRITING

- Evidence—
- Criminal proceedings. *See* **Criminal evidence** (Handwriting).

HARASSMENT

- Residential occupier—
- Civil liability. *See* **Statutory duty** (Breach—Civil liability—Landlord and tenant—Harassment).
- Criminal offence. *See* **Criminal law** (Harassment—Residential occupier of land).

HARBOUR

- Board—
- Act done in pursuance of public duty or authority—
- Limitation of action. *See* **Public authority** (Limitation of action—Act done in execution of statute or of public duty or authority—Public—Harbour board).
- Dock and harbour undertaking—
- Rates. *See* **Rates** (Valuation—Dock and harbour undertaking).
- Dues—
- Priority of payment out of proceeds of sale of ship. *See* **Admiralty** (Appraisalment and sale—Payment out of proceeds of sale—Priorities—Harbour dues).
- Harbour authority—
- Negligence—
- Exemption from liability—Insufficient supervision of bed of berth—Damage to ship at berth on taking ground—Notice issued by port authority known to shipowners and stipulating for exemption from liability—Whether port authority exempted from liability for negligence. **The Ballyalton** [1961] 1 459, Adm.
- Public authority—
- Limitation of action—Action under power to carry on trade of wharfingers and warehousemen—Trade not subsidiary to main purpose of managing and controlling harbour. **Firestone Tire and Rubber Co (SS) Ltd v Singapore Harbour Board** [1952] 2 219, PC.
- Rates—
- Mooring charges—Statutory lien—Payment out of proceeds of sale of ship free from authority's rights. *See* **Admiralty** (Appraisalment and sale—Payment out of proceeds of sale—Priorities—Harbour authority's claims for rates incurred by ship).
- Harbour, dock and pier to be open to public for shipping and unshipping of goods—
- Shipping and unshipping—
- Tugs not owned by owners of dock employed in towing vessels into and out of dock—Right of owners to perform tug services—Whether 'shipping and unshipping goods'—Harbours, Docks, and Piers Clauses Act 1847, s 33. **J H Pigott & Son v Docks and Inland Waterways Executive** [1953] 1 22, QBD.
- Nature reserve—
- Mooring within reserve—
- Offence—Byelaw creating offence—Statutory proviso—Byelaw not to interfere with exercise by any person of 'any public right of way'—Accused mooring in reserve—Accused charged with offence—Accused relying on proviso—Accused exercising right to navigate in tidal waters—Whether 'any public right of way' including right to navigate in tidal waters—National Parks and Access to the Countryside Act 1949, s 20(2), proviso—Administrative County of West Sussex Byelaws (Pagham Harbour Nature Reserve), byelaw 2, proviso. **Evans v Godber** [1974] 3 341, QBD.
- Offence—Meaning of 'mooring'—Anchoring—Accused anchoring overnight in reserve—Whether accused guilty of 'mooring' in reserve—Administrative County of West Sussex Byelaws (Pagham Harbour Nature Reserve), byelaw 2(1). **Evans v Godber** [1974] 3 341, QBD.
- Pilotage district—
- Compulsory pilotage—
- Loss or damage caused by vessel while under compulsory pilotage—Liability of owner or master of vessel—Action by shipowner against harbour board for negligence—Counterclaim by board for damage to harbour—Contributory negligence—Harbours, Docks, and Piers Clauses Act 1847, s 74—Pilotage Act 1913, s 15. **Workington Harbour and Dock Board v Owners of the SS Towerfield** [1950] 2 414, HL.
- Loss or damage caused by vessel while under compulsory pilotage—Liability of owner or master of vessel—Collision in foreign territorial waters—Iraq—Ship under jurisdiction of local port authority—Defence of 'compulsory pilotage' under Iraq law—Effect of incorporation in port byelaws of note similar, in substance, to Regulations for Preventing Collisions at Sea (Sea Regulations 1910 (S R & O 1910 No 1113)), art 29. **The Waziristan** [1953] 2 1213, Adm.
- Loss or damage caused by vessel while under compulsory pilotage—Liability of owner or master of vessel—Limitation of liability—Local traffic signals ignored. **The Hans Hoth** [1953] 1 218, Adm.

HARBOUR (cont)

Pilotage district (cont)—

Compulsory pilotage (cont)—

Obligations where pilotage compulsory—Ship carrying passengers—Meaning of passengers—Lorry drivers accompanying lorries—Lorries driven on to ship by drivers and driven off by them at port of disembarkation—Drivers not paying fares for voyage—Drivers provided with own cabin and food free of charge—Drivers performing no work in connection with ship—Whether drivers 'passengers'—Pilotage Act 1913, s 11(1). **Clayton v Albertsen** [1972] 3 364, QBD.

Obligations where pilotage compulsory—Ship carrying passengers—London Pilotage District—Passenger boats of over fifty tons gross tonnage—Navigated by licensed watermen—Whether navigating 'for the purpose of making use of' the port—Whether custom superseded by pilotage order—Whether passenger boats of over fifty tons gross tonnage, navigated by licensed watermen, subject to compulsory pilotage—Pilotage Act 1913, s 11(1), s 59—Port of London (Consolidation) Act 1920, s 318. **Thames Launches Ltd v Corpn of The Trinity House of Deptford Strand (No 2)** [1961] 2 913, ChD.

Ships exempt from compulsory pilotage—Home trade ship—Ship regularly engaged in home trade—Voyage outside home trade limits—Whether 'home trade ship' for that voyage—Merchant Shipping Act 1894, s 742—Pilotage Act 1913, s 11(4), (5). **Smith v Veen** [1955] 2 323, QBD.

Right of licensed pilot to supersede unlicensed persons—

Offer for unlicensed pilot to pilot ship after offer by licensed pilot—Offer—Communication of offer—Offer to be communicated in relation to particular movement of ship—General offer to all masters requiring pilots that pilots available not sufficient—Pilotage Act 1913, s 30(3). **Babbs v Press** [1971] 3 654, QBD, **Montague v Babbs** [1972] 1 240, QBD.

Offer for unlicensed pilot to pilot ship after offer by licensed pilot—Ship being moved for purpose of changing from one mooring to another—Ship not navigating by virtue of pilotage district byelaws—Whether ship being 'piloted' by unlicensed pilot if not navigating—Pilotage Act 1913, ss 30(3), 32—London Pilotage District Bye-Laws, Part IX, byelaw 2. **Babbs v Press** [1971] 3 654, QBD, **Montague v Babbs** [1972] 1 240, QBD.

Offer for unlicensed pilot to pilot ship after offer by licensed pilot—Ship not navigating by virtue of pilotage district byelaws—Whether ship being 'piloted' by unlicensed pilot if not navigating—Pilotage Act 1913, ss 30(3), 32—London Pilotage District Byelaws, Part IX, byelaw 2. **McMillan v Crouch** [1972] 3 61, HL.

Quay—

Cranes—

Undertakers providing cranes for public use—Stevedores using cranes—Undertakers subsequently themselves undertaking stevedoring services—Whether undertakers entitled to refuse use of cranes to public, including stevedores—Harbours, Docks, and Piers Clauses Act 1847, s 22, s 33. **Garland & Flexman (a firm) v Wisbech Corpn** [1961] 3 342, QBD.

HARBOURING

Husband or wife. *See* **Husband and wife** (Harbouring).

Uncustomed goods. *See* **Customs and excise** (Harbouring uncustomed goods).

HARDSHIP

Divorce—

Refusal of decree. *See* **Divorce** (Separation—Five year separation—Refusal—Grave financial or other hardship).

HAULAGE ROAD

Coal mine, in—

Statutory duty to keep clear of obstructions. *See* **Coal mining** (Statutory duty—Road—Haulage road—Duty to keep clear of obstructions).

HEALTH INSURANCE

National health insurance. *See* **National health insurance**.

HEALTH SERVICE

National Health Service. *See* **National Health Service**.

HEARING

Advance hearing—

Chancery Division—

Summons. *See* **Practice** (Chambers proceedings—Masters' summons—Advance hearing).

Application for committal for contempt of court—

Wardship proceedings. *See* **Contempt of court** (Committal—Application—Hearing—Contempt in relation to wardship proceedings).

Long vacation. *See* **Practice** (Long vacation—Hearing during long vacation).

Matrimonial causes—

Royal Courts of Justice. *See* **Practice** (Hearing—Matrimonial causes—Royal Courts of Justice).

Natural justice. *See* **Natural justice**.

Summons for directions. *See* **Practice** (Summons for directions).

HEARSAY

Affidavit—

Striking out. *See* **Affidavit** (Striking out—Hearsay).

Evidence—

Civil proceedings. *See* **Evidence** (Hearsay).

Criminal proceedings. *See* **Criminal evidence** (Hearsay).

HEAVY MOTOR CAR

See **Road traffic** (Heavy motor car).

HEDGE

Boundary. *See* **Boundary** (Hedge).

Repair—

Agricultural holding. *See* **Agricultural holding** (Repairs—Fences and hedges).

HEIGHT OF BUILDINGS

London. *See* **Building** (London—Height).

HEIR

Unconscionable bargain with expectant heir. *See* **Equity** (Unconscionable bargain—Expectant heir).

Will—

Specific donee. *See* **Will** (Gift—Specific donee—Heir-at-law).

HEIRLOOM

Will—

Descent. *See* **Will** (Heirloom—Descent).

HELMET

Funeral accoutrement associated with tomb—

Sale—

Faculty jurisdiction. *See* **Ecclesiastical law** (Faculty—of chattel—Monument—Funeral accoutrement associated with tomb—Jousting helmet).

HEREDITAMENT

Annual value—

Drainage rates. *See* **Land drainage** (Drainage rates—Annual value of hereditament).

HEROIN

Administration—

Criminal offence. *See* **Criminal law** (Administering poison or other noxious thing—Noxious thing—Substance likely to cause danger in common danger in common use—Heroin).

Generally. *See* **Drugs** (Dangerous drugs—Heroin).

HIGH COMMISSIONER

Residence—

Provision of—

Whether charitable purpose.

HIGH COURT

Appeal—

Appeal to House of Lords—

Application for leave to appeal. *See* **House of Lords** (Appeal from High Court—Application for leave to appeal).

Costs—

County court scale. *See* **Costs** (County court scale—High Court action).

Jurisdiction. *See* **Costs** (Jurisdiction—Costs of and incidental to proceedings in the Supreme Court).

HIGH COURT

Costs—

Landlord and tenant—

Recovery of possession. *See* **Landlord and tenant** (Recovery of possession—Costs—High Court action).

HIGH COURT

Injunction. *See* **Injunction** (High Court).

Judge—

Offences triable by judge in Crown Court. *See* **Crown Court** (Distribution of court business—

Classification of offences—Offences triable by High Court judge, circuit judge, recorder).

Jurisdiction—

Agricultural holding—

Arbitration—Question as to jurisdiction of arbitrator. *See* **Agricultural holding** (Arbitration—Question as to jurisdiction of an arbitrator).

Certiorari. *See* **Certiorari** (Jurisdiction).

Charging order. *See* **Execution** (Charging order—Jurisdiction—High Court).

Compulsory purchase—

Dispute as to basis of assessment of compensation. *See* **Compulsory purchase** (Compensation—Assessment—Dispute as to assessment—Basis of assessment—Jurisdiction of High Court).

Contempt of court—

Committal—Ex parte application. *See* **Contempt of court** (Committal—Application—Ex parte application—Jurisdiction of High Court).

Court-martial—

Non-compliance with rules of procedure, by. *See* **Court-martial** (Procedure—Non-compliance with rules of procedure—Jurisdiction of High Court).

Dispute as to form of divine service. *See* **Ecclesiastical law** (Divine service—Obligation to hold services—Dispute as to form of services—Jurisdiction of High Court).

Divisions of High Court. *See* **Court** (Jurisdiction—High Court of Justice—Divisions of High Court).

Friendly society—

Appeal against order by justices for delivery of accounts by officers. *See* **Friendly society** (Accounts of officers—Neglect to deliver—Order by justices to deliver—Appeal—High Court jurisdiction).

Jurisdiction to interfere with perverse decision of magistrates. *See* **Magistrates** (Perverse decision).

HIGH COURT (cont)

Jurisdiction (cont)—

Mortgagee's action for possession. *See* **Mortgage** (Action by mortgagee for possession—Jurisdiction of High Court).

Remission of arbitration award. *See* **Arbitration** (Award—Remission—Jurisdiction).

Matrimonial proceedings—

Issue estoppel. *See* **Estoppel** (Issue estoppel—Matrimonial proceedings—County court proceedings—Subsequent Proceedings in High Court for determination of Property rights).

Practice—

Application to county court. *See* **County court** (Practice—Application of High Court practice).

Generally. *See* **Practice**.

Transfer to county court of money recovered in High Court by infant, etc. *See* **County court** (Practice—Transfer to county court of money recovered in High Court by infants etc).

Supervisory jurisdiction—

Crown Court. *See* **Crown Court** (Supervisory jurisdiction of High Court).

Transfer—

Action—

Transfer from county court. *See* **County court** (Transfer of action—Transfer to High Court).

Transfer to county court. *See* **County court** (Transfer of action—Transfer from High Court).

Money—

Transfer to county court of money recovered in High Court by infant, etc.—Practice. *See* **County court** (Practice—Transfer to county court of money recovered in High Court by infants, etc).

Transfer of proceedings between Divisions. *See* **Practice** (Transfer of proceedings between Divisions of High Court).

Wardship proceedings—

Jurisdiction—

Previous custody order by magistrates—Circumstances in which High Court will make different order. *See* **Ward of court** (Previous custody order of magistrates made under jurisdiction conferred by guardianship legislation—Circumstances in which High Court will make different order under wardship jurisdiction).

HIGH SEAS

Offences on board ship. *See* **Criminal law** (Jurisdiction—Ship—High seas).

HIGHWAY

Access—

Interference with means of access—

Statutory powers of highway authority—Highway authority proposing to erect refuge on access to garage—Refuge in nature of footway—Refuge in highway but not in carriageway—Whether refuge 'raised paving'—Whether within highway authority's statutory powers—Public Health Act 1875, s 149—Public Health Acts Amendment Act 1907, s 18(c)—Road Traffic Act 1956, s 45(1)—Highways Act 1959, ss 67(1) (2) (3), 68(1), 85(1) (3). **Ching Garage Ltd v Chingford Corp** [1961] 1 671, HL.

Minimum width. *See* **Town and country planning** (Access to highway).

Animal on highway. *See* **Animal** (Negligence—Highway—Animal straying on to highway).

Authority—

Statutory powers—

Excessive exercise of powers. *See* **Public authority** (Statutory powers—Excessive exercise of statutory powers).

Boundary of highway—

Ditch—

Presumption ditch not part of highway—Rebuttable—Onus of proof—Statutory right to fill in—Highway Act 1835, s 67—Highway Act 1864, s 48. **Hanscombe v Bedfordshire County Council** [1938] 3 647, ChD.

Fence—

Presumption of dedication—Rebuttable—Public user. **Hinds and Diplock v Breconshire County Council** [1938] 4 24, Assizes.

Road running between fences—

Presumption—Rebuttable. **Attorney-General v Beynon** [1969] 2 263, ChD.

Bridge—

Bridge carrying road over railway—

Repair. *See* **Repair**—Bridge carrying road over railway, *post*.

Restriction on construction of bridges over highway. *See* **Restriction on construction of bridges over highway, post.**

Cellars under streets—

Statutory duty of owner or occupier to keep cellar openings and cellar in good condition and repair—

Breach of duty—Flagstone over cellar collapsed—Injury to passer-by—Flagstone damaged by lorry—Occupier not liable in negligence or nuisance—Whether breach of duty under Highways Act 1959, s 154(5), by itself giving rise to civil action. **Scott v Green and Sons** [1969] 1 849, CA.

Non-repair—Grating admitting light to cellar of adjoining premises—Dedicated as part of highway—Liability of owner or occupier of adjoining premises for repair and for accident resulting from want of repair—Public Health Acts Amendment Act 1890, s 35(1). **Macfarlane v Gwalter** [1958] 1 181, CA.

HIGHWAY (cont)

Classification—

Definitive map—

Road used as a public path—Reclassification—Special review—Presumption that public have right of way on horseback over highway classified as road used as public path—Reclassification of roads used as public path—No right of way for vehicular traffic—Reclassification as footpath or bridleway—Application of presumption—Whether authority bound to reclassify highway as bridleway rather than footpath—National Parks and Access to the Countryside Act 1949, ss 27(6), 32(4)(b)—Countryside Act 1968, Sch 3, Part III, para 9(1). **R v Secretary of State for the Environment, ex parte Hood** [1975] 3 234, CA.

Collision between vehicles—

Contributory negligence. *See* **Negligence** (Contributory negligence—Collision between vehicles on road).

Construction—

Compensation on compulsory acquisition of land. *See* **Compulsory purchase** (Compensation—Injurious affection—Land—Land or interest therein injuriously affected by the execution of works—Right to compensation—Construction of by-pass).

Damage to highway—

Wilful damage—

Ingredients of offence—Lorry catching fire on highway—Fire inadvertently caused—Lorry driver doing all within his power to extinguish fire—Whether driver guilty of 'causing damage to be done to highway'—Highway Act 1835, s 72. **Tunncliffe v Pickup** [1939] 3 297, KBD.

Damage to property adjoining highway—

Trespass to adjoining premises causing damage—

Need to prove negligence. **Esso Petroleum Co Ltd v Southport Corp** [1955] 3 864, HL.

Danger or annoyance to users—

Deposit of builders' hopper—

Hopper six feet wide deposited on highway adjacent to kerb to collect builders' rubble—Consent of highway authority not obtained—Commercial convenience not lawful excuse—Road straight and well lit at night—Red lamps lit by hopper—Highway forty-three feet wide—Lorry ran into hopper at night—Lorry driver not, in the circumstances, endangered by hopper—Highways Act 1959, s 140(1). **Gatland v Metropolitan Police Comr** [1968] 2 100, QBD.

Dangers adjoining highway—

Duty to fence—

Excavation near highway—Unfenced dock basin—47 ft from highway at nearest point—Injury to person wandering from highway—Fog—Whether duty to fence basin. **Caseley v Bristol Corp** [1944] 1 14, CA.

Source of danger 'in or on any land' adjoining street—Pavement raised above level of adjoining land—Unfenced source of danger created—Whether landowner liable to obviate danger—Highways Act 1959, s 144(1). **Myers v Harrow Corp** [1962] 1 876, QBD.

Dedication—

Access to market—

Twenty years' user. *See* **Obstruction**—Market—Access ways through market area—Access ways enjoyed by public for twenty years without interruption, *post*.

Capacity of statutory corporation to dedicate to public right of way—

Test to be applied—Compatibility of dedication with objects of corporation—Footpaths over and under railway—Whether dedication incompatible with objects of statutory corporation—Railways Clauses Consolidation Act 1845, s 16. **British Transport Commission v Westmorland County Council** [1957] 2 353, HL.

Evidence—

Provisional map—Dispute—Determination of quarter sessions—Effect—Issue whether path a public right of way as shown on map—Decision of quarter sessions that path a public path—Decision in rem—Decision binding on court in subsequent litigation—National Parks and Access to the Countryside Act 1949, s 31(1). **Armstrong v Whitfield** [1973] 2 546, QBD.

Presumption—

Public use for prescribed period—Actually enjoyed by the public as of right and without interruption—Meaning—Rights of Way Act 1932, s 1. **Merstham Manor Ltd v Coudsdon and Purley Urban District Council** [1936] 2 422, KBD. **Jones v Bates** [1938] 2 237, CA.

Public use for prescribed period—Contrary evidence—Definitive map of public rights of way—Presumed dedication of highway for use with vehicles—Way marked on definitive map as footpath—Definitive map conclusive evidence that public having right to pass and repass on foot—Whether map conclusive evidence that public having no right to pass and repass otherwise than on foot—National Parks and Access to the Countryside Act 1949, s 32(4)—Highways Act 1959, s 34(1). **Attorney-General v Honeywill** [1972] 3 641, ChD.

Public use for prescribed period—Date from which period calculated—Period next before right to use brought into question by notice or otherwise—Footpath used by public from 1883—1931—Users orally informed in 1931 that no right of way existed—Whether right of public brought into question—Effect of termination of period of twenty years prior to passing of Rights of Way Act 1932—Retrospective operation of Act—Rights of Way Act 1932, s 1(1), (6). **Fairey v Southampton County Council** [1956] 2 843, CA.

Public use for prescribed period—Date from which period calculated—Period next before right to use brought into question by notice or otherwise—Land used as public footway for over 40 years prior to 1923—Right of public to use lane disputed in 1923—Whether period of 40 years must end after 1934 when Rights of Way Act 1932 came into operation—Rights of Way Act 1932, ss 1(1), (2), (3), (5), (6), 2(1), 4. **Attorney-General and Newton Abbot Rural District Council v Dyer** [1946] 2 252, ChD.

Public use for prescribed period—Interruption—Relevance of intention of interrupter—Rights of Way Act 1932, s 1(1), (2). **Lewis v Thomas** [1950] 1 116, CA.

HIGHWAY (cont)

Definitive map—

Determination of disputes by quarter sessions—

Res judicata—Duty of parties to raise all matters relating to the status of a right of way—Determination of quarter sessions a judgment in rem—Plaintiffs objecting to designation of lane across their land as a bridleway—Objection dismissed by quarter sessions—Barrier across lane—Highway authority proposing to remove barrier—Plaintiffs contending lane designated as highway subject to right of owners to maintain barrier—Issue not raised by plaintiffs' predecessors in title in proceedings before quarter sessions—Whether plaintiffs estopped from asserting right against highway authority. **Walwin (L E) & Partners Ltd v West Sussex County Council** [1975] 3 604, ChD.

Diversion—

Certificate—

Enrolment—Quarter sessions—Jurisdiction to refuse to enrol certificate—Extent of jurisdiction—Highway Act 1835, ss 84, 85. **R v Essex Justices, ex parte East Ham Borough Council** [1947] 1 775, KBD.

Footpaths and bridleways—

Efficient use of land—Diversion for securing efficient use of land crossed by footpath or bridleway or of other land held therewith—Other land—Dwelling-house—Use to best advantage as a dwelling-house—Attributes of dwelling-house—Safety—Peace and quiet—House occupied by Prime Minister—Footpath crossing land held with house—Proximity of path to house causing danger to occupier from terrorist activities—Diversion of path to safer distance—Whether house 'other land'—Whether purpose of diversion to secure the 'efficient use' of the house—Highways Act 1959, s 111(1). **Roberton v Secretary of State for the Environment** [1976] 1 689, QBD.

Land crossed by footpath or bridleway—Land—Meaning—Whether restricted to soil over which footpath or bridleway runs or including all the relevant holding of land—Highways Act 1959, s 111(1). **Roberton v Secretary of State for the Environment** [1976] 1 689, QBD.

Order—

Jurisdiction—Railway and Canal Commission—Sand pit—Grant of ancillary right—Jurisdiction of Railway and Canal Commission—Mines (Working Facilities and Support) Act 1923, s 3. **Hoddesdon Urban District Council v Broxbourne Sand and Ballast Pits Ltd** [1936] 1 798, Ry & Can Com.

Substitution of new highway—

Procedure—New highway not viewed by justices—Liability of highway authority to maintain new highway—Highway Act 1835, s 91. **Stockwell v Southgate Corp'n** [1937] 3 627, CA.

Drains—

Maintenance—

Responsibility for maintenance and repair—Transfer of functions from rural district council—Non-repair of drains used for agricultural land drainage—Maintenance of drains awarded to surveyor of highways under Inclosure Act of 1800—Whether county council under duty to maintain and repair drains in rural district for which rural district council formerly liable as successors of highway board—Local Government Act 1929, s 30(1), proviso. **Attorney-General (on the relation of Thomas Brownlee Paisley) v St Ives Rural District Council** [1961] 1 265, CA.

Escape of domestic animal on to highway. *See* **Animal** (Negligence—Highway—Animal straying on to highway).

Extinguishment—

Public right of way across land—

Land acquired by the authorities for defence purposes—Land subsequently conveyed to private purchaser—No reservation of right of way—Purchaser holding land free of estates, leases, rights etc 'notwithstanding any Defect in the Title' of the authorities—Whether purchaser acquiring land free from public right of way—Defence Act 1842, s 14. **Shonleigh Nominees Ltd v Attorney-General at the relation of Hampshire County Council** [1974] 1 734, HL.

Free passage—

Obstruction of. *See* **Obstruction**—Obstruction of free passage, *post*.

Highway authority—

Consent to placing of rails, beams, etc over highway. *See* **Restriction** on placing rails, beams etc over highway—Need for consent of highway authority, *post*.

Licence—

Construction of bridge over highway. *See* **Restriction** on construction of bridges over highway—Need for licence from highway authority, *post*.

Maintenance of highway—

Civil liability for non-repair. *See* **Maintenance**—Civil liability for non-repair, *post*.

Statutory duty. *See* **Maintenance**—Statutory duty of highway authority, *post*.

Notification of abnormal indivisible load. *See* **Road traffic** (Heavy motor car—Abnormal indivisible load—Notification to highway and bridge authority).

Nuisance—

Liability. *See* **Nuisance** (Highway—Highway authority's liability).

Obstruction—

Statutory duty to remove. *See* **Obstruction**—Removal—Duty of highway authority, *post*.

Ownership of land—

Liability to apportioned part of title redemption annuity—Tithe Act 1936, s 10(1), s 17(1)—Law of Property Act 1925, s 7(1) (as amended by Law of Property (Amendment) Act 1926, s 7, Schedule). **Tithe Redemption Commission v Runcorn Urban District Council** [1954] 1 653, CA.

Improper user—

Injunction—

Damage to support action by frontager without joinder of Attorney-General. **Medcalf v R Strawbridge Ltd** [1937] 2 393, KBD.

HIGHWAY (cont)

Improvement line—

Refusal of planning permission—

Alternative to prescribing improvement line with a view to road widening. *See Town and country planning* (Permission for development—Refusal—Alternative to exercising statutory power under Highways Act to prescribe improvement line with a view to road widening).

Improvement scheme—

Scheme necessitating use of consecrated ground—

Faculty for secular use of consecrated ground. *See Ecclesiastical law* (Faculty—Secular use of consecrated ground—Burial ground—Road improvement scheme necessitating exhumation and reinterment of remains).

Maintenance—

Civil liability for non-repair—

County council—Defences available—Continuing nuisance—Trunk road—County council agents for Minister of Transport—Whether defences open to highway authority available to county council. *Drake v Bedfordshire County Council* [1944] 1 633, KBD.

Defective traffic stud—Non-feasance—Duty to repair stud not a duty as highway authority—Rule restricting liability of highway authority to misfeasance not applicable. *Skilton v Epsom and Ewell Urban District Council* [1936] 2 50, CA.

Defence—Such care as in all the circumstances was reasonably required—Projecting flagstone in pavement—Pedestrian injured by tripping and falling—No regular inspections of highway—Absolute statutory duty subject to statutory defence—Statutory defence not proved—Liability of highway authority to injured pedestrian—Highways (Miscellaneous Provisions) Act 1961, s 1. *Griffiths v Liverpool Corpn* [1966] 2 1015, CA.

Flooding of main road—Whether flooding of itself sufficient to show failure by highway authority to maintain—Highways (Miscellaneous Provisions) Act 1961, s 1. *Burnside v Emerson* [1968] 3 741, CA.

Highway authority—Non-feasance—Road temporarily repaired by highway authority—Subsequently becoming out of repair—Injury caused by lack of repair—Whether highway authority liable. *Wilson v Kingston-upon-Thames Corpn* [1949] 1 679, CA.

Non-feasance—Drainage work done by authority—Work properly done but inadequate—Motorist injured owing to car skidding on icy patch. *Burton v West Suffolk County Council* [1960] 2 26, CA.

Non-feasance—Excavation for drainage purposes—Accident due to subsequent three years after work completed. *Newsome v Darton Urban District Council* [1938] 3 93, CA.

Sunken flagstone in pavement—Pedestrian injured by tripping and falling—Pavement in continual use and no complaint by local inhabitants—Prima facie case that pavement dangerous to traffic not shown. *Meggs v Liverpool Corpn* [1968] 1 1137, CA.

Enforcement of liability to maintain—

Highway out of repair—Complaint to justices—Meaning of 'out of repair'—Surface of highway defective or disturbed—Highway not out of repair merely because obstruction renders it unusable—Footpath—Footpaths obstructed by hedge and wire—Whether footpaths 'out of repair'—Highways Act 1959, s 59(4). *Hereford and Worcester County Council v Neilman* [1975] 2 673, CA.

Negligence—

Liability of highway authority—Transfer of function to new authority—Civil liability of new authority for negligence—Construction of highway by county council—Subsequent taking over by borough council—Road accident alleged to be due to negligent construction of island on road and absence of sufficient protection for public against danger—Misfeasance and non-feasance—Whether borough council liable—Development and Road Improvement Funds Act 1909, s 8(1)(a), s 10, as amended—Local Government Act 1929, s 32. *Baxter v Stockton-on-Tees Corpn* [1958] 2 675, CA.

Road supported by retaining-wall—

Main road—Wall old but still capable of supporting highway—Non-feasance—Raising level of road—Misfeasance—Amount of repair necessary—Whether altered by Local Government Act 1929, s 29. *Attorney-General (at the relation of Ormerod Taylor & Son Ltd) and Ormerod Taylor & Son Ltd v Todmorden Borough Council* [1937] 4 588, KBD.

Statutory duty of highway authority—

Breach of duty—Persons to whom duty owed—Test to be applied in determining whether actionable breach of duty—Highways Act 1959, s 44(1). *Rider v Rider* [1973] 1 294, CA.

Standard of repair—Flagstone defective—Small triangular gap at corner, making a possible tripping point one half-inch in depth—Defect not a reasonably foreseeable cause of danger in a pavement in public use—Unevenness in pavement insufficient to give rise to cause of action in negligence or for breach of statutory duty—Highways Act 1959, s 44(1). *Little v Liverpool Corpn* [1968] 2 343, Assizes.

Motorway. *See Road traffic* (Motorway).Negligence in relation to highway. *See Negligence* (Highway).

Non-repair—

Civil liability of highway authority. *See Maintenance*—Civil liability for non-repair, *ante*.

Nuisance. *See Nuisance* (Highway).

Obstruction—

Collision of vehicles—

Contributory negligence—Causation. *See Negligence* (Contributory negligence—Collision between vehicles on road—Causation—Obstruction of highway).

Defence—

Benefit to public—Tow-path—Erection of posts—Benefit to public—Nuisance—Injunction. *Attorney-General (at the relation of Esher Urban District Council) v Wilcox* [1938] 3 367, ChD.

HIGHWAY (cont)

Obstruction (cont)—

Dual carriageway—

Intersections—Highway authority extending central reservation so as to block intersections at junction of carriageway with road joining it—Erection by highway authority of 'dual carriageway' sign at junction—Validity of highway authority's acts—Highways Act 1959, s 65(1)(a) (b). **Birmingham and Midland Motor Omnibus Co Ltd v Worcestershire County Council** [1967] 1 544, CA.

Duty of driver to take care. *See* **Negligence** (Duty to take care—Driver of vehicle—Obstruction above level of road).

Footway—

Placing or exposing to sale goods projecting into or over footway 'so as to obstruct or incommode the passage of any person'—Whether allegation or proof of actual obstruction of any person necessary—Applicability of de minimis principle—Town Police Clauses Act 1847, s 28. **Wolverton Urban District Council v Willis** (trading as **S G Willis & Sons**) [1962] 1 243, QBD.

Lighting of obstruction—

Air-raid shelter—Duty of highway authority—Entrance to air-raid shelter through opening in pavement protected by flap—Local authority lighting sign as warning of danger—Self-imposed duty to continue to light sign. **Knight v Sheffield Corp** [1942] 2 411, KBD.

Air-raid shelter—Shelter erected in roadway by local authority—Shelter not illuminated—Corners of shelter painted with white paint—Cyclist injured by colliding with shelter—Duty of local authority to give appropriate warning of danger. **Morris v Luton Corp** [1946] 1 1, CA.

Air-raid shelter—Shelter erected in roadway by local authority—Statutory authority to erect and maintain shelter—Shelter sometimes illuminated—Trap—Car colliding with shelter—Duty to take care not expressly imposed upon local authority—Whether local authority under duty to give warning of danger—Public Health Act 1875, s 161—Civil Defence Act 1939, s 9(1). **Fisher v Ruislip-Northwood Urban District Council and County Council of Middlesex** [1945] 2 458, CA.

Air-raid shelter—Shelter erected in roadway by local authority—Common law duty to persons using highway. **Fox v Newcastle-upon-Tyne City Council** [1941] 2 563, CA.

Air-raid shelter—Street lighting obscured—Lamp on shelter unlit—Person injured—Liability of local authority. **Whiting v Middlesex County Council** [1947] 2 758, KBD.

Barrier placed across road on account of bomb damage—Duty of highway authority—Towns Improvement Clauses Act 1847, ss 78, 81, 83—Public Health Act 1875, ss 145, 160. **Foster v Gillingham Corp** [1942] 1 304, CA.

Sandbag barrier on pavement—Duty of highway authority—Common law duty to persons using highway. **Jelley v Ilford Borough Council** [1941] 2 468, CA.

Sand-bin on pavement—Duty of highway authority—Suspension of statutory duty to light streets—Common law duty to persons using highway. **Lys v Stepney Borough Council** [1940] 4 463, CA.

Street refuge—Duty of local authority to light—Metropolis Management Act 1855, s 108, s 130. **Polkinghorn v Lambeth Borough Council** [1938] 1 339, CA.

Market—

Access ways through market area—Access ways enjoyed by public for twenty years without interruption—Whether access way dedicated as highway—Whether non-fee-paying trader entitled under market franchise to cause obstruction—Metropolitan Police Act 1839, s 54(6)—Highways Act 1959, s 34(1). **Brandon v Barnes** [1966] 3 296, QBD.

Nuisance. *See* **Nuisance** (Highway—Obstruction of highway).

Obstruction of free passage—

Bona fide claim that there was no public right of way—Jurisdiction of justices—Highways Act 1959, s 121(1), s 269. **R v Ogden, ex parte Long Ashton Rural District Council** [1963] 1 574, QBD.

Fruit and vegetable stall on highway—Acquiescence by authorities in its presence—Whether constituting licence to obstruct—Highways Act 1959, s 121(1). **London Borough of Redbridge v Jaques** [1971] 1 260, QBD.

Lawful excuse—Obstruction intended to be permanent—Bollard erected by shopkeeper on footway outside shop—Bollard erected to prevent danger from vehicles to pedestrians approaching shop—Whether lawful excuse for obstruction—Highways Act 1959, s 121(1). **Dixon v Atfield** [1975] 3 265, QBD.

Wilful obstruction—Constituents of offence—Highways Act 1959, s 121(1). **Nagy v Weston** [1965] 1 78, QBD.

Wilful obstruction—Constituents of offence—Offence constituted where intention to do act that caused obstruction, though no intention to do wrong—Highways Act 1959, s 121. **Arrowsmith v Jenkins** [1963] 2 210, QBD.

Wilful obstruction—Constituents of offence—Cyclist struck by driver opening door of stationary motor car—Whether 'wilful obstruction'—Highway Act 1835, s 72. **Eaton v Cobb** [1950] 1 1016, KBD.

Wilful obstruction—Shopkeeper—Business not carried on in normal manner—Selling from window of, and not inside, shop—Liability of shopkeeper—Act 1835, s 72. **Fabbri v Morris** [1947] 1 315, KBD.

Obstruction rendering highway out of repair. *See* **Maintenance**—Enforcement of liability to maintain—Highway out of repair—Meaning of 'out of repair'—Surface of highway defective or disturbed—Highway not out of repair merely because obstruction renders it

Picketing. *See* **Trade dispute** (Picketing—Obstruction of highway).

HIGHWAY (cont)**Obstruction (cont)—****Pitching stall on highway—**

Lawful excuse—Reasonable but mistaken belief by accused that entitled to set up stall—Accused setting up stall on grass island abutting highway—Accused enquiring from various authorities as to legality of stall—None telling him that stall unlawful—Accused assessed to rates by district council in respect of stall—No authority having power to licence accused to set up stall—Pitching of stall unlawful even if facts were as accused believed them—Accused's belief in legality of stall not affording a 'lawful excuse'—Highways Act 1959, s 127. **Cambridgeshire and Isle of Ely County Council v Rust** [1972] 3 232, QBD.

Stopping motor van to sell ice cream from it—Whether 'pitching a stall'—Highway Act 1853, s 72. **Divito v Stickings** [1948] 1 207, KBD.

Removal—

Duty of highway authority—Complaint to justices—Order to remove obstruction within 24 hours—Obstruction arising from accumulation of snow, falling down of banks or from any other cause—Words 'or any other cause' to be construed ejusdem generis—Peremptory order for removal of obstruction limited to cases of emergency—Order not appropriate for removal of hedge—Highways Act 1959, s 129(1)(2)(as substituted by the Highways (Amendment) Act 1965, s 1). **Worcestershire County Council v Newman** [1974] 2 867, QBD.

Road traffic. See Road traffic (Obstruction).

Streets in neighbourhood of Parliament. **See Parliament** (Prevention of obstruction of streets in neighbourhood of Parliament).

Trade dispute. **See Trade dispute** (Picketing—Obstruction of highway).

Pedestrian crossing. **See Road traffic** (Pedestrian crossing).

Picketing—

Obstruction of highway. **See Trade dispute** (Picketing—Obstruction of highway).

Pitching stall on highway. **See Obstruction—Pitching stall on highway, ante.**

Private street works—**Adoption of private street after execution of street works—**

Declaration—Description of street in declaration—Part of street outside the area of the authority included—Whether declaration wholly invalid—Private Street Works Act 1892, s 20. **Newton v Lambton Hetton & Joicey Collieries Ltd** [1937] 2 150, CA.

Advance payments code—

Deposit by frontager in respect of cost of street works—Refund of excess to his successor in title—No express contract by successor to refund excess to payor—No liability to refund—Highways Act 1959, s 195(1). **Henshall v Fogg** [1964] 2 868, CA.

Appeal to quarter sessions—

Person aggrieved—Resolution of county council, being both highway authority and street works authority, for making up street—Quashed by order of magistrates' court—Appeal by council to quarter sessions—Whether council a 'person aggrieved' within Highways Act 1959, s 275(1). **Phillips v Berkshire County Council** [1967] 2 675, QBD.

Apportionment of cost—

Minister of Housing and Local Government's powers on memorial addressed by person aggrieved—Public Health Act 1875, s 268. **R v Minister of Housing and Local Government, Ex parte Finchley Corpn** [1955] 1 69, QBD.

Objection—Footpath—Repairable by inhabitants at large—Distinction between road and footpath—Highway Act 1835, s 5, s 23—Private Street Works Act 1892, s 7(b). **Richmond (Surrey) Corpn v Robinson** [1955] 1 321, QBD.

Objection—Persons protected under statute required to give notice of objection—Private Street Works Act 1892, ss 7, 22. **Watford Corpn v London Passenger Transport Board** [1944] 2 400, KBD.

Recovery of costs by local authority from property owner—Action by local authority brought 11 years after date of final apportionment—Limitation of time for proceedings—Equitable relief—Interest on amount claimed—Private Street Works Act 1892, ss 13, 14—Limitation Act 1939, ss 2, 18, 31. **Moody v Poole Corpn** [1945] 1 536, CA.

Resolution of local authority that apportionment be based on degree of benefit to be derived by any premises—No exercise by local authority of statutory power to require a variation of relative widths of existing carriage-way and footways—Discretion of local authority—Whether proposed works reasonable—Wider road for benefit of through traffic—Private Street Works Act 1892, ss 7(d), 10. **Hornchurch Urban District Council v Allen** [1938] 2 431, KBD.

Erection of walls at boundary of estate—

Demolition of walls by local authority—Walls built over sewers—Right of owner to opportunity of being heard before demolition—Officer concerned with demolition—Public Health Act 1875, s 26—Public Health Act 1936, s 25—Private Street Works Act 1892, s 19. **Urban Housing Co Ltd v Oxford City Council** [1939] 4 211, CA.

Expenses—

Apportionment to premises—Building containing two maisonettes—Owner of ground-floor maisonette owning garden fronting street—Owner of first-floor maisonette having access to street only across garden—Whether first-floor owner's premises adjoin street—'Front'—'Adjoins'—'Abuts'—Highways Act 1959, ss 213(2), 295(1). **Buckinghamshire County Council v Trigg** [1963] 1 403, QBD.

Apportionment to premises—Premises to which access obtained from highway—Inclusion in apportionment—No resolution of local authority—Discretion of local authority—Private Street Works Act, 1892, ss 7(e), 10. **Hornchurch Urban District Council v Webber** [1938] 1 309, KBD.

Apportionment to premises—Provisional apportionment of expenses—Basis of apportionment—Sufficiency of particulars—Birkenhead Improvement Act 1884, s 21, Sch II. **Smith v Birkenhead Corpn** [1937] 4 75, KBD.

HIGHWAY (cont)

Private street works (cont)—

Expenses (cont)—

Apportionment to premises—Street lighting—Subterranean drainage—Resolution did not express dissatisfaction with existing street lights or mention subterranean drainage—Whether justices had power to amend resolution—Whether expenses could be apportioned to premises on the far side of public footpath adjoining street—*Front*—*Adjoin*—Private Street Works Act 1892, s 6. **Ware Urban District Council v Gaunt** [1960] 3 778, QBD.

Persons liable—Expenses of lowering gas main—Alteration to existing sewage system—Whether chargeable to frontagers or to ratepayers—Public Health Act 1875, s 153—Private Street Works Act 1892, s 6. **Re Jesty's Avenue, Broadway, Weymouth** [1940] 2 632, KBD.

Persons liable—Expenses of providing new gullies and altering existing gullies—Whether part of drainage system or of formation of road—Whether chargeable to frontagers or to ratepayers—Private Street Works Act 1892, s 5. **East Barnet Urban District Council v Stacey** [1939] 2 621, KBD.

Persons liable—Expenses of work on surface water drainage system—Cost of alteration and repair—Whether chargeable to frontagers—Private Street Works Act 1892, s 6(1), s 9(1). **Poole Corp v Blake** [1955] 3 409, QBD.

Objections to proposed works—

Unreasonableness—Jurisdiction of justices—Policy a matter for the local authority—Expense and engineering methods—First resolution by local authority for the sewerage (meaning foul water and surface drainage) of two streets on estate—Second resolution (approval of specification and provisional apportionment) extending to foul water sewers only—Whether unreasonable to propose to do works in two stages—Highways Act 1959, ss 174, 177(1)(c). **Bognor Regis Urban District Council v Boldero** [1962] 2 673, QBD.

Unreasonableness—Proposed works premature—Proposal to make up street before land fully developed—Whether 'unreasonable'—Private Street Works Act 1892, s 7(d). **Southgate Corp v Park Estates (Southgate) Ltd** [1954] 1 520, CA.

Private street—

Occupation way or road laid out alongside footpath repairable by inhabitants at large—Whether road subject to provisions of Highway Act 1835, s 23. **Ware Urban District Council v Gaunt** [1960] 3 778, QBD.

Occupation way used after housing development as a right of footway by public—Resolution passed by local authority concerning proposed street works—Objection by frontager—Whether occupation way repairable by public at large or excepted under Highway Act 1835, s 23—Whether part of a street within the meaning of Private Street Works Act 1892, s 5. **Margate Corp v Roach** [1960] 3 774, QBD.

Onus of proving street not highway repairable by public at large—Whether lane not a highway repairable by the inhabitants at large—Onus on local authority—Whether lane a 'cul-de-sac'—Finding by justices that lane was a public highway—Conclusiveness—Private Street Works Act 1892, s 5. **Huyton-with-Roby Urban District Council v Hunter** [1955] 2 398, CA.

Resolution of local authority to execute works—

Abandonment of resolution—Abandonment after objections—Effect—Whether local authority could pass new resolution in respect of same road—Private Street Works Act 1892, s 6, s 7, s 8, s 11. **R & T Glynn Evans v Liverpool Corp** [1959] 2 419, QBD.

Abandonment of resolution—Resolution that apportionment be based on degree of benefit—Subsequent resolution that apportionment be based on frontage—Whether prior resolution amended or abandoned—Scope of power of amendment—Validity of later resolution—Jurisdiction of justices to quash resolution for invalidity—Private Street Works Act 1892, s 6(1), s 8(1) (2), 11. **Wilson v Wrexham Corp** [1959] 3 674, QBD.

Discharge of onus of proof on local authority that the road is a private street—Highway Act 1835, s 23—Highways Act 1959, s 174, s 213(1). **Alsager Urban District Council v Barratt** [1965] 1 889, QBD.

Prostitution—

Wandering in a highway. *See* Criminal law (Prostitution—Wandering in public highway).

Provisional map—

Evidence of right of way. *See* Dedication—Evidence—Provisional map, *ante*.

Public nuisance—

Unreasonable use of highway—

Circumstances constituting unreasonable use—Picketing—Plaintiffs' offices picketed by defendants every Saturday for three hours—Picketing not for purpose of trade dispute—Defendants standing in line on public footpath in front of offices—Defendants protesting against plaintiffs' activities—Public able to pass on either side of picket line and between individuals forming it—Whether picketing by defendants unreasonable use of highway. **Hubbard v Pitt** [1975] 1 1056, QBD.

Rails, beams, etc, over—

Restriction on. *See* Restriction on placing rails, beams, etc, over highway, *post*.

Repair—

Bridge carrying road over railway—

Embankment—New stretches of road joining existing road to bridge carried along embankment—Embankment slipping into railway cutting—Extent of liability of railway company's successors to repair embankment and road—Railways Clauses Consolidation Act 1845, s 46. **Monmouthshire County Council v British Transport Commission** [1957] 3 384, CA.

Liability of railway company for non-feasance—Extent of liability to repair—Railways Clauses Consolidation Act 1845, s 46. **Swain v Southern Ry Co** [1939] 2 794, CA.

Generally. *See* Maintenance, *ante*.

HIGHWAY (cont)

Repairable by inhabitants at large—

Adoption of street—

Exception of footway—Notice to repair footway—Make, kerb, flag and complete—Asphalt substituted for flags—Recovery of cost. **Finney v Birkenhead Borough Council** [1936] 2 590, KBD.

Restriction on construction of bridges over highway—

Need for licence from highway authority—

Office building spanning highway—Building outside area of user of road where highway crossed—Whether a way by means of a 'bridge' over a highway requiring a licence from highway authority—Highways Act 1959, s 151(1). **New Towns Commission v Hemel Hempstead Corp** [1962] 3 183, ChD.

Restriction on placing rails, beams etc over highway—

Need for consent of highway authority—

Office building spanning highway—Installation of beams, cables, etc in span crossing highway—Whether consent of highway authority required—Highways Act 1959, s 152(1). **New Towns Commission v Hemel Hempstead Corp** [1962] 3 183, ChD.

Road widening—

Refusal of planning permission. *See* **Town and country planning** (Permission for development—Refusal—Alternative to exercising statutory power under Highways Act).

Statutory vesting in local authority—

Extent of vesting—

Erection of portico resting on public street—Right to authorise—Right of owner of soil to sue in trespass—United Provinces Municipalities Act (India) 1916, s 116—Public Health Act 1875, s 149. **His Highness Maharaja Man Singh of Sewai Jaipur v Arjun Lal** [1937] 4 5, PC.

Stopping-up—

Stopping up to enable development to be carried out in accordance with planning permission—

Power of Minister of Transport—Town and Country Planning Act 1947, s 49(1), s 118(1). **Harlow v Minister of Transport** [1951] 2 1005, CA.

Straying animals—

Negligence. *See* **Animal** (Negligence—Highway—Animal straying on to highway).

Offence—

Exception—Highway passing over common etc—Meaning of passing 'passing over'—Highway immediately adjoining common—Highways Act 1959, s 135(1). **Davies v Davies** [1974] 3 817, CA.

Street—

Private street works. *See* **Private street works, ante**.

Street works—

Safety requirements—Statutory duty to fence and guard street that is broken up—Trench dug for sewer, but not fenced, guarded nor lighted during hours of darkness—Injury to pedestrian—No negligence by undertakers—Whether civil action for breach of statutory duty lay—Public Utilities Street Works Act 1950, s 8(1)(a). **Keating v Elvan Reinforced Concrete Co Ltd** [1968] 2 139, CA.

Summary recovery of expenses—Owner in default—Public Health Act 1875, ss 150, 257—Croydon Corporation Act 1884, s 39. **Croydon Corp v Oldaker** [1936] 3 360, KBD.

Touting—

Prohibition—Touting in any street—Touting from forecourt of shop—Construction of bye-law—Intention of local authority. **McQuade v Barnes** [1949] 1 154, KBD.

Widening—

Compensation—Michael Angelo Taylor's Act—Local authority not owner at relevant date—Yearly tenant of kiosk—Tenancy determinable by six months' notice at any time—Six months' notice to quit given by local authority under statute—Loss of security under Landlord and Tenant Act 1954—Whether compensation payable—Metropolitan Paving Act 1817, s 90. **Pearl v London County Council** [1960] 3 588, CA.

Street trading. *See* **Street trading**.

Traffic sign—

Generally. *See* **Road traffic** (Traffic sign).

Obstruction—

Dual carriageway. *See* **Obstruction**—Dual carriageway—Intersections—Highway authority extending central reservation so as to block intersections at junction of carriageway with road adjoining it—Erection by highway authority of 'dual carriageway' sign at junction, *ante*.

Siting—

Duty of Ministry—Duty towards negligent drivers—Sign 4 feet from edge of carriageway—Site at end of bend—Safer and equally good site further away—Duty to select safer site—Regard for foreseeable hazards—Car negligently driven in heavy rain—Skid and striking of kerb—Collision with sign opposite. **Levine v Morris** [1970] 1 144, CA.

Trees—

Planting of trees in highway—

Restriction—Trees not to hinder reasonable use of highway by person entitled to use thereof—Highway authority planting trees—Branches allowed to overhang carriageway—Injury to passenger in passing omnibus—Liability of highway authority—'Reasonable use' of highway—Roads Improvement Act 1925, s 1(1) (2). **Hale v Hants and Dorset Motor Services Ltd** [1947] 2 628, CA.

Trespass—

Nuisance—

Motor car parked by plaintiff on highway leading only to defendant's farm—Plaintiff, in person, trespassing on farm—Whether trespasser also on highway in respect of car. **Randall v Tarrant** [1955] 1 600, CA.

HIGHWAY (cont)

Trunk roads—

Improvement—

Compulsory purchase order—Trunk road lowered to pass under cross-road—Powers of Minister—Public local inquiry—Procedure—Evidence of necessity or purpose of purchase—Trunk Roads Act 1936, ss 3(1), 6(3). **Re London-Portsmouth Trunk Road (Surrey) Compulsory Purchase Order (No 2), 1938** [1939] 2 464, KBD.

Widening and levelling—Construction of 'lay-by'—Powers of Ministry of Transport—Right of driver to park vehicle on grass verge of highway—Highway Act 1864, s 48. **Rodgers v Ministry of Transport** [1952] 1 634, QBD.

User—

Duty owed to other users—

Duty to take reasonable care. **Dawrant v Nutt** [1960] 3 681, Assizes.

Waiting and loading restrictions. *See* **Road traffic** (Waiting and loading restrictions).

Waterworks—

Duty of undertakers to reinstate streets etc after execution of work. *See* **Water supply** (Waterworks—Duty of undertakers to reinstate streets etc after execution of work).

HIGHWAY CODE

Breach of code—

Contributory negligence. *See* **Negligence** (Contributory negligence—Breach of Highway Code).

Pleading—

Particulars—

Negligence. *See* **Pleading** (Particulars—Negligence—Action for damages for negligence—Plaintiff relying on 'all the provisions of the Highway Code').

HIRE

Animals—

Progeny—

Property of hirer. *See* **Hire-purchase** (Livestock—Progeny—Property in progeny).

Carriage of passengers by air—

Private pilot's licence—

Flight for purpose of public transport. *See* **Carriage by air** (Carriage of passengers or cargo—Flight for the purpose of public transport—Hire or reward given or promised for the carriage of passengers).

Contract—

Default in payments—

Recovery of money paid for initial instalment. *See* **Contract** (Money paid—Recovery—Initial payment under contract of hire).

Damages for breach of contract of hiring—

Repudiation of contract by hirer—

Agreed damages percentage of outstanding rentals—Whether penalty. **Robophone Facilities Ltd v Blank** [1966] 3 128, CA.

Owner having sufficient other goods to satisfy demand for hirings. **Interoffice Telephones Ltd v Robert Freeman Co Ltd** [1957] 3 479, CA.

Dangerous weapons. *See* **Criminal law** (Dangerous weapons—Manufacture, sale or hire).

Forfeiture—

Relief. *See* **Equity** (Forfeiture—Relief—Hiring of chattels).

Hackney carriage—

Plying for hire. *See* **Road traffic** (Hackney carriage—Plying for hire).

Implied condition of fitness—

Hire-purchase. *See* **Hire-purchase** (Implied condition—Fitness for purpose).

Implied warranty of fitness—

Hire of specific chattel—

Express obligations of hirer to provide competent operator of, and to service, chattel, which was a crane—Defect aggravated and remaining undetected because of incompetent operator and hirer's failure to service crane—Hirer's workman injured owing to fall of crane—Whether owner liable to indemnify hirer against workman's claim for damages for personal injury. **Hadley v Droitwich Construction Co Ltd (Joseph Pugsley & Sons Ltd, Third Party)** [1967] 3 911, CA.

Latent defects—Car—Car when delivered not safe or roadworthy. **Yeoman Credit Ltd v Apps** [1961] 2 281, CA.

Indemnity clause. *See* **Indemnity** (Hiring).

Motor vehicle—

Using vehicle on road in breach of regulations. *See* **Road traffic** (Motor vehicle—Using vehicle on road in breach of regulations—Hire of vehicle).

Ship—

Claim arising out of hire of ship—

Admiralty jurisdiction. *See* **Admiralty** (Jurisdiction—Action in rem—Claim arising out of agreement relating to use or hire of a ship).

Vicarious liability—

Hire of operator or driver with machine or vehicle. *See* **Vicarious liability** (Loan of servant).

HIRE OR REWARD

Carriage of goods—

Goods vehicle. *See* **Road traffic** (Goods vehicle—Carriage of goods for hire or reward).

Private motor vehicle—

Insurance—

Carriage of passengers for hire or reward. *See* **Motor insurance** (Compulsory insurance against third party risks—Passengers carried for hire or reward in private vehicle).

HIRE-PURCHASE

Agreement—

Collateral agreement. *See* Collateral agreement, *post*.

Consensus ad idem—

Fraudulent completion of documents—No consensus ad idem—Fraud of car dealer in completing proposal and hire-purchase agreement, which were signed by hirer in blank—Hirer's initial payment deducted by finance company in accounting to dealer for purchase price payable to him—Initial payment being in fact the sale price of a car sold by the hirer to the dealer—Whether the hirer was entitled to recover the amount of the initial payment from the finance company for total failure of consideration—Whether the dealer was the agent of the finance company to receive the initial payment. **Branwhite v Worcester Works Finance Ltd** [1968] 3 104, HL.

Copies—

Requirements as to copies—Power of court to dispense with requirements—Duty to deliver or send copy of agreement to hirer—Agreement signed elsewhere than at appropriate trade premises—Duty to send by post second statutory copy within seven days—Power to dispense with requirements where second statutory copy sent to hirer but not within seven days—Sent—Meaning—Second statutory copy handed to hirer personally outside period of seven days—Whether copy 'sent' to hirer—Whether court having power to dispense with requirement that second statutory copy be sent by post within seven days—Hire-Purchase Act 1965, ss 9(3), 10(2). **Skuce (V L) & Co (a firm) v Cooper** [1975] 1 612, CA.

Enforceability—

Agreement not made and signed by hirer—Rights of owner against third parties—Agreement unenforceable against hirer—Recovery of possession against third party—Hire-Purchase Act 1938, s 2(2), s 17. **Eastern Distributors Ltd v Goldring (Murphy third party)** [1957] 2 525, CA.

Equitable relief—Unconscionable bargain—Whether enforcement of term of hire-purchase agreement refused on such equitable grounds. **Bridge v Campbell Discount Co Ltd** [1962] 1 385, HL.

Estoppel—Agreement signed by hirer in blank—Price exceeding £300 inserted incorrectly by dealer—Deposit of £65 paid by hirer to dealer and deducted by finance company in paying balance to dealer—Whether dealer agent of finance company or hirer—Whether hirer estopped from denying correctness of written agreement—Whether agreement enforceable or hirer entitled to recover deposit. **Campbell Discount Co Ltd v Gall** [1961] 2 104, CA.

Illegality—

Title to goods under related sale agreement. *See* Sale of goods (Title—Illegality of related agreement).

Implied condition. *See* Implied condition, *post*.

Implied term—

Recourse agreement—Reasonable time. *See* Racecourse agreement—Obligation to repurchase goods if hire-purchase agreement terminated—Reasonable time—Implied term that party required to repurchase should be so required within a reasonable time after termination of the hire-purchase agreement, *post*.

Nature of agreement—

Agreement to hire goods—Conditional option to purchase—Provision that if agreement shall continue in force for two years, hirer may purchase goods for 1s 'subject to the enactment of the necessary legislation'—Whether a 'hire-purchase agreement'—Hire-Purchase Act 1938, s 21(1). **R v R W Proffitt Ltd** [1954] 2 798, Assizes.

Notice—

Title—Motor vehicle—Private purchaser. *See* Title—Motor vehicle—Private purchaser without notice of hire-purchase agreement under which owner reclaiming vehicle, *post*.

Option—

Termination of agreement—Exercise. *See* Termination of agreement—Exercise of option, *post*.

Repudiation. *See* Repudiation, *post*.

Sale distinguished—

Purchase price—Price payable by instalments—Purchaser to pay instalments and interest to finance company—Purchaser entering into hire—purchase agreement with finance company—Whether contract of sale by vendor—Whether vendor liable for breach of implied condition of fitness—Sale of Goods Act 1893, s 14. **Drury v Victor Buckland Ltd** [1941] 1 269, CA.

Sale of goods—

Terms implied by statute—Exclusion—Conditions on printed form varied by previous correspondence—Hire-purchase as agreement for sale—Contract of sale—Conditions and warranties implied—Sale of Goods Act 1893, ss 1, 14. **Felston Tile Co Ltd v Winget Ltd** [1936] 3 473, CA.

Termination. *See* Termination of agreement, *post*.

Voidable title. *See* Sale of goods (Voidable title—Acquisition of voidable title—Hire-purchase transaction).

Warranty. *See* Warranty, *post*.

Assignment—

Notice of assignment—

Notice stating balance aggregate of hire-purchase price was due—Certain instalments only in arrear—Whether assignment valid at law. **W F Harrison & Co Ltd v Burke** [1956] 2 169, CA.

Avoidance of certain conditions—

Liability of hirer to pay amount exceeding prescribed amount—

Promissory note—Note given as collateral security at time of agreement—Liability of hirer under promissory note—Hire-Purchase Act 1938, s 5(c). **United Dominions Trust Ltd v Bycroft** [1954] 3 455, CA.

HIRE-PURCHASE (cont)**Bill of sale—****Agreement void for non-registration as bill of sale—**

Recovery of money paid by finance company as money had and received—Company exempted from Moneylenders Acts by order of Board of Trade—Undertaking given as condition precedent to grant of exemption not to charge interest above certain rate—Loan made at rate of interest exceeding that rate—Whether company exempt—Moneylenders Act 1900, s 6(a). **North Central Wagon Finance Co Ltd v Brailsford** [1962] 1 502, Assizes.

Hire-purchase documents—

Goods sold to finance company and let to the hire-purchaser—Documents not bills of sale. **Olds Discount Co Ltd v Krett & Krett** [1940] 3 36, KBD.

Collateral agreement—**Dealer and finance company—**

Undertaking by dealer to collect and repurchase goods should purchaser default—Purchaser absconding with goods—Whether obligation of dealer to purchase missing goods. **Watling Trust Ltd v Briffault Range Co Ltd** [1938] 1 525, CA.

Parol warranty—

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Abrogation—Parol warranty during negotiations of 'roadworthiness' of second hand motor car—Subsequent formal document excluding documentsexcludingwarrnaties—Whether warranties—Whether wording of document abrogating separate collateral agreement. **Webster v Higgin** [1948] 2 127, CA.

Exclusion of warranty by written hire-purchase agreement—Parol warranty during negotiations of 'roadworthiness' of second-hand motor car—Subsequent signing by purchaser of hire-purchase agreement excluding parol warranty—Whether written agreement obrogating the separate collateral agreement constituted by the parol warranty. **Webster v Higgin** [1948] 2 127, CA.

Control—**Cash payment before agreement entered into—**

Allowance for goods taken in part exchange—Hire-purchaser of car from finance company giving, with finance company's conditional authority, possession of car, and right to purchase it, to dealer in part exchange for another car on hire-purchase from another finance company—Condition that first finance company should be paid outstanding amount by dealer—Failure by dealer to pay—Whether second hire-purchase agreement valid—Authority of dealer—Hire-Purchase and Credit Sale Agreements (Control) Order 1960 (S I 1960 No 762), art 2, Sch 2, para 3(b). **Northgran Finance Ltd v Ashley (Betta Cars Ltd third party)** [1962] 3 973, CA.

Contravention of statutory requirements—

Criminal offence—Absolute offence—Contravention of statutory requirement that percentage of cash price must be paid before agreement is signed—Finance company ignorant of contravention—Whether finance company guilty of offence—Hire-Purchase and Credit Sale Agreements (Control) Order 1956 (S I 1956 No 180), art 1. **R v St Margaret's Trust Ltd** [1958] 2 289, CA.

Damages—**Breach of warranty—**

Title—Seller lacking title—Right to set-off against damages reasonable charge for hiring chattel. **Warman v Southern Counties Car Finance Corp Ltd (W J Ameris Car Sales, third party)** [1949] 1 711, KBD.

Failure to pay instalments—

Election by hirer to affirm contract—Fundamental breach by owners by delivery of unroadworthy car—Hirer electing to affirm contract—Hirer failing to pay three instalments—Termination of hiring by owners—Goods re-sold by owners—Measure of damages of owners and hirer. **Charterhouse Credit Co Ltd v Tolly** [1963] 2 432, CA.

Goods re-sold by owners—Measure of damages. **Overstone Ltd v Shipway** [1962] 1 52, CA.

No repudiation of contract by hirer—Hirer's breach by not paying two instalment—

Termination of agreement by owner—Goods re-sold by owner—Measure of damages. **Financings Ltd v Baldock** [1963] 1 443, CA.

No repudiation of contract by hirer—Hirer's breach by not paying two instalments and not keeping goods in repair—Termination of agreement by owner—Goods resold by owner—Measure of damages. **Brady v St Margaret's Trust Ltd** [1963] 2 275, CA.

Option to determine contract—Hirer's option not exercised—Hirer in breach by not paying instalments—Goods re-sold by owners—Hirer's option to determine agreement not exercised—Measure of damages. **Yeoman Credit Ltd v Waragowski** [1961] 3 145, CA.

Outstanding instalments or value of goods—

Breach by hirer of term prohibiting sale—Assignment of agreement similarly prohibited—Detinue—Relief—Whether owners entitled to value of goods or limited to outstanding instalments. **United Dominions Trust (Commercial) Ltd v Parkway Motors Ltd** [1955] 2 557, QBD.

Sale of goods by hirer—

Default in payment of instalments by hirer—Goods reclaimed by finance company. **Astley Industrial Trust Ltd v Miller (Oakes, Third Party)** [1968] 2 36, Assizes.

Measure of damages in conversion—Illegal hire-purchase agreement. **Belvoir Finance Co Ltd v Stapleton** [1970] 3 664, CA.

Measure of damages in conversion or detinue—Two-thirds of hire-purchase price already paid—Whether full value of goods recoverable by finance company. **Wickham Holdings Ltd v Brooke House Motors Ltd** [1967] 1 117, CA.

Measure of damages in conversion or detinue—Whether owners entitled to value of goods or limited to outstanding instalments. **United Dominions Trust (Commercial) Ltd v Parkway Motors Ltd** [1955] 2 557, QBD.

HIRE-PURCHASE (cont)

Damages (cont)—

Unlawful recovery of possession. *See* Possession—Unlawful recovery of possession—Damages, *post*.

Dealer—

Authority—

Extent of dealer's authority to bind finance company. **Northgran Finance Co Ltd v Ashley (Beta Cars Ltd third party)** [1962] 3 973, CA.

Position of dealer as intermediary. **Mercantile Credit Co Ltd v Hamblin** [1964] 3 592, CA.

Warranty—

Condition of goods. *See* Warranty—Dealer—Condition of goods, *post*.

Distress—

Landlord and tenant—

Goods in possession of tenant as hirer—Distress by landlord on tenant's goods—Provision for automatic determination of agreement on distress being levied—Effect of provision—Goods in possession, order or disposition of tenant—Whether distress valid—Law of Distress Amendment Act 1908, ss 1, 4. **Times Furnishing Co Ltd v Hutchings** [1938] 1 422, KBD.

Documents—

Non est factum. *See* Mistake (Nature of document—Non est factum—Hire-purchase transaction).

Emergency legislation—

Effect on. *See* Emergency legislation (Hire-purchase).

Estoppel—

Negligence—

Registration of agreement. *See* Estoppel Negligence—Need to establish duty of care in order to found estoppel by negligence—Hire-purchase agreement—Registration).

Fundamental breach of contract—

Effect on exception clause. *See* Contract (Fundamental breach—Effect on exception clause—Affirmation of contract—Hire-purchase of motor cycle).

Guarantee—

Guarantee for performance of agreement by hirer—

Indemnity against loss sustained through default or breach by hirer—Repudiation of agreement by hirer—Motor car sold in breach of agreement—Acceptance of repudiation by owners—Effect on liability of guarantor. **Chatterton v Maclean** [1951] 1 761, KBD.

Notice to guarantor—Term of guarantee that guarantor should be informed if payment of instalment more than thirty days overdue—Agreement to give time to hirer—When payment 'overdue'. **Midland Counties Motor Finance Co Ltd v Slade** [1950] 2 821, CA.

Indemnity distinguished—

Loss sustained as a result of hirer's act—Loss sustained by hire-purchase company as a result of the act, default or negligence of the hirer—Termination by hirer, in accordance with terms of agreement, by paying, altogether, fraction of hire-purchase price and returning car during period of hire—Hire-purchase company's profit consequently smaller than if hirer had hired for full period—Whether a 'loss'—Whether obligation of guarantor to indemnify company against 'loss'. **Western Credit Ltd v Alberry** [1964] 2 938, CA.

Recourse agreement—

Implied term—Repurchase within reasonable time. *See* Recourse agreement—Obligation to repurchase goods if hire-purchase agreement terminated—Reasonable time—Implied term that party required to repurchase should be so required within a reasonable time after termination of the hire-purchase agreement, *post*.

Indemnity or guarantee—Construction of 'Specific Indemnity and Repurchase Undertaking' by motor dealer—Construed as indemnity—Finance company terminated hiring for hirer's failure to pay instalments on hire-purchase of car—Car re-sold—Finance company entitled to recover whole loss from dealer. **Goulston Discount Co Ltd v Clark** [1967] 1 61, CA.

Repudiation by finance company—Sale of goods by finance company—Dealer to be entitled to the goods hired and to the finance company's rights in respect of the goods on indemnifying the finance company—Goods sold by finance company after default by hirer—Subsequent claim by finance company against dealer—Whether sale of goods by finance company amounted to repudiation of contract of indemnity. **Bowmaker (Commercial) Ltd v Smith** [1965] 2 304, CA.

Retaking of possession by finance company—Effect—Dealer undertaking to pay finance company hire-purchase price less amount already paid if hire-purchase agreement terminated—Whether contract of guarantee—Purchase price of goods below £300—Hirer making default in payment of instalments—Finance company retaking possession of goods when more than one-third of price paid—Release of hirer—Effect on agreement of guarantee—Hire-Purchase Act 1938, s 11(1), (2). **Unity Finance Ltd v Woodcock** [1963] 2 270, CA.

Illegality—

Illegal agreement—

Sale of goods by hirer—Measure of damages in conversion. *See* Damages—Sale of goods by hirer—Measure of damages in conversion—Illegal hire-purchase agreement, *ante*.

Passing of property. *See* Contract (Illegality—Passing of property—Hire-purchase agreement).

Transfer of title—

Action for conversion—Illegal hire-purchase agreement—Transfer of title to finance company—No actual payment to finance company of statutory percentage of cash price before agreement—Unauthorised transfer by hirer to motor dealer—Later claim by finance company against dealer for conversion—Claim founded on title gained by original outright purchase by finance company—Whether title vitiated by illegal hire-purchase agreement so as to preclude action for conversion—Hire-Purchase and Credit Sale Agreements (Control) Order 1964 (SI 1964 No 942), art 1(1), Sch 2, Pt 1, para 3. **Belvoir Finance Co Ltd v Harold G Cole & Co Ltd** [1969] 2 904, QBD.

HIRE-PURCHASE (cont)

Implied condition—

Fitness for purpose—

Description of goods—Fundamental term that goods must correspond with description—Tipping lorry six years old—Lorry initially in state of some disrepair—Latent defects—Extent of obligation of finance company. **Astley Industrial Trust Ltd v Grimley** [1963] 2 33, CA.

Exclusion of implied condition—Exclusion provision to be brought to hirer's notice—Exclusion of condition as to fitness by express provision of agreement—Agreement signed but not read by hirer—Whether provision brought to the notice of the hirer—Whether hirer impliedly made known purpose for which goods were required—Estoppel—Hire-Purchase Act 1938, s 8(2) (3). **Lowe v Lombank Ltd** [1960] 1 611, CA.

Motor car—

Log book—Motor car let on hire-purchase but log book not delivered—Hirer consequently did not licence and did not use—Suspensive condition—Contract not enforceable and instalments not recoverable as no log book provided. **Bentworth Finance Ltd v Lubert** [1967] 2 810, CA.

Title of owners—

Material date when title must be shown—Commencement of bailment—Date of delivery. **Mercantile Union Guarantee Corp Ltd v Wheatley** [1937] 4 713, KBD.

Indemnity—

Hire-purchase agreement by infant. *See Indemnity* (Guarantee distinguished—Hire-purchase agreement by infant in respect of motor car).

Loss or damage arising from agreement being unenforceable—

Implied condition that log book should be provided on hire-purchase of motor car—Log book not delivered—Contract unenforceable by finance company—Agreement to indemnify finance company against loss or damage arising from hire-purchase agreement being unenforceable—Whether loss or damage suffered by finance company having arisen because agreement unenforceable. **Bentworth Finance Ltd v Lubert** [1967] 2 810, CA.

Instalments—

Action for unpaid instalments—

Debt or damages—Instalments due before termination of contract for hirer's breach—Cause of action in debt, not breach of contract. **Overstone Ltd v Shipway** [1962] 1 52, CA.

Failure to pay instalments—

Damages. *See Damages*—Failure to pay instalments, *ante*.

Limits of value for purpose of legislation—

Insurance premium added to price—

Premium not separately mentioned—Motor car—Insurance premium paid by dealer and added to original agreed price for car—Premium not separately mentioned in agreement—Whether included in hire-purchase price—Hire-Purchase Act 1938, ss 1(1), 21(1)—Hire-Purchase Act 1954, ss 1(1), 3. **Mutual Finance Ltd v Davidson** [1963] 1 133, CA.

Price less than prescribed amount—

Instalments and initial payment exceeding prescribed amount—194010549 Initial payment not required from hirer—Instalments less than prescribed amount—Whether Hire-Purchase Acts applicable—Hire-Purchase Act 1938, ss 1, 11(1) (2), 20, 21. **Menzies v United Motor Finance Corp Ltd** [1940] 1 549, CA.

Livestock—

Progeny—

Property in progeny—Ewes—Lambs born during hiring—Whether property of hirer or of finance company. **Tucker v Farm and General Investment Trust Ltd** [1966] 2 508, CA.

Mercantile agent—

Possession of goods—

Possession under illegal hire-purchase agreement. *See Agent* (Mercantile agent—Possession of goods—Consent of owner—Possession under illegal hire-purchase agreement).

Motor vehicle—

Protection of private purchaser without notice of hire-purchase agreement—

Private purchaser—Trade or finance purchaser—Person who at the time of the purchase carries on business of purchasing motor vehicle for resale not a private purchaser—Purchaser carrying on part-time business of dealing in motor cars—Purchase of car for own private use—Whether purchaser a 'trade or finance purchaser' or entitled to protection as a 'private purchaser'—Hire-Purchase Act 1964, ss 27(2), 29(2). **Stevenson v Beverley Bentinck Ltd** [1976] 2 606, CA.

Title. *See Title*—Motor vehicle, *Spot*.

Notice of default—

Termination of agreement. *See Termination of agreement, post*.

Obtaining credit by fraud—

Credit. *See Criminal law* (Obtaining credit by fraud—Credit—Hire-purchase).

Option—

Termination of agreement—

Exercise of option. *See Termination of agreement*—Exercise of option, *post*.

Payment—

Recovery—

Initial payment—Termination of agreement—Initial payment in consideration of option to purchase when all rental payments made—Execution levied against hirer—Termination of agreement by owners—Whether initial payment recoverable as on a total failure of consideration. **Kelly v Lombard Banking Ltd** [1958] 3 713, CA.

HIRE-PURCHASE (cont)

Penalty—

Depreciation—

Amount of depreciation—Agreement to pay depreciation on termination of agreement by either party—Amount of depreciation substantially greater on determination in early months—No depreciation payable, in the particular case, during last six months for which agreement would run. **Phonographic Equipment (1958) Ltd v Muslu** [1961] 3 626, CA.

Calculation—New or second-hand vehicle—Agreement to pay depreciation on termination by either party—Depreciation calculated on total hire-purchase price (not cash price) and not differentiating between new and second-hand motor vehicles. **Lombank Ltd v Excell** [1963] 3 486, CA.

Calculation—Three-quarters of purchase price payable as depreciation if agreement determined under certain conditions. **Landom Trust Ltd v Hurrell** [1955] 1 839, QBD.

Calculation—Varying amount—Agreement to pay depreciation on termination of agreement by either party—Depreciation calculated on total hire-purchase price rather than cash price—Depreciation increasing during first few months, then decreasing—Whether sum provided for agreed depreciation was a penalty. **E P Finance Co Ltd v Dooley** [1964] 1 527, Assizes.

Depreciation or minimum payment clause—Termination of hiring by hirer in breach of contract—Whether sum payable under clause a penalty. **Bridge v Campbell Discount Co Ltd** [1962] 2 385, HL.

Termination by hirer—Agreement to pay depreciation on contract not being carried through—Termination of hiring by hirer in breach of contract—Whether sum provided for depreciation was a penalty. **Lombank Ltd v Cook** [1962] 3 496, QBD.

Minimum payment clause—

Sum to be paid if agreement determined within nine months of commencement of hire—Whether liquidated damages or penalty—Fraud on bankruptcy laws. **Re Apex Supply Co Ltd** [1941] 3 473, ChD.

Termination of agreement by hirer—Liability for minimum payment—Penalty or liquidated damages. **Associated Distributors Ltd v Hall and Hall** [1938] 1 511, CA.

Payment on termination of hiring—

Difference between (a) hire-purchase price less total of deposit and instalments paid, and (b) realised on sale of goods hired, agreed to be recoverable—Sum recoverable in all circumstances thus 100 per cent of hire-purchase price—Clause unenforceable as penalty clause—Damages (arrears of instalments, plus re-possession costs) only recoverable. **Anglo-Auto Finance Co Ltd v James** [1963] 3 566, CA.

Unpaid instalments—

Full balance of unpaid instalments payable and agreement determinable on breach of agreement and on other events—Whether a penalty. **Cooden Engineering Co Ltd v Stanford** [1952] 2 915, CA.

Possession—

Action for possession—

Claim against guarantor included—Hirer and guarantor named as defendants—Service on hirer not effected—Whether action to enforce right to recover goods from hirer commenced—Whether hirer made a party to the action—Hire-Purchase Act 1938, s 12(1) (2), extended by Hire-Purchase Act 1954, s 1—County Court Rules 1936, Ord 6, rr 1, 3. **United Motor Finance Corp Ltd v Turner** [1956] 1 623, CA.

Request for return of goods—Written request for surrender followed by threat to take proceedings if arrears not paid by named date—No formal demand for possession—Validity of notice—Hire-Purchase Act 1938, ss 10, 11. **Smart Bros Ltd v Pratt** [1940] 3 432, CA.

Instalment in arrear—

Immediate right of recovery of possession by owners—Loan of article hired to third person—Hire of car—Use for conveying uncustomed goods—Forfeiture of car by customs authorities—Conversion of car by borrower. **Moorgate Mercantile Co Ltd v Finch** [1962] 2 467, CA.

Restriction on recovery of possession otherwise than by action—

Abandoned goods—Protected goods—Owner entitled to retake possession where hirer has abandoned all rights in the goods so as to show he no longer has any interest in them—Hirer left car at garage for nine months without instructions or payment to garage owner—Finance company entitled to take possession from garage owner and to recover from defendants under their indemnity against hirer's default—Hire-Purchase Act 1965, s 34. **Bentnick Ltd v Cromwell Engineering Co** [1971] 1 33, CA.

Enforcing right to recover possession—Termination of hiring—Letter requiring possession to be given up to owners—Hirer voluntarily complying unmindful of statutory notice in agreement stating his rights—Full and free consent—Whether owners had 'enforced' right to recover possession—Hire-Purchase Act 1938, s 11(1) (2)(a). **Mercantile Credit Co Ltd v Cross** [1965] 1 577, CA.

Termination of agreement—

Recovery of possession without court order. *See* Termination of agreement—Recovery of possession without court order, *post*.

Unlawful recovery of possession—

Damages—Seizure of goods by owner—No application to court under Hire-Purchase Acts 1938 or Courts (Emergency Powers) Acts—Right of hirer to damages—Measure of damages—Hire-Purchase Act 1938, ss 11, 12. **Carr v James Broderick & Co Ltd** [1942] 2 441, KBD.

Purchaser without notice—

Private purchaser of motor vehicle subject to hire-purchase agreement—

Protection of private purchaser. *See* Motor vehicle—Protection of private purchaser without notice of hire-purchase agreement, *ante*.

Title. *See* Title—Motor vehicle—Private purchaser without notice of hire-purchase agreement under which owner reclaiming vehicle, *post*.

HIRE-PURCHASE (cont)

Recourse agreement—

Construction. *See* Guarantee—Recourse agreement—Indemnity or guarantee, *ante*.

Obligation to repurchase goods if hire-purchase agreement terminated—

Reasonable time—Implied term that party required to repurchase should be so required within a reasonable time after termination of the hire-purchase agreement—Hire-purchase of aircraft—Three months a reasonable period after termination of hire-purchase agreement within which to call for re-purchase—Call to re-purchase made subsequently—No obligation to re-purchase—Unilateral contracts and synallagmatic contracts distinguished. **United Dominions Trust (Commercial) Ltd v Eagle Aircraft Services Ltd, United Dominions Trust (Commercial) Ltd v Eagle Aviation Ltd** [1968] 1 104, CA.

Refinancing arrangements—

Estoppel—

Authority given to finance company to transfer title—Minimum initial payment—Hirer desiring to obtain money on security of car that he had on hire-purchase—Value of his interest then substantial—Arrangement that settlement figure should be paid by second finance company to first finance company—New hire-purchase agreement entered into by third finance company, defendants, with hirer by arrangement with second company—Value of car inserted in documents as cash price and a figure of £500 as initial payment—Hirer obtained thus some additional finance—Default by hirer in paying instalments under new hire-purchase agreement—Car retaken by defendants and sold—Whether new hire-purchase agreement void as unregistered bill of sale—Whether defendants able to establish title to car—Whether 'actual payment' of initial payment—Hire-Purchase and Credit Sale Agreements (Control) Order 1960, art 1(1), Sch 2. **Snook v London & West Riding Investments Ltd** [1967] 1 518, CA.

Loan by borrower on security of own car—

Payment of amount of first deposit by cancellation of indebtedness—Borrower sold car to A Ltd, which re-sold it to finance company, which let the car on hire-purchase to borrower—First deposit met by set-off allowed by A Ltd, of its amount from price paid to borrower and by finance company deducting amount from price paid to A Ltd—Whether hire-purchase agreement void as unregistered bill of sale—Whether there was actual payment of the amount of the first deposit before entering into the hire-purchase agreement—Whether title would pass notwithstanding illegality—Money borrowed or otherwise 'acquired'—Hire-Purchase and Credit Sale Agreements (Control) Order 1960 (SI 1960 No 762), art 1(1), Sch 2, Pt 1, para 3, Pt 2. **Kingsley v Sterling Industrial Securities Ltd** [1966] 2 414, CA.

Sale of motor car by hirer whilst instalments outstanding—

Fictitious sale by dealers at instance of purchaser to another finance company—Payment of settlement figure by second finance company to first finance company—Title to car accruing thereby to vendor hirer—Defendants deriving title from him through subsequent sales of car. **Bennett v Griffin Finance** [1967] 1 515, CA.

Transaction prohibited by finance company—

Validity—Sale of vehicles by limited company to dealer for resale by dealer to finance company and letting on hire-purchase by finance company to limited company—Finance company ignorant of original ownership of limited company—Whether knowledge of dealer imputed to finance company—Whether invoice by limited company to dealer or hire-purchase agreement registrable as document which would, if executed by individual, have been registrable as bill of sale—Companies Act 1948, s 95(2)(c). **Stoneleigh Finance Ltd v Phillips** [1965] 1 513, CA.

Registration of hire-purchase agreement—

Failure to register agreement—

Estoppel—Assertion of title—Estoppel by negligence. *See* Estoppel (Negligence—Need to establish duty of care in order to find estoppel by negligence—Hire-purchase agreement—Registration).

Repudiation—

Acceptance of delivered chattel—

Approbation of contract by payment of some instalments—Rejection subsequently—Chattel unfit for purpose for which acquired—Fundamental breach of contract—Hirer's right to damages. **Yeoman Credit Ltd v Apps** [1961] 2 281, CA.

Taking possession of property—

Leave to exercise remedy. *See* Emergency legislation (Hire-purchase—Taking possession of property—Leave to exercise remedy.).

Termination of agreement—

Action for unpaid instalments—

Judgment—Effect of judgment—Transfer of ownership of goods—Judgment unsatisfied—Further action to recover possession of goods hired—Whether second action barred on ground first action had terminated agreement and effected transfer of ownership to hirers. **South Bedfordshire Electrical Finance Ltd v Bryant** [1938] 3 580, CA.

Conversion—

Action against third party—Right of owners to terminate hiring on default of hirer—Right to immediate possession of chattel hired—Sale by hirer—Auction—Right of owners to bring action for conversion against auctioneer. **North Central Wagon and Finance Co Ltd v Graham** [1950] 1 780, CA.

Exercise of option—

Option for finance company to terminate agreement for hirer's breach—Option for hirer to terminate agreement—Minimum payment clause applicable on exercise of option—Hirer returning car to dealers and regretting inability to pay instalments—Letter by hirer sent at instance of finance company expressing wish to terminate agreement—Claim by finance company under minimum payment clause—Whether option exercised by finance company or by hirer—Whether repudiation of agreement by hirer—Whether any sum recoverable by finance company under hire-purchase agreement. **United Dominions Trust (Commercial) Ltd v Ennis** [1967] 2 345, CA.

HIRE-PURCHASE (cont)**Termination of agreement (cont)—****Leave of court under emergency legislation—**

Leave to exercise remedy—Determination of agreement by hirer—No pressure by owner—Real bargain—Remedy—Courts (Emergency Powers) Act 1939, s 1(2)(a)(ii)—Liabilities (War-Time Adjustment) Act 1941, s 26(2). **Smart Brothers Ltd v Ross** [1942] 2 282, HL.

Taking of possession—Car sold by hirer in breach of agreement—Car released by owners to purchaser on payment of amount due under agreement—Whether transaction amounting to a taking of possession by owners. **Chatterton v Maclean** [1951] 1 761, KBD.

Minimum payment clause—

Construction—Computation of amount payable. **Yeoman Credit Ltd v Odgers (Vospers Motor House (Plymouth) Ltd, third party)** [1962] 1 789, CA.

Notice of default—

Need to state relevant provision of hire-purchase agreement under which given and specify consequences of defaulting in payment—Essential exact period within which payment to be made stated—Hire-Purchase Act 1965, s 25. **Eshun v Moorgate Mercantile Co Ltd** [1971] 2 402, CA.

Failure by hirer to pay first two instalments within prescribed time—Assumption by owner of repudiation on part of hirer—Validity—Hire-Purchase Act 1965, s 25. **Eshun v Moorgate Mercantile Co Ltd** [1971] 2 402, CA.

Recourse agreement—

Notice to hirer—Provision that in event of termination of hiring agreement dealer to repurchase hired car from finance company—Termination of agreement—Finance company requesting dealer to re-possess car, but not informing hirer that hiring was terminated—In absence of notice to hirer no termination and recourse agreement ineffective. **Reliance Car Facilities Ltd v Roding Motors (a firm)** [1952] 1 1355, CA.

Recovery of possession without court order—

Termination under statute—Owners recovering possession of car without court order after more than one-third of purchase price paid—Car later returned to hirer—Demand for redelivery of car made in pursuance of hire-purchase agreement—Hire-purchase agreement not revived—Hire-Purchase Act 1938, s 11. **Capital Finance Co Ltd v Bray** [1964] 1 603, CA.

Leave of court under emergency legislation—

Leave to exercise remedy. *See* **Emergency legislation** (Hire-purchase—Taking possession of property—Leave to exercise remedy).

Theft—**Restitution order—**

Order in favour of finance company—Sale of motor vehicle to trade purchaser when hire-purchase agreement still subsisting—Purchaser not buying in good faith—Hire-Purchase Act 1964, ss 27(2), 29(2). **Stamp v United Dominions Trust (Commercial) Ltd** [1967] 1 251, QBD.

Title—**Motor vehicle—**

Private purchaser without notice of hire-purchase agreement under which owner reclaiming vehicle—Purchaser falsely informed by hirer all hire-purchase instalments paid off—Whether purchaser without notice as one who has 'no actual notice that vehicle is or was the subject of any hire-purchase agreement'—Hire-Purchase Act 1964, ss 27(2), 29(3). **Barker v Bell** [1971] 2 867, CA.

Protection of private purchaser without notice of hire-purchase agreement. *See* **Motor vehicle—Protection of private purchaser without notice of hire-purchase agreement, ante.**

Value added tax—

Supply of goods or services. *See* **Value added tax** (Supply of goods or services—Time of supply—Supply of goods on hire).

Warranty—**Dealer—**

Condition of goods—Sale of motor car—Warranty as to condition by dealer to buyer—Car sold by dealer to finance company—Hire-purchase agreement between company and buyer—Action for damages by buyer against dealer. **Brown v Sheen and Richmond Car Sales Ltd** [1950] 1 1102, KBD.

Fitness—

Breach—Sale of motor car—Car sold by dealer to finance company—Hire-purchase agreement between finance company and buyer—Buyer injured owing to dangerous condition of car—Action for damages by buyer—Measure of damages. **Andrews v Hopkinson** [1956] 3 422, Assizes.

Exception clause excluding warranty for fitness—Hire-purchase of car—Car when delivered not safe or roadworthy—Fundamental breach of contract—Election by hirer to affirm contract—Whether exception clause still effective. **Charterhouse Credit Co Ltd v Tolley** [1963] 2 432, CA.

Inducement to enter into agreement—

Sale of motor car—Warranty as to condition by dealer to buyer—Car sold by dealer to finance company—Hire-purchase agreement between company and buyer—Action for damages by buyer against dealer. **Brown v Sheen and Richmond Car Sales Ltd** [1950] 1 1102, KBD.

Repair—

Damages for breach—Mill, known to be defective, purchased under hire-purchase agreement—Obligation on owner to remedy defects—Failure to remedy defects—Delivery of mill taken by hire-purchasers—Expenses incurred in installing mill—Measure of damages for breach of contract by failing to remedy mill's defects. **R P Doobay v Mohabeer** [1967] 2 760, PC.

HIRE-PURCHASE (cont)

Warranty (cont)—

Truth of statement in proposal form—

Warranty by dealers—Breach—Damages—Information supplied by hirer untrue—Liability of dealers for breach of warranty—Measure of damages—Vehicle hired lost and hirer untraceable—Reasonably foreseeable loss including loss of vehicle. **Liverpool and County Discount Co Ltd v A B Motor Co (Kilburn) Ltd** [1963] 2 396, CA.

HOARDINGAdvertisement. *See* **Town and country planning** (Advertisement—Hoarding).**HOIST**Factory. *See* **Factory** (Hoists or lifts).**HOLDER FOR VALUE**Bill of exchange. *See* **Bill of exchange** (Holder for value).**HOLIDAY CENTRE**

Rates—

Charitable purpose—

Holiday centre for Derbyshire miners. *See* **Rates** (Charitable and other organisation—Hereditaments wholly or mainly used for charitable purposes—Holiday centre for Derbyshire miners, their wives and families).

HOLIDAYSHolidays with pay. *See* **Master and servant** (Remuneration—Holidays with pay).**HOME GUARD**

Will—

Actual military service. *See* **Will** (Soldier's or mariner's privileged will—Actual military service—Home Guard).

HOME SECRETARY

Reference to court—

Criminal appeal. *See* **Criminal law** (Appeal—Reference by Home Secretary).**HOME TRADE SHIP**

Exemption from compulsory pilotage. *See* **Harbour** (Pilotage district—Compulsory pilotage—Ships exempt from compulsory pilotage—Home trade ship).

HOMES FOR MENTALLY DISORDERED PERSONSRegistration. *See* **Mental health** (Registration of residential homes for mentally disordered persons).**HOMICIDE**Generally. *See* **Criminal law** (Homicide).**HOMOSEXUALITY**

Corruption of public morals—

Conspiracy. *See* **Criminal law** (Conspiracy—Corruption of public morals—Corruption—Homosexual acts in private between consenting adults no longer criminal).

Evidence in criminal proceedings—

Character of accused. *See* **Criminal evidence** (Character of accused—Sexual offence—Homosexuality).

Gross indecency. *See* **Criminal law** (Gross indecency—With another man).

Sentence—

Buggery—

Imprisonment—Length of sentence. *See* **Sentence** (Imprisonment—Length of sentence—Buggery).

HONG KONG

Corporation profits tax—

Computation of profits—

Deduction—Expenses—Expenditure referable to production of taxable profits only deductible—Expenses incurred in production of dividends received not deductible as those dividends not included in taxable profits—Inland Revenue Ordinance 1956 16(1), s 17(1), s 26(a). **Inland Revenue Comr v Mutual Investment Co Ltd** [1966] 3 265, PC.

Estate duty—

Appeal from commissioner's decision—

Gift inter vivos of shares—Claim for estate duty in respect of shares—Donees not executors of donor's will—No account delivered by donees in respect of shares—Whether condition of appealing that duty should be paid or security should be given for it—**Hong Kong Estate Duty Ordinance 1932**, s 19(1). **Moller v Commissioner of Estate Duty** [1967] 2 1035, PC.

Exemption—

Settled property—Annuity to widow of testator—Power for trustees to appropriate investments to pay annuity—No appropriation—Estate Duty Ordinance 1932, ss 5(1), 25(1), (2). **Armstrong v Estate Duty Comr** [1937] 3 484, PC.

HORIZONTAL MILLING MACHINES

Cutters—

Duty to fence. *See* **Factory** (Dangerous parts of machinery—Duty to fence—Cutters of horizontal milling machines).

HORSE-RACING

Trainer's licence. *See* **Licence** (Horse-racing).

HOSPITAL**Charges—**

Whether deductible in assessing professional man's income. *See* **Income tax** (Deduction in computing profits—Expenses wholly and exclusively laid out for purpose of trade—Medical expenses—Nursing home charges).

Contract—**Implied term—**

House physician—Obligation to reside in nearby hostel. *See* **Contract** (Implied term—Hospital—House physician—Obligation to reside in nearby hostel).

Duty to take care—**Persons to whom duty owed—**

Duty in respect of property of staff—Loss of property from hostel—House physician obliged to reside in hostel—Theft of his personal effects from bedroom—Whether management committee owed duty to take reasonable care of employee's property in hostel. **Edwards v West Herts Group Hospital Management Committee** [1957] 1 541, CA.

Injury to relative of patient—Relative slipping on mat on polished floor—Duty to relative of patient. **Weigall v Westminster Hospital** [1936] 1 232, CA.

Expenses—**Payment—**

Motor insurance. *See* **Motor insurance** (Compulsory insurance against third party risks—Payment for hospital expenses).

Gift—**Patient—**

Undue influence—Gift by patient to private independent mental hospital. *See* **Equity** (Undue influence—Presumption of undue influence—Mental hospital and patient—Gift by patient to private independent mental hospital).

Purpose provision of 'accommodation for use of relatives who come from a distance of patients who are critically ill'—

Whether charitable. *See* **Charity** (Benefit to community—Hospital—Gift to a hospital to provide 'accommodation for the use of relatives who come from a distance of patients who are critically ill').

Will—

Destruction of object. *See* **Will** (Gift—Destruction of object—Gift to ear, nose and throat hospital at a particular address).

House physician—**Contract—**

Implied term—Obligation to reside in nearby hostel. *See* **Contract** (Implied term—Hospital—House physician—Obligation to reside in nearby hostel).

Liability for negligence of members of staff—**Casualty officer—**

Duty to see and examine patient presenting himself at casualty department and complaining of illness, when casualty department open—Arsenical poisoning—Patient's death not caused by the negligence. **Barnett v Chelsea & Kensington Hospital Management Committee** [1968] 1 1068, QBD.

Maternity home provided and controlled by county council—

Incoming patient not warned of infection—Recent case of puerperal fever—Disease contracted by patient—County council's liability for negligence of professional staff. **Lindsey County Council v Marshall** [1936] 2 1076, HL.

Medical practitioner—

Anaesthetist—Negligent administration of anaesthetic. **Jones v Manchester Corpn** [1952] 2 125, CA.

Contract of service—Medical practitioner employed by hospital under contract of service—House surgeon. **Cassidy v Ministry of Health (Fahrni, third party)** [1951] 1 574, CA.

Pharmacist—Dangerous and negligent system—Injection of lethal dose of cocaine—Apportionment of damages between joint tortfeasors—Law Reform (Married Women and Tortfeasors) Act 1935, s 6(2). **Collins v Hertfordshire County Council** [1947] 1 633, KBD.

Nurses—

Failure to remove wadding after patient's operation—Failure to notice change in patient's condition. **Dryden v Surrey County Council and Stewart** [1936] 2 535, KBD.

Fully qualified nurses—Administering wrong dose of medicine—Patient dying. **Strangeways-Lesmere v Clayton** [1936] 1 484, KBD.

Radiographer—

Professional duty—Insufficient screening—Public Health Act 1936, ss 181, 184. **Gold v Essex County Council** [1942] 2 237, CA.

Specialist anaesthetist—

Spinal anaesthetic administered to patients—Contamination of drug in ampoules—Molecular flaws in ampoules. **Roe v Ministry of Health** [1954] 2 131, CA.

Maintenance of patient—

Recovery of expenses. *See* **Public health** (Expenses—Recovery—Expenses of maintenance of patient in hospital).

Mental hospital. *See* **Mental health (Mental hospital).****Mental patient—**

Admission. *See* **Mental health** (Admission of patient to hospital).

National Health Service. *See* **National Health Service (Hospital).****Order. *See* **Sentence** (Hospital order).****Patient—****Driver—**

Breath test. *See* **Road traffic** (Breath test—Hospital patient).

HOSPITAL (cont)

Patient (cont)—

Driver (cont)—

Failure to provide specimen for laboratory test. *See* **road traffic** (Failure to provide specimen for laboratory test).Specimen for laboratory test to determine blood-alcohol proportion. *See* **Road traffic** (Specimen for laboratory test to determine driver's blood-alcohol proportion—Hospital patient).

Regional hospital board—

Act done in pursuance of public duty or authority—

Limitation of action. *See* **Public authority** (Limitation of action—Act done in pursuance of statute or of any public duty or authority—Action for negligence against medical specialist at hospital administered by hospital board).**HOSPITIUM**Innkeeper's duty to guest. *See* **Inn** (Damage to guests's property—Liability of innkeeper at common law).**HOSTEL**Classes of use. *See* **Town and country planning** (Development—Use classes—Students' hostel).**HOTCHPOT**Partial intestacy. *See* **Administration of estates** (Partial intestacy—Hotchpot).Settlement. *See* **Settlement** (Hotchpot).Will. *See* **Will** (Hotchpot clauses).**HOTEL**

Accommodation—

False trade description. *See* **Trade description** (False or misleading statement as to services etc—Statement made recklessly—Hotel accommodation).

Conditions of employment—

Statutory half-holiday—

Shop assistants. *See* **Shop** (Conditions of employment—Statutory half holiday for shop assistants—Hotel).

Industrial training—

Levy. *See* **Industrial training** (Levy—Activities of industry—Hotel and catering industry).Inn. *See* **Inn**.

Licence—

Sale of intoxicating liquor. *See* **Licensing**.

Residential—

Use of premises as—

Change of use from use as students' hostel. *See* **Town and country planning** (Development—Use classes—Students' hostel).**HOURS OF DUTY**Goods vehicle driver. *See* **Road traffic** (Goods vehicle—Limitation of driver's time on duty).**HOUSE**Compulsory purchase. *See* **Housing** (Compulsory purchase—Property to be acquired—House).Housing legislation. *See* **Housing**.

Joint acquisition by unmarried couple—

Man sole owner at law—

Acquisition by joint efforts—Resulting trust. *See* **Trust and trustee** (Constructive trust—Unmarried couple—House acquired by joint efforts for joint benefit).

Late night refreshment house—

Licence. *See* **Licensing** (Late night refreshment house).

Long leasehold—

Acquisition of freehold or extended lease. *See* **Landlord and tenant** (Leasehold enfranchisement—House).Protected tenancy. *See* **Rent restriction** (House or part of house let).

Public—

Generally. *See* **Licensing**.

Sale—

Solicitor's negligence—

Solicitor acting both for vendor and purchaser. *See* **Solicitor negligence**—Sale of dwelling house—Solicitor acting both for vendor and purchaser).House completed at date of sale. *See* **Sale of land** (House completed at date of sale).

House in course of erection—

Notice of state and condition of property. *See* **Sale of land** (Notice of actual state and condition of property—House in course of erection).Warranty of fitness. *See* **Sale of land** (House in course of erection).

Support—

Semi-detached house—

Compulsory purchase order on one house—Failure to notify owner of other house. *See* **Compulsory purchase** (Compulsory purchase order—Application to quash order—Notification of owner of land comprised in order—Failure to notify owner of semi-detached house adjoining house subject to order).

Transfer under a trust—

Oral arrangement—

Absence of writing. *See* **Trust and trustee** (Constructive trust—Oral arrangements—Voluntary transfer of legal estate).

HOUSE OF LORDS

Appeal—

Appeal from Court of Appeal, Criminal Division. *See* Appeal from Court of Appeal, Criminal Division, *post*.

Appeal from Court of Criminal Appeal. *See* Appeal from Court of Criminal Appeal, *post*.

Appeal from High Court. *See* Appeal from High Court, *post*.

Consideration of question not argued below—

Appeal against allowance before proof. **South of Scotland Electricity Board v British Oxygen Co Ltd** [1956] 3 199, HL.

Leave to appeal. *See* Leave to appeal, *post*.

Appeal from Court of Appeal, Criminal Division—

Certificate—

Point of law of general public importance—Point of law—Sentence—Sentence one which judge empowered to impose by statute—Contention that sentence one which no reasonable tribunal could have imposed—Whether raising a point of law—Criminal Appeal Act 1968, s 33(2). **R v Ashdown** [1974] 1 800, CA.

Legal aid—

Application for leave to appeal—Certificate that point of general public importance involved but refusal of leave to appeal to House of Lords—Application for legal aid to apply for leave to appeal—Court of Criminal Appeal has no power to grant legal aid—Administration of Justice Act 1960, s 1(2). **Practice Note** [1962] 1 516, CCA.

Appeal from High Court—

Application for leave to appeal—

Grant of certificate by trial judge—Discretion of judge—Relevant conditions to be fulfilled prior to exercise of discretion—Point of law of general public importance involved—Point relating wholly or mainly to construction of enactment—Construction of taxing statute—Statutory provision relating to deduction of tax in respect of rentcharge—Determination of true nature of rentcharge—Whether point relating mainly to construction of enactment—Whether discretionary power to grant certificate ought to be exercised—Income Tax Act 1952, s 177—Administration of Justice Act 1969, s 12. **Inland Revenue Comrs v Church Comrs for England** [1974] 3 529, ChD.

Procedure—Notice to other parties—Papers—Decision. **Procedure Direction** [1970] 1 59, HL.

Time—Extension of time. **Procedure Direction** [1970] 1 59, HL.

Patent appeal—

Appeal from order for revocation of patent—Procedure—Patents Act 1949, ss 32, 61. **Procedure Direction** [1970] 3 804, HL.

Certificate authorising appeal to House of Lords—

Refusal—

Mandamus. *See* **Mandamus** (Attorney—General—Certificate authorising appeal to House of Lords).

Compromise—

Approval—

Person under disability—Claim for damages for personal injuries—Infant appellant—Leave to appeal to House of Lords granted by Court of Appeal—Settlement after petition lodged—Approval by House of Lords. **Flack v Withers** [1961] 3 388, HL.

Person under disability—Claim for damages for personal injuries—Settlement on appeal to House of Lords—Payment by defendant must be either into court or to Court of Protection—Payment not to be made to next friend or plaintiff's solicitors—RSC, Ord 80, r 11. **Leather v Kirby** [1965] 3 927, HL.

Costs—

Application for costs or expenses against legally-aided party—

Application for costs by successful respondent—Legal Aid Act 1964, s 1(2). **Saunders v Anglia Building Society (No 2)** [1971] 1 243, HL.

Procedure. **Procedure Direction** [1969] 1 156, HL.

Costs against respondent who was legally aided in court below—

Appropriate order for costs. **Anderson v Lambie** [1954] 3 157, HL.

Costs of successful respondent—

Respondent successful in Court of Appeal and House of Lords—Point of law unnecessarily raised by respondent—Point of law wrongly accepted by Court of Appeal—Point of law rejected by House of Lords—Many days spent in Court of Appeal and House of Lords arguing point of law—House of Lords upholding award of exemplary damages to respondent for libel—Proper order as to costs. **Cassell & Co Ltd v Broome (No 2)** [1972] 2 849, HL.

Order for costs other than by award to successful party—

Application—Procedure—Letter within fourteen days of conclusion of hearing. **Procedure Direction** [1968] 2 606, HL.

Procedure—

Submission as to costs—No submission made before question put from Woolsack—Usual order for costs incorporated in draft judgment—Subsequent application by unsuccessful appellants for amendment of draft judgment insofar as it relates to costs—Power of House of Lords to amend draft judgment—House of Lords Directions as to Procedure (1971), directions 35, 36. **Cassell & Co Ltd v Broome (No 2)** [1972] 2 849, HL.

Scale of costs—

Brief fees on petitions for leave to appeal. **Procedure Direction** [1970] 2 93, HL.

Party and party costs scale. **Practice Direction** [1962] 2 127, HL.

Security for costs—

Increase in amount of security. **Practice Direction** [1962] 2 127, HL.

Taxation—

Costs properly incurred—Appellant in person—Appeal successful—Costs incurred in preparing written case and in equipping appellant to appear and argue case in person—Solicitor assisting and advising appellant—Whether solicitor's charges and expenses properly included in bill of costs. **Malloch v Aberdeen Corpn (No 2)** [1973] 1 304, HL.

HOUSE OF LORDS (cont)

Costs (cont)—

Taxation (cont)—

Counsel's fees—Refresher fees—Discretion of taxing officer to allow increased fees. **Practice Direction** [1959] 1 475, HL.

Criminal appeal—

Decision of Divisional Court. *See* **Criminal law** (Appeal—Criminal cause or matter—Decision of Divisional Court).

Generally. *See* **Criminal law** (House of Lords).

Decisions—

Rule of precedent—

Invitation to depart from prior decisions. *See* **Procedure**—Cases—Preparation—Statement of intention to invite House to depart from one of its own decisions, *post*.

Evidence—

Further evidence—

Application made within time for appeal—Admission of further evidence. **Murphy v Stone Wallwork (Charlton) Ltd** [1969] 2 949, HL.

Application out of time for appeal—Admissibility. **Murphy v Stone Wallwork (Charlton) Ltd** [1969] 2 949, HL.

Judicial fees—

Fees on document—

Taxing fees. **Procedure Direction** [1970] 1 1116, HL.

Leave to appeal—

Application—

Court of Appeal—Matrimonial cause—Court of Appeal's decision on appeals final except in relation to question of law—Religious upbringing of child—Reversal by Court of Appeal of direction of Judge of first instance—Whether question of law—Supreme Court of Judicature (Consolidation) Act 1925, s 27(2). **B v B** [1955] 2 158, CA.

Court of Appeal, Criminal Division—Jurisdiction—Applicant's first application refused—Whether court having jurisdiction to consider second application—Criminal Appeal Act 1968, s 33(2). **R v Ashdown** [1974] 1 800, CA.

Criminal cause or matter—

Notice to be given to respondent—Copy petition to be served—Respondent may appear by counsel. **Practice Direction** [1962] 1 501, HL.

Procedure—Appeal against refusal of writ of habeas corpus—Applicants in person not heard save on exceptional grounds. **Practice Direction** [1962] 1 501, HL.

Income tax appeal. *See* **Income tax** (Appeal—House of Lords—Leave to appeal).

Petition for leave to appeal—

Bankruptcy proceedings. *See* **Bankruptcy** (Appeal—House of Lords—Leave).

Brief fee on petition for leave. *See* **Costs**—Scale of costs—Brief fees on petitions for leave to appeal, *ante*.

Case title. **Procedure Direction** [1974] 1 752, HL.

Lodgment of judgments of courts below—Lodgment of law reports—Lists of authorities. **Practice Direction** [1962] 2 127, HL.

Petitions referred to appeal committee for determination whether competent petitions or not—Petitions referred for oral hearing if not incompetent—Dismissal of petitions not referred for oral hearing. **Procedure Direction** [1976] 2 445, HL.

Procedure where petition for leave appears incompetent. *See* **Leave to appeal**—Procedure where petition for leave appears incompetent, *post*.

Procedure where petition for leave appears incompetent—

Criminal petition for which no certificate granted under Administration of Justice Act 1960, s 1(2)—Petition where Court of Appeal refused to grant leave to appeal from High Court—Petition barred by Bankruptcy Act 1914, s 108(2)(b). **Procedure Direction** [1970] 3 70, HL.

Petitions barred by Housing Act 1957, Sch 4, para 4. **Procedure Direction** [1971] 2 736, HL.

Petitions barred by Supreme Court of Judicature (Consolidation) Act 1925, s 27(2). **Procedure Direction** [1972] 2 588, HL.

Petitions by vexatious litigants. **Procedure Direction** [1971] 3 237, HL.

Terms—

Costs—Applicant a legally assisted person in Court of Appeal—Consideration of position of respondent in House of Lords as to costs. **Chapman v Honig** [1963] 2 513, CA.

Costs—Appellant to pay costs in any event—Dissenting judgment in Court of Appeal. **Rowell v Pratt** [1937] 3 660, HL.

Costs—Test case—Appellant a poor person—Consideration of respondent's position as to costs. **Searle v Wallbank** [1947] 1 12, HL.

Costs—Whole costs of appeal payable by appellant. **Salomon v Commissioners of Customs and Excise** [1966] 3 881, CA.

Power to impose conditions. **Hunt & Winterbotham (West of England) Ltd v BRS (Parcels) Ltd** [1962] 1 111, CA.

Revenue appeals—Power to impose conditions. **Rennell (Lord) v Inland Revenue Comrs** [1961] 3 1041, CA.

Surtax appeal—Company in liquidation—Amount of tax in dispute deposited with Board of Trade—Low rate of interest—Terms on which leave to appeal granted. **Inland Revenue Comrs v Wood Bros (Birkenhead) Ltd (in liquidation)** [1958] 1 405, HL.

Terms which may be imposed—Leave granted by Court of Appeal on such terms that respondent had no interest in result—No living issue to be tried. **Sun Life Assurance Co of Canada v Jervis** [1944] 1 469, HL.

Legal aid—

Costs against legally-aided party. *See* **Costs**—Application for costs or expenses against legally-aided party, *ante*.

HOUSE OF LORDS (cont)

- Petition—
 - Presentation out of time—
 - Leave—Consideration of petition for leave in private where founded on misunderstanding or technicality and with respondent's consent. **Practice Direction** [1966] 2 928, HL.
 - Reproduction of petition—
 - Printing or duplicating—Paper to be used. **Practice Direction** [1964] 2 509, HL.
 - Time for lodging petition of appeal—
 - Appeals from orders pronounced on or after 1st April 1959. **Practice Direction** [1959] 1 475, HL.
- Poor persons—
 - Means—
 - Increase of limit of means for appeal in forma pauperis. **Practice Direction** [1959] 1 475, HL.
- Precedent—
 - Generally. *See* **Precedent** (House of Lords).
 - Invitation to depart from previous decision. *See* **Procedure—Cases—Preparation—Statement of intention to invite House to depart from one of its own decisions, post.**
- Procedure—
 - Cases—
 - Bound cases. **Practice Direction** [1965] 2 239, HL, **Practice Direction** [1966] 3 720, HL.
 - Preparation—Separate cases—Joint cases—Style etc of cases—New Judicial Direction 11. **Procedure Direction** [1969] 2 875, HL.
 - Preparation—Statement of intention to invite House to depart from one of its own decisions—Inclusion of statement in separate paragraph of case—Judicial Direction 12(i). **Procedure Direction** [1971] 2 159, HL.
 - Documents—
 - List of documents—Appendix to appellants' case—Division of appendix—Index to appendix—Examination of appendix—Respondents' additional documents—Documents available at hearing—Originals—New Judicial Direction 12. **Procedure Direction** [1969] 2 875, HL.
 - Law reports—
 - List of authorities—Amendments to Judicial Direction 30. **Procedure Directions** [1967] 1 128, HL, [1969] 2 874, HL.
 - Leave to appeal—
 - Criminal cause or matter. *See* **Leave to appeal—Criminal cause or matter, ante.**
 - Petition for leave to appeal. *See* **Leave to appeal—**
- Right of appeal—
 - Exclusion of right—
 - Limitation—Extension of time limit—Ex parte order extending time limit—Decision of Court of Appeal on application to set aside ex parte order—No appeal against decision—Limitation Act 1963, s 2(4). **Cozens v North Devon Hospital Management Committee** [1966] 2 799, CA.
- Right of audience—
 - Company—
 - Representation by counsel. **Tritonia Ltd v Equity and Law Life Assurance Society** [1943] 2 401, HL.

HOUSE TO HOUSE COLLECTION

- Charitable purposes. *See* **Charity** (House to house collection).

HOUSEBREAKING

- See* **Criminal law** (Housebreaking).

HOUSEHOLDER

- Insurance. *See* **Insurance** (Householder).

HOUSEKEEPER

- Tax relief. *See* **Income tax** (Relief—Housekeeper).

HOUSING

- Accommodation of working classes—
 - Administrative County of London—
 - Powers of London County Council—Housing Act 1925, s 80—Housing Act 1935, s 74—Housing Act 1936, s 103. **Re County of London (Stoke Newington) Housing Order 1936, Application of Stocker** [1937] 4 678, KBD.
 - Appropriation of land—
 - Open space—London Open Spaces Act 1893—Housing Act 1925, ss 65, 103. **R v Minister of Health, ex parte Villiers** [1936] 1 817, KBD.
 - House suitable for occupation by persons of the working classes—
 - House including appurtenances—Whether 'appurtenances' can include ten acres of grassland—Housing Act 1936, s 188. **Trim v Sturminster Rural District Council** [1938] 2 168, CA.
 - Recovery of possession—
 - Notice to quit—'Notice...proceeding from a local authority'—Signature by 'clerk or lawful deputy'—Signature by housing manager—Validity of notice—Housing Act 1936, s 164(2). **Becker v Crosby Corpn** [1952] 1 1350, QBD.
 - Right of local authority—Exclusion of Rent Restrictions Acts—Small Tenements Recovery Act 1838, s 1—Increase of Rent and Mortgage Interest (Restrictions) Act 1920, s 5(2), (4)—Housing Act 1936, ss 82(1), 83(1), 156(1)(a), (2). **Shelley v London County Council** [1948] 2 898, HL.

HOUSING (cont)

Accommodation of working classes (cont)—

Recovery of possession (cont)—

Right of local authority—Right to bring proceedings in court of summary jurisdiction—Rent exceeding £20—Whether summary procedure before justices available—Housing Act 1936, ss 83(1), 156(2). *R v Snell, ex parte St Marylebone Borough Council* [1942] 1 612, KBD.

Association—

Recovery of possession of premises. *See* **Rent restriction** (Tenancies excluded from being regulated tenancies—Housing association).

Clearance area—

Compensation for land purchased compulsorily. *See* **Compulsory purchase—Compensation, post.**

Compulsory purchase order—

Inquiry by inspector—Natural justice—Duty to hear parties—Opportunity to consider reasons for decision. *See* **Natural justice** (Public inquiry—Duty to hear parties—Opportunity to consider reasons for decision—Reasons not put forward at hearing—Housing—Compulsory purchase order—Inquiry by inspector).

Houses unfit for human habitation etc—

Houses—Other buildings—Whether tenement houses are houses within Housing Act 1957, s 42(1)(a). *Quiltotex Co Ltd v Minister of Housing and Local Government* [1965] 2 913, QBD.

Houses—Premises consisting of shops with living rooms over—Housing Act 1936, s 25. *Re South Shields (D'Arcy Street) Compulsory Purchase Order 1937, Application of Bainbridge* [1939] 1 419, KBD.

Houses—Single house—Clearance area may comprise a single house—Existence of shops in separate occupation on ground floor of large tenement house does not prevent the building being a 'house' within Housing Act 1957, s 42(1)(a). *Annicola Investments Ltd v Minister of Housing and Local Government* [1965] 3 850, QBD.

Method for securing clearance of area—

Discretion of local authority—Clearance order or compulsory purchase order—Onus on local authority to show that it has chosen appropriate method for securing clearance—Housing Act 1930, s 1(3). *Re Greenwich (Prince of Orange Lane) Housing Order 1936, Application of Willey* [1937] 3 305, KBD.

Discretion of local authority—Whether local authority entitled to proceed by compulsory purchase rather than by demolition—Housing Act 1936, ss 25, 27, 29, Sch I. *Re Brighton (Everton Place Area) Housing Order 1937, E Robins & Son Ltd's Application* [1938] 4 446, CA.

Order—

Clearance order. *See* **Clearance order, post.**

Payments in respect of well-maintained houses—

Payment to person other than owner—Duty of local authority to invite representation before deciding to pay a person other than the owner—Housing Act 1957, s 60(2). *Hoggard v Worsbrough Urban District Council* [1962] 1 468, Assizes.

Power to declare area clearance area—

Sufficiency of local authority's resources—Requirement that local authority should be satisfied of the sufficiency of their resources before declaring clearance area—'Resources' of council—Validity of resolution and of subsequent compulsory purchase order—Housing Act 1957, s 42(1), proviso (ii), Sch 4. *Goddard v Minister of Housing and Local Government* [1958] 3 482, QBD.

Rehabilitation of unfit houses—

Application for rehabilitation order—Refusal—Reasons for refusal to be given in writing—Adequacy of reasons—Sufficient if salient reason stated without going into matters of detail—Statement that applications being refused because property needed to be demolished and site used for erection of new housing accommodation—Whether adequate statement of reasons—Housing Act 1974, Sch 10, para 3(2)(as substituted by the Housing Rents and Subsidies Act 1975, Sch 5, para 25). *Elliott v London Borough of Southwark* [1976] 2 781, CA.

Scheme for letting part of area—

Validity—Scheme for letting part of clearance site for air-raid shelter—Previous schemes refused approval by Ministers—Lease to company constructing shelter—Lease of shelter when constructed to authority—Validity of scheme—London Government Act 1899, s 5(2), Sch II, Part II—Housing Act 1936, s 30—Air Raid Precautions Act 1937, ss 1(3), 7. *Attorney-General (at the relation of Martin) v Finsbury Borough Council* [1939] 3 995, ChD.

Clearance order—

Confirmation by Minister of Health—

Objection that no evidence upon which Minister could confirm—Appeal to High Court—Power of court to interfere with Minister's decision—Housing Act 1930, s 11(3). *Re Falmouth (Well Lane, Sedgmond's Court and Smithick Hill) Clearance Order 1936, Application of Halse* [1937] 3 308, KBD.

Demolition of building subject of order—

Demolition by local authority in default of owner—Interference with support of adjoining house—Liability of local authority—Housing Act 1936, s 26. *Bond v Norman* [1940] 2 12, CA.

Premises subject of order—

Garage with dwelling-rooms above—Separately let with no communication—Power to demolish whole of premises. *Re Hammersmith (Berghem Mews) Clearance Order 1936, Application of Wilmot* [1937] 3 539, KBD.

Houses—Buildings consisting of dwelling-houses on first floor and garages and stores on ground floor—Separate occupations—Whether garages and stores should be included in clearance order—Whether 'houses'—Housing Act 1936, s 25, Sch III, para 2. *Re Camberwell (Wingfield Mews) No 2 Clearance Order 1936, Application of Butler* [1939] 1 590, CA.

HOUSING (cont)

Clearance order (cont)—

Premises subject of order (cont)—

Other buildings—Inclusion in order of garages and workshops—Housing Act 1936, Sch III, para 2. **Re Camberwell (Wingfield Mews) No 2 Clearance Order 1936, Application of Butler** [1939] 1 590, CA.

Closing order—

Effect of Rent Act. *See* **Rent restriction** (Possession—Premises unfit for human habitation).

Power to make order—

Part of a building—Terrace house unfit for human habitation—Demolition undesirable as likely to render adjoining houses unfit—Housing Act 1936, ss 11(4), 12(1). **Birch v Wigan Corp** [1952] 2 893, CA.

Underground rooms—

Fitness for human habitation—Standard to be applied—Housing Act 1936, s 12(2)(b)—Housing Repairs and Rents Act 1954, s 9(1). **Critchell v Lambeth Borough Council** [1957] 2 417, CA.

Compulsory purchase—

Application to quash order—

Fresh evidence—Admissibility—Question whether premises were a house unfit for human habitation—Housing Act 1957, Sch 3, para 4(3). **Ashbridge Investments Ltd v Minister of Housing and Local Government** [1965] 3 371, CA.

Compensation—

House occupied as private dwelling on relevant date—Mortgagee claimants to compensation—House owned by wife, with husband surety for mortgage—Wife died intestate—Husband entitled to residuary estate of wife—No grant of representation to her estate taken out—Husband removed to hospital and property empty—Whether mortgagees were entitled to compensation at full compulsory purchase value—Whether husband had 'interest' in house either as beneficiary on wife's intestacy or as surety—Housing Act 1957, s 61, Sch 2, Pt 2, para 4(2), (4), para 7(2). **Eastbourne Mutual Building Society v Hastings Corp** [1965] 1 779, ChD.

Houses on part only of clearance area being acquired—Whether regard should be had to increase of value by clearance of rest of area—Whether likelihood of clearance apart from action by local authority—Town and Country Planning Act 1959, s 9(2), (7)(a), (8). **Davy v Leeds Corp** [1965] 1 753, HL.

Owner in occupation on relevant date for clearance area order—House wholly or partly occupied for the purposes of private dwelling—Reduction in compensation where house occupied partly for purposes other than those of private dwelling—Occupied for purposes of a private dwelling—Meaning—Occupation by person other than owner—Owner-occupier letting part of house to tenant—Tenant using that part as his private dwelling—Whether part of house 'occupied for any purposes other than those of a private dwelling'—Housing Act 1969, Sch 5, para 3(1). **Hunter v Manchester City Council** [1975] 2 966, CA.

Private dwelling—Acquisition of unfit house purchased by company as home for employee—Occupation of house by employee—Whether company entitled to higher rate of compensation payable to owner-occupier of a 'private dwelling' or occupier of business premises—Housing Act 1957, Sch 2, paras 2(6), 4(2). **G E Stevens (High Wycombe) Ltd v High Wycombe Corp** [1961] 2 738, QBD.

Confirmation of order by Minister—

Appeal—Proposed abuse of powers after land acquired—Relevance of events up to time when order was confirmed by Minister—Order *intra vires* local authority when made—Subsequently bargain made between authority and freeholders of land being acquired contravening Housing Act—Bargain appearing on face of inspector's report to Minister—Confirmation of order *ultra vires*—Whether court entitled to quash order—Housing Act 1957, s 47(2), Sch 4, para 2. **London and Westcliff Properties Ltd v Minister of Housing and Local Government** [1961] 1 610, QBD.

Demolition of property—Demolition of property subject to order before inquiry—Power of Minister to confirm compulsory purchase order—Housing Act 1930, Sch 2 Part 1 para 5. **Marriott v Minister of Health** [1936] 2 865, CA.

Deputation from local authority to Minister prior to confirmation—Absence of other party—Whether grounds for quashing order. **Horn v Minister of Health** [1936] 2 1299, CA.

Duties of Minister—Disclosure of information acquired before order made—Lis—Quasi-judicial—Duty to act fairly—Housing Act 1936, Sch 1(4)(5). **B Johnson & Co (Builders) Ltd v Minister of Health** [1947] 2 395, CA.

Matters to be considered—Cost—Whether cost a relevant factor to be taken into consideration by Secretary of State in deciding whether to confirm order. **Sovmots Investments Ltd v Secretary of State for the Environment** [1976] 1 178, QBD.

Matters to be considered—Regard had by Minister to letters from local authority received by him while acting administratively—Right of Minister to use knowledge gained by him extra-judicially—Housing Act 1936, s 29(1), Sch 1, para 4. **Price v Minister of Health** [1947] 1 47, KBD.

Matters to be considered—Right of person aggrieved by order to question validity of order—Time limit for application to High Court for that purpose—Originating notice of motion entered at Crown Office within six weeks after publication of notice of confirmation, but notice of motion not served on Minister or local authority within the six weeks—Whether notice of motion out of time—Power of court to enlarge time for service—Housing Act 1936, Sch II, para 2—RSC Ord 55B, r 74, Ord 64, r 7. **Summers v Minister of Health** [1947] 1 184, KBD.

Objection to confirmation—Public local inquiry—Refusal to allow statements of counsel not supported by evidence—Future intentions of owners—Whether proceedings vitiated. **Re London (Hammersmith) Housing Order, Application of Land Development Ltd** [1936] 2 1063, KBD.

Review by High Court—Jurisdiction of High Court to review order—Housing Act 1936, ss 25, 29(2)(3), 42, 188(4)—RSC Ord 55B, r 71. **Re Housing Act 1936, Re The London County Council (Riley Street, Chelsea, No 1) Order 1938** [1945] 2 484, KBD.

HOUSING (cont)**Compulsory purchase (cont)—****Confirmation of order by Minister—**

Time for submission—Extension of time—Whether Minister under duty to seek views of owners of land within clearance area—Housing Act 1957, s 43(4). **Aristides v Minister of Housing and Local Government** [1970] 1 195, QBD.

Land acquired for persons employed or paid by county council—

Persons employed or paid by county council—Whether including superintendent of police—Housing Act 1936, s 97. **Rodwell v Minister of Health** [1947] 1 80, KBD.

Land exempt from compulsory purchase order—

Land forming part of any park, garden or pleasure ground—Required for the amenity or convenience of any house—Field 70 yds from house used for pasturing stock—Field used occasionally for local festivities—Whether exempt—Housing Act 1936, s 75. **Re Newhill Compulsory Purchase Order 1937, Payne's Application** [1938] 2 163, KBD.

Land forming part of any park, garden or pleasure ground—Required for the amenity or convenience of any house—Finality of Minister's decision—Housing Act 1936, s 75. **Re Ripon (Highfield) Housing Order 1938, Applications of White and Collins** [1939] 3 548, CA.

Land forming part of any park, garden or pleasure ground—Required for the amenity or convenience of any house—Need for land to be appurtenant to house—Housing Act 1936, ss 74, 75—Housing (Temporary Accommodation) Act 1944, s 6. **R v Minister of Health, ex parte Waterlow & Sons Ltd** [1946] 2 189, KBD.

Notice to treat and notice of entry—

Enforcement—Notice to treat and notice of entry served—Delay—Abandonment—Ultra vires—Original housing project not implemented—Redevelopment at some future date as part of larger area contemplated instead—Whether notices continued to be enforceable—Whether change of circumstances gave rise to equity to restrain enforcement of notices—Housing Act 1936, s 74. **Simpsons Motor Sales (London) Ltd v Hendon Corp'n** [1963] 2 484, HL.

Objection to order—

Notice stating facts alleged as principal grounds of unfitness—Sufficiency of notice—Housing Act 1935, s 63(1). **R v Minister of Health, ex parte Hack** [1937] 3 176, KBD.

Payment of purchase money into court—

Payment out—Discretion of court—Purchase price paid into court—Failure of owner to make title—Previous work of repair to dangerous structure carried out by council—Whether council entitled to payment of costs of repairs out of money in court—London Building Acts (Amendment) Act 1939, s 70—Lands Clauses Consolidation Act 1845, s 78—Land Charges Act 1925, s 15(1), as amended by Law of Property (Amendment) Act 1926, s 7 and Sch. **Re County of London (Devons Road, Poplar) Housing Confirmation Order 1945** [1956] 1 818, ChD.

Property to be acquired—

House—Appurtenances belonging thereto or normally enjoyed therewith—Ancillary rights—Easements and quasi-easements—Easements and rights necessary or desirable for enjoyment of property acquired—Easements not used at date of acquisition—Whether rights acquired by implication—Housing Act 1957, s 189(1). **Sovmots Investments Ltd v Secretary of State for the Environment** [1976] 3 720, CA.

House—Part of building—Acquisition of property for purpose or providing housing accommodation—'House' including part of building which is occupied or intended to be occupied as a separate dwelling—Part of building not standing directly on land underneath—Whether local authority having power to acquire compulsorily part only of building—Housing Act 1957, ss 96(b), 96(1), 189(1). **Sovmots Investments Ltd v Secretary of State for the Environment** [1976] 3 720, CA.

Land—Description of land—Scope of description—Ancillary rights—Rights necessary for enjoyment of property acquired—Whether such rights included by implication in compulsory purchase order. **Sovmots Investments Ltd v Secretary of State for the Environment** [1976] 3 720, CA.

Provision of housing accommodation—

Duty of housing authority to consider needs of the district—Inclusion of residents outside district—Housing Act 1936, s 71. **Re Havant and Waterloo Urban District Council Compulsory Purchase Order (No 4) 1950, Application of Watson** [1951] 2 664, KBD.

Planning considerations—Local housing authority seeking to rebuild residential area to house more people—Planning permission of local planning authority essential—Indication by planning authority that conditions would be attached affecting road network and housing development in wider area—Whether local authority and minister acted ultra vires in taking into account planning considerations—Housing Act 1957, s 97(1)—Acquisition of Land (Authorisation Procedure) Act 1946, Sch 1, para 4(2). **Hanks v Minister of Housing and Local Government** [1963] 1 47, QBD.

Site for erection of houses for the working classes—

Land subject of order to be used as site for erection of houses of type suitable for working classes—Intended allocation outside those classes—Additional amenities serving beneficial purpose to residents in neighbouring areas—Validity of order—Housing Act 1936, ss 73, 80. **H E Green & Sons v Minister of Health** [1947] 2 469, KBD.

Ultra vires order—

Acquisition of adjoining land reasonably necessary for the satisfactory development or use of cleared area—Necessity for evidence that acquisition reasonably necessary—Question whether acquisition reasonably necessary not one of planning policy—Modern property adjoining clearance area—Council failing to produce evidence that acquisition reasonably necessary and relying on mere assertion—Recommendation of inspector that acquisition of property not reasonably necessary—Minister overruling inspector's recommendation—Absence of material on which Minister could overrule recommendation—Minister's decision ultra vires—Housing Act 1957, s 43(2). **Coleen Properties Ltd v Minister of Housing and Local Government** [1971] 1 1049, CA.

HOUSING (cont)**Compulsory purchase (cont)—****Unoccupied house—**

Powers—Houses built by builder unoccupied for long periods—Intended for letting as source of income for his old age—Need for housing accommodation in district—After approach by local housing authority houses let at rents which tenants after a time failed to pay—Houses again unoccupied—Factors for consideration in determining whether to make compulsory purchase order—Owner's interests weighed against public need—Number of housing units in district not increased by the acquisition—Whether acquisition *intra vires* as a provision of further housing accommodation—Housing Act 1957, ss 91, 92, 96. **Moore v Minister of Housing and Local Government** [1965] 2 367, QBD.

Conversion of house into several tenements—**Power of court to authorise conversion—**

Conversion—Alteration of house into single-room flatlets—Effect on character of neighbourhood—Jurisdiction to authorise alteration—Housing Act 1936, s 163. **Stack v Church Comrs for England** [1952] 1 1352, CA.

Scheme for conversion of house into parts of flats—Building of garages in garden of house—Whether conversion of single dwelling-house into two or more separate dwelling-houses—Housing Act 1957, s 165(b). **Josephine Trust Ltd v Champagne** [1962] 3 136, CA.

Demolition order—**Contents of order—**

Times for vacation and demolition of premises—Order for demolition within seven years—House vacant—No order that house be vacated—Propriety of order—Housing Act 1957, s 21. **Pocklington v Melksham Urban District Council** [1964] 2 862, CA.

Duty to make order forthwith where no undertaking accepted—

Order made eight months after return date on notice—No detriment to owner—Validity of order—Whether owner who has not appealed against demolition order can resist claim for expenses on ground that order invalid—Housing Act 1957, ss 16(1), 17(1), 37(1). **London Borough of Hillingdon v Cutler** [1967] 2 361, CA.

Expenses of demolition—

Lump sum price for demolition arranged by local authority with contractor—Price calculated on basis that contractor should retain materials—Whether compliance with statutory requirement to give credit for amount realised by sale of materials—Housing Act 1957, s 23(1)(2). **London Borough of Hillingdon v Cutler** [1967] 2 361, CA.

Notice to quit—

Date for vacating premises fixed by demolition order as 30 days from its becoming operative—Time for service on occupier of notice to quit—Housing Act 1957, ss 21(a), 22(1). **R v Epsom and Ewell Corpn, ex parte R B Property Investments (Eastern) Ltd** [1964] 2 832, QBD.

Fitness of property for human habitation—**Lease of dwelling-house at rent not exceeding specified sum—**

Rent—Whether inclusive or exclusive rent—Housing Act 1936, s 2. **Jones v Nelson Rousou v Photi (Gort Estates Co third party)** [1940] 2 528, CA.

Scope of implied condition of lease—

House incapable of being rendered fit for human habitation at reasonable expense—Housing Act 1957, s 6(2). **Buswell v Goodwin** [1971] 1 418, CA.

In all respects reasonably fit for human habitation—Broken sashcord—Housing Act 1936, ss 2, 188(4). **Summers v Salford Corpn** [1943] 1 68, HL.

Home loss payment—

Displacement from land. *See Compensation* (Displacement from land—Home loss payment).

Hot water supply—

House in multiple occupation. *See House in multiple occupation*—Personal washing facilities, *post*.

House constructed under building licence—**Limitation of purchase price—**

House, garden and approach to garage shown on plan—Sale of house and garden for licensed price, but extra sum charged for approach—Whether breach of condition of licence—Building Materials and Housing Act 1945, s 7(1)(3). **Modern Housing (Leicester) Ltd v Gunning** [1948] 1 784, KBD.

Price to include cost of roads, sewers and other services—Whether cost of making up roads to satisfaction of local authority included—Public Health Act 1875, s 150. **Smith v Jones** [1952] 2 907, QBD.

Sale of house at price in excess of permitted price—Knowledge of vendor's solicitors—Aiding and abetting—Building Materials and Housing Act 1945, s 7(1)(5). **Johnson v Youden** [1950] 1 300, KBD.

Sale of registered land at price exceeding limit—Place of sale—Jurisdiction of justices—Building Materials and Housing Act 1945, ss 7(1), 9(3). **R v Edwards, ex parte Joseph** [1947] 1 314, KBD.

Permitted rent—

Letting at rent exceeding permitted amount—Flat constructed under building licence—Obligation to repair placed on tenant—Consideration other than payment of money rent—Expression in terms of money—Modification of rent—Building Materials and Housing Act 1945, s 7(1)(4)(7)(b). **Duplex Settled Investment Trust Ltd v Worthing Borough Council** [1952] 1 545, KBD.

Letting at rent exceeding permitted amount—Informations laid more than six months after date of letting—Competency of proceedings—Building Materials and Housing Act 1945, s 7(1). **R v Wimbledon Justices, ex parte Derwent** [1953] 1 390, QBD.

House in multiple occupation—**Execution of works required—**

Building originally built as one dwelling-house, now divided into several self-contained dwellings—Whether whole building was a house occupied by members of more than one family—Housing Act 1961, s 15(1). **Okereke v Borough of Brent (Town Clerk)** [1966] 1 150, CA.

HOUSING (cont)

House in multiple occupation (cont)—

Notice to execute works—

Two residential floors, over shop, let to tenant—Tenant and wife living on first floor—Tenant's son and his family living on second floor—Separate cooking facilities—Payments equal to half rent by son to tenant's wife—No door dividing the two floors—Whether the two floors 'occupied by members of more than one family'—Housing Act 1961, ss 15(1), 16(1). **Holm v Royal Borough of Kensington and Chelsea** [1967] 1 289, CA.

Overcrowding. *See* Overcrowding, *post*.

Personal washing facilities—

Whether expression includes provision of hot water supply—Question of degree and fact—Housing Act 1961, s 15(1). **McPhail v London Borough of Islington** [1970] 1 1004, CA.

House unfit for human habitation—

Compulsory purchase—

Compensation. *See* Compulsory purchase—Compensation, *ante*.

Demolition order. *See* Demolition order, *ante*.

Notice to execute works—

Appeal to county court—Owner's undertaking to do part of work—Power of court to quash notice as a whole—Housing Act 1936, ss 9(1), 15(2). **Cochrane v Chanctonbury Rural District Council** [1950] 2 1134, CA.

House capable at reasonable expense of being rendered fit—Factors to be considered—Duty of local authority to consider 'estimated cost of the works necessary'—Detailed estimates of cost of works not before local authority before notice issued—Whether consideration of detailed estimates condition precedent to issue of notice—Whether value to ground lessee or freehold value to be considered in determining whether estimated expense of repairs reasonable—Housing Act 1936, ss 9(1), 9(3). **Bacon v Grimsby Corpn** [1949] 2 875, CA.

House capable at reasonable expense of being rendered fit—Reasonable expense—Material date for consideration of reasonableness—Housing Act 1936, ss 9(1)(3), 15(1)—Middlesex County Council Act 1944, s 260(1)(2). **Leslie Maurice & Co Ltd v Willesden Corpn** [1953] 1 1014, CA.

Service on person having control of house—Person receiving rack-rent—Rent not less than two-thirds of 'full net annual value' of house—Service of notice on landlord of house controlled under Rent Acts—Whether landlord in receipt of rack-rent and so person having control—Housing Act 1936, s 9(4). **Rawlence v Croydon Corpn** [1952] 2 535, CA.

Validity—House let as two separate tenements—Two parts of house rated by local authority as separate dwellings—Statutory notice to carry out repairs—Failure to comply with notice—Work carried out by local authority—Right of appeal to county court not exercised—Validity of notice and demand—Whether two separate notices required—Housing Act 1936, ss 9, 10, 15, 23, 188. **Benabo v Wood Green Corpn** [1945] 2 162, KBD.

Unfit for human habitation—

Factors to be considered—General standard in district—Hot water system out of order—Other facilities for heating water—Whether 'unfit for human habitation'—Housing Act 1936, ss 9(1), 188(4). **Daly v Elstree Rural District Council** [1948] 2 13, CA.

Improvement notice—

Appeal against improvement notice—

Appeal on ground of invalidity of notices—Preliminary and immediate improvement notices—Farm cottage—Occupier, no longer employed as farm labourer, not a tenant—Appeal by owner on ground of invalidity of notices—Whether owner substantially prejudiced—Housing Act 1964, ss 14(1)(a), 16, 27(2)(e), (3). **De Rothschild v Wing Rural District Council** [1967] 1 597, CA.

Extension of dwelling by building bathroom—

Power of local authority to require landlord to build extension—Factors to be regarded in determining whether compliance practicable at reasonable expense—Grant and increased rent (controlled letting)—Tenants' needs to be taken into consideration in deciding whether works reasonable in character or extent—Whether controlled tenant ought to pay whole or part of capital cost—Housing Act 1964, ss 14, 15(4), 16, 27(1)(2)(3), 29. **Harrington v Croydon Corpn** [1967] 3 929, CA.

Local authority—

Duty in respect of land acquired for provision of accommodation—

Duty to secure that building acquired made suitable as a house—Whether applicable where building acquired as part of a site for erection of houses—Housing Act 1936, s 79(4). **Uttoxeter Urban District Council v Clarke** [1952] 1 1318, ChD.

Duty to secure that building acquired made suitable as a house—Whether applicable where building acquired as part of site for erection of houses—Housing Act 1936, ss 73(a)(b) 79(4). **Attridge v London County Council** [1954] 2 444, QBD.

Duty to provide accommodation—

enforcement of duty. *See* Local authority (Statutory duty—Enforcement—Accommodation).

Local authority houses. *See* Local authority houses, *post*.

Powers of dealing with land acquired for provision of accommodation—

Power to sell land—Compulsory purchase of land by urban district council for purpose of building houses—Proposed sale of part of land to county council as local education authority for a school site—Whether ultra vires—Whether proposed sale within Housing Act 1957, s 105(1)(a)(b). **Capital Investments Ltd v Wednesfield Urban District Council** [1964] 1 655, ChD.

Sale of house—

Mortgage—Right of pre-emption—Exercise of power of sale on default by mortgagor. *See* Mortgage (Sale—Exercise of power of sale by mortgagee—Local authority).

HOUSING (cont)

Local authority houses—

Management—

Eviction—Non-payment of rent—Considerations relevant to exercise of power to evict—Duty of local authority to exercise power in good faith and having regard to relevant considerations—Proceedings for possession—Whether local authority required to tender evidence that possession necessary in order to exercise statutory powers—Whether authority having abused powers by seeking possession order—**Housing Act 1957**, ss 111(1), 158 (as amended by the **Rent Act 1968**, s 117(2), Sch 15). **Bristol District Council v Clark** [1975] 3 976, CA.

Insurance—Tenants' personal and household effects—Arrangements made by housing authority for issuing group policy insurance of its tenants' personal and household effects—Premiums collected by housing authority with weekly rent—Whether insurance scheme ultra vires the housing authority—Whether insurance was an act of general management of the housing authority's properties—**Housing Act 1957**, s 111(1). **Attorney-General v Crayford Urban District Council** [1962] 2 741, CA.

Notice to quit—

Validity—Signature—Director of housing duly authorised to take eviction proceedings—Instructions to director to issue notices given by chairman of housing committee—Presumption of due authority not rebutted—**Local Government Act 1933**, s 287B(2). **Greater London Council v Connolly** [1970] 1 870, CA.

Rent—

Certainty of rent—Condition in tenancy providing for increase—Amount of increase uncertain—Condition not void if increased amount may be calculated with certainty on date it became payable. **Greater London Council v Connolly** [1970] 1 870, CA.

Fair rent—Duty of authority to charge fair rent—Default—Remedy of Secretary of State—Power to direct district auditor to make extraordinary audit of housing revenue account—Power exercised instead of appointing housing commissioner to discharge authority's functions—Validity of exercise of power—Motive of Minister—Relevance—Minister having in mind that surcharge consequent on audit would disqualify members of local authority—Audit directed before determination of fair rents and therefore before ultimate deficiency to housing revenue account ascertainable—Whether direction of Minister ultra vires—**Local Government Act 1933**, s 236(1)—**Housing Finance Act 1972**, s 95(1)(7). **Asher v Secretary of State for the Environment** [1974] 2 156, CA.

Increase of rent without notice to quit—Whether statutory powers invalidated contractual provisions in tenancy—Prices and Incomes Act 1968, s 12(1)(3). **Greater London Council v Connolly** [1970] 1 870, CA.

Notice of increase—Condition in tenancy providing for increase—Length of notice uncertain—Requirement of reasonable notice implied. **Greater London Council v Connolly** [1970] 1 870, CA.

Notice of increase—Whether notice determining tenancy necessary—**Housing Act 1936**, s 85(6). **Bathavon Rural District Council v Carlile** [1958] 1 801, CA.

Reasonable charge—Differential rent scheme—Scheme based on income of tenants—Reasonableness of charges—Validity of scheme—**Housing Act 1936**, ss 83(1), 85(6). **Smith v Cardiff Corp** [1955] 1 113, ChD.

Reasonable charge—Differential rent scheme—Duties of local authority in fixing rents—**Housing Act 1936**, ss 83(1), 85(5) (as substituted by **Housing Act 1949**, s 1, Sch 1), (6). **Summerfield v Hampstead Borough Council** [1957] 1 221, ChD.

Reasonable charge—Maintenance of balance between ratepayers as a whole and tenants—Duty to consider 'rent ordinarily payable by person of the working classes in the locality'—**Housing Act 1936**, ss 83(1), 85(5). **Belcher v Reading Corp** [1949] 2 969, ChD.

Reasonable charge—Reasonableness of method of charging adopted—Overall basis of comparison in fixing charges between capacity to pay of broad groups of tenants and economic rent required to recoup cost of providing housing—Balance to be held between tenants and ratepayers—**Housing Act 1957**, s 111(1). **Evans v Collins** [1964] 1 808, QBD.

Reasonable charge—Social policy—Choice of rent structure a matter of social policy—Differential rent scheme rejected—Whether discretion exercised lawfully in fixing rents at uniform level—Whether local authority bound to take into consideration individual circumstances of tenant—**Housing Act 1957**, ss 111(1), 113(3)(4). **Luby v Newcastle-under-Lyme Corp** [1964] 3 169, CA.

Rebate—Excess rebate—Recovery—Differential rent scheme—Rebate from rent varying with income of tenant—Review of tenant's income and rebate effected towards end of current year—Excess rebate—Additional weekly payments as rent for next year to recover excess rebate—Tenant quitting before excess discharged—Whether balance of excess recoverable as rent in arrear. **Havant and Waterloo Urban District Council v Norum** [1958] 2 42, CA.

Management—

Local authority houses. *See* Local authority houses—Management, *ante*.

Movable dwellings—

Licence—

Application—Factors to be considered—Whether including consideration of local amenities—**Public Health Act 1936**, s 269(1)(2). **Pilling v Abergale Urban District Council** [1950] 1 76, KBD.

Multiple occupation house. *See* House in multiple occupation, *ante*.

Notice from local authority—

Validity—

Challenge to validity—Appeal—Prescribed time limit—Notice invalid on its face—Unauthorised signature—Failure to appeal against notice within time limit—Effect—Whether recipient of notice precluded from challenging validity—Whether recipient entitled to disregard notice—**Housing Act 1957**, ss 11(1), 37(1), 166(2). **Graddage v London Borough of Haringey** [1975] 1 224, ChD.

HOUSING (cont)

Nuisance—

Premises constituting statutory nuisance—

Premises subject to clearance order. *See* Nuisance (Statutory nuisance—Nuisance order—House subject to clearance order).

Occupation—

Rateable occupation. *See* Rates (Rateable occupation).

Overcrowding—

Circumstances rendering tenant guilty of offence—

Removal of restriction on recovery of possession by landlord under Rent Acts—'Guilty of offence'—Material dated—Contemporaneous duration of offence and of removal of restriction on recovery of possession by landlord under Rent Acts—Housing Act 1936, ss 59(3), 65(1). *Zbysniewski v Broughton* [1956] 3 348, CA.

Directions to prevent or reduce overcrowding in houses in multiple occupation—

Direction by local authority limiting number of occupants in house—Only one family in occupation when direction made—Subsequent change of occupancy with members of family over permitted number—Validity of direction—Housing Act 1961, ss 15(1), 19(1)(2) (a). *Allen v Khan* [1967] 3 1082, QBD.

Lodgings—

Premises used as lodging house—Notice by local authority—Notice limiting number of persons permitted to sleep on premises—Premises subsequently ceasing to be used as lodging house—Premises used as home for members of one family—Members of family sleeping on premises exceeding number permitted by notice—Whether notice limiting number of persons permitted to sleep on premises still valid when premises no longer used as lodging house—Housing Act 1957, s 90(1)(4). *Wolkind v Ali* [1975] 1 193, QBD.

Personal washing facilities—

House in multiple occupation. *See* House in multiple occupation—Personal washing facilities, *ante*.

Provision of housing accommodation—

Acquisition of land for provision of accommodation. *See* Compulsory purchase—Provision of housing accommodation, *ante*.Duties of local authority in respect of land acquired for provision of accommodation. *See* Local authority—Duty in respect of land acquired for provision of accommodation, *ante*.Local authority's powers of dealing with land acquired for provision of housing accommodation. *See* Local authority—Powers of dealing with land acquired for provision of accommodation, *ante*.

Quashing of clearance order or compulsory purchase order—

Requirement of Act not complied with—

Natural justice—Inquiry following objection to compulsory purchase order—Inquiry conducted in breach of rules of natural justice—Whether 'requirement of Act not having been complied with'—Whether ground for quashing order—Housing Act 1957, Sch 4, para 2. *Fairmount Investments Ltd v Secretary of State for the Environment* [1976] 2 865, HL.

Registration of conditions imposed by building licence—

Building licence granted subject to any condition—

Maximum rent to be charged on letting stated in application for licence—No condition limiting rent attached to licence—Condition limiting rent and purporting to be condition 'attached to a building licence' registered as local land charge—Whether application and licence to be read as one document so as to provide registrable condition. *R v Barnet etc Rent Tribunal, ex parte Reed's Investments Ltd* [1950] 2 848, KBD.

Registration of living accommodation—

Registration by occupier of accommodation he is willing to make available for occupation by tenants—

Exclusion of Rent Restriction Acts—Householder not in physical occupation of premises at date of registration—Relative dates of letting and registration—Whether premises 'occupied' by householder at relevant time—Defence (General) Regulations 1939 (as amended), reg 68CB(1)(6). *Baldwin v Gurnsey* [1948] 2 165, CA.

Rehousing—

Duty of local authority—

Persons displaced from residential accommodation—Housing order—Duty of authority to provide suitable alternative accommodation on reasonable terms—Extent of duty—Offer of temporary accommodation until council house available—Whether provision of temporary accommodation sufficient compliance with duty—Land Compensation Act 1973, s 39. *R v Bristol Corporation, ex parte Hendy* [1974] 1 1047, CA.

Requisitioned premises—

Release from requisition—

Contribution towards local authority's expenses by way of compensation—Rate of contribution by Ministry of Housing and Local Government—Requisitioned Houses and Housing (Amendment) Act 1955, s 10(1). *East Ham Corp v Ministry of Housing and Local Government* [1959] 3 508, ChD.Rural worker. *See* Agriculture (Housing).

Small dwellings—

Letting—

Implied condition of fitness. *See* Fitness of property for human habitation—Scope of implied condition, *ante*.

Purchase of house by means of advance by local authority—

Mortgagee's right to recover possession—Instalment mortgage—Default in monthly repayments—Default made good—No arrears at date of hearing—Small Dwellings Acquisition Act 1899, ss 3(1)(a)(3), 5(5). *Alnwick Rural District Council v Taylor* [1966] 1 899, ChD.

HOUSING (cont)

Small dwellings (cont)—

Purchase of house by means of advance by local authority (cont)—

Personal liability of proprietor for repayment of sum due in respect of advance—Possession of house taken by local authority by letting it—Whether remedy against proprietor personally remained available—Whether enforcement of personal liability conferred a renewed right of redemption on proprietor—Small Dwellings Acquisition Act 1899, ss 4(1), 5(1)(2). **Mexborough Urban District Council v Harrison** [1964] 2 109, ChD.

Sale of house by local authority—House subject to second mortgage—Whether local authority must pay surplus on sale to second mortgagee—Small Dwellings Acquisition Act 1899, s 6(2). **Re Caunter's Charge** [1959] 3 669, ChD.

Sale of house by local authority—Money advanced by local authority for purchase of small house—Charge by way of legal mortgage—Foreclosure—Local authority taking possession—Increase in value of house—Whether local authority entitled to pay mortgagor profit on sale of house—Small Dwellings Acquisition Act 1899, ss 3(3), 5, 6. **Re Brown's Mortgage** [1945] 1 397, ChD.

Subsidised houses—

Sale—

Consent—Necessity for consent—Construction of house promoted by local authority—Statutory special conditions for annual subsidy made applicable by agreement with building owner—Subsidy paid by local authority who received contribution from government funds—Whether building owner entitled to sell houses without consent of the Secretary of State—Housing (Financial Provisions) Act 1924, s 3(2). **Corpn of the City of Glasgow v Western Heritable Investment Co Ltd** [1956] 1 706, HL.

Temporary accommodation—

Acquisition of land—

Authorisation by Minister—Nature of authorisation—Equivalent to compulsory purchase order—Housing Act 1936, s 74—Housing (Temporary Accommodation) Act 1944, s 6. **R v Minister of Health, ex parte Waterlow & Sons Ltd** [1946] 2 189, KBD.

Urgent need—

Duty of local authority to provide accommodation to persons in urgent need—

Enforcement of duty. *See* **Local authority** (Statutory duty—Enforcement—Accommodation).

HOUSING ASSOCIATION

Rent Act exemption. *See* **Rent restriction** (Tenancies excluded from being regulated tenancies—Housing association).

HOMES FOR MENTALLY DISORDERED PERSONS

Registration. *See* **Mental health** (Registration of residential homes for mentally disordered persons).

HUSBAND AND WIFE

Accessory after the fact—

Wife as accessory. *See* **Criminal law** (Accessory after the fact—Wife).

Account—

Action for an account—

Meaning—Limitation of action. *See* **Limitation of action** (Action for an account—Meaning—Husband and wife).

Adultery—

Divorce. *See* **Divorce** (Adultery).

Affiliation order—

Application by wife—

Wife living apart from husband. *See* **Affiliation** (Application for order—Single woman—Married mother living apart from husband).

Agreement—

Maintenance. *See* **Maintenance—Agreement, post.**

Separation. *See* **Separation agreement, post.**

Assault occasioning bodily harm—

Mental injury. *See* **Criminal law** (Assault—Occasioning bodily harm—Mental injury—Husband and wife).

Bankruptcy—

Annulment—

Application for annulment by spouse. *See* **Bankruptcy** (Annulment—Application to annul—Application by person interested—Meaning of 'person interested'—Spouse of bankrupt).

Bigamy. *See* **Criminal law** (Bigamy).

Burial—

Wife—

Expenses—Common law liability of husband. *See* **Burial** (Expenses—Burial of wife—Common law liability of husband).

Child—

Adoption. *See* **Adoption.**

Maintenance—

Divorce proceedings. *See* **Divorce** (Financial provision—Child—Maintenance).

Generally. *See* **Minor** (Maintenance).

Communications between spouses—

Evidence in criminal proceedings. *See* **Criminal evidence** (Spouses—Communications between spouses).

Privilege—

Interrogatory. *See* **Discovery** (Interrogatory—Privilege—Communications between spouses).

HUSBAND AND WIFE (cont)**Consortium—**

Action by husband and wife for injuries to wife—

Estrangement of husband allegedly owing to wife's disfigurement. **Lampert v Eastern National Omnibus Co Ltd** [1954] 2 719, QBD.

Husband's claim for medical and household expenses—Injury to wife through defendant's negligence—Wife's contributory negligence—Reduction of damages awarded to husband—Law Reform (Contributory Negligence) Act 1945, s 1(1). **Mallett v Dunn** [1949] 1 973, KBD.

Husband's contributory negligence—Liability to contribute towards damages awarded to wife—Law Reform (Contributory Negligence) Act 1945, s 1(1). **Drinkwater v Kimber** [1952] 1 701, CA.

Damages—

Impairment of wife's consortium—Defendant liable for injuries sustained by wife in road accident—Wife at no time an in-patient in hospital but partially and temporarily incapacitated for housework—Household tasks partly taken over by husband—Whether husband entitled to damages. **Lawrence v Biddle** [1966] 1 575, QBD.

Loss of consortium as a factor in assessing damages for negligence causing personal injuries to wife. **McNeill v Johnstone** [1958] 3 16, QBD.

Loss of wife's consortium—Measure of damages. **Hare v British Transport Commission** [1956] 1 578, QBD.

Loss of wife's consortium—Measure of damages in action by husband and wife for negligence causing injuries to them—Whether loss of husband's earnings as result of wife's injuries recoverable. **Kirkham v Boughey** [1957] 3 153, QBD.

Total loss of wife's services—Wife injured in road accident for which defendant liable—Wife under care in institution for rest of her life, probably about 25 years—Total incapacity of wife to render services in the home to husband and children—Husband necessarily employing paid housekeeper to care for three children in his home—Claim for total loss of wife's services. **Cutts v Chumley** [1967] 2 89, QBD.

Wife's loss of consortium—Sexual incapacity—Injury to husband causing sexual incapacity—Tortfeasor's liability to wife. **Best v Samuel Fox & Co Ltd** [1952] 2 394, HL.

Conspiracy—

Criminal liability. *See* **Criminal law** (Conspiracy—Husband and wife).

Contract by wife—

Purchase of goods by wife—

Purchase without informing seller that she intended to buy on behalf of her husband—Leave to defend action by sellers granted under RSC, Ord 14, r 1, on terms. **Fick and Fick Ltd v Assimakis** [1958] 3 182, CA.

Costs—

Legal aid—

Divorce. *See* **Legal aid** (Costs—Divorce).

Taxation—

Value added tax. *See* **Costs** (Taxation—Value added tax—Matrimonial proceedings).

Custody of children—

Conflict of laws—

Ward of court. *See* **Ward of court** (Jurisdiction).

Custody order made by magistrates—

Access to children unsatisfactory—Ward of court. *See* **Ward of court** (Custody—Prior custody order made by magistrates).

Generally. *See* **Minor** (Custody).

Damages—

Personal injury—

Loss of earnings—Joint earnings. *See* **Damages** (Personal injury—Loss of joint earnings—Husband and wife).

Loss of earnings. *See* **Damages** (Personal injury—Loss of earnings—Husband and wife in motor accident).

Deserted wife's right to remain in matrimonial home—

Bankruptcy—

Possession—Husband adjudicated a bankrupt—Right of trustee to possession. **Bendall v McWhirter** [1952] 1 1307, CA.

Sale—Husband adjudicated bankrupt—Joint tenancy of husband and wife—Sale at instance of trustee in bankruptcy. **Re A Debtor, ex parte The Trustee v Solomon** [1966] 3 255, ChD.

Extent of right—

Cost to husband exceeding anything he might be ordered to pay in maintenance—Whether wife as trustee under trust for sale would be ordered to concur in sale of matrimonial home. **Jackson v Jackson** [1970] 3 854, ChD.

Husband restrained from selling matrimonial home—Right of wife to reside in house until provision of alternative accommodation—Married Women's Property Act 1882, s 17. **Lee v Lee** [1952] 1 1299, CA.

Whether wife as trustee under trust for sale may be ordered to concur in sale of matrimonial home. *See* **Matrimonial home**—Sale under trust for sale—Joint tenants—One party not wishing to sell, *post*.

Legal or equitable interest of wife—

Maintenance order containing non-cohabitation clause—Husband restrained from selling matrimonial home—Right of deserted wife to remain in matrimonial home without showing a legal or equitable interest—Married Women's Property Act 1882, s 17. **Halden v Halden** [1966] 3 412, CA.

Mortgage—

After desertion—Mortgage of matrimonial home by husband after desertion—Equitable mortgage—Claim for possession by equitable mortgagee—No notice of desertion—Wife's right to remain in matrimonial home—Nature of right. **Westminster Bank Ltd v Lee** [1955] 2 883, ChD.

HUSBAND AND WIFE (cont)

Deserted wife's right to remain in matrimonial home (cont)—

Mortgage (cont)—

After desertion—Mortgage of matrimonial home by husband after desertion—Equitable mortgage—Claim for possession by equitable mortgagee—Wife's right to remain in matrimonial home. **Barclays Bank Ltd v Bird** [1954] 1 449, ChD.Before desertion—Mortgage of matrimonial home by husband before desertion—Claim for possession by mortgagees—Wife's right to remain in matrimonial home. **Lloyds Bank Ltd v Oliver's Trustee** [1953] 2 1443, ChD.Mortgagees' right to possession—Dwelling-house mortgaged to trustees—Sale of house by husband to his mistress—New mortgage by mistress to same mortgagees, the husband joining as surety—Mortgagees' right to possession on default by mistress and husband in paying interest on mortgage debt. **Churcher v Street** [1959] 1 23, ChD.

Notice of licence to occupy—

Licence to occupy rent free—Purchaser acquiring property with notice of wife's occupation. **Jess B Woodcock & Son Ltd v Hobbs** [1955] 1 445, CA.Purchaser acquiring property with notice of licence. **Ferris v Weaven** [1952] 2 233, QBD.Purchaser acquiring property with notice of licence—Limitation to licence—Relinquishment by wife of licence—Occupation of other accommodation. **Street v Denham** [1954] 1 532, Assizes.

Notice of wife's occupation—

Defence to summary proceedings—Purchaser acquiring property with notice of wife's occupation—Whether transaction a sham—Whether wife entitled to defend proceedings for summary judgment to evict her—RSC, Ord 14, r 3(1)—Matrimonial Homes Act 1967, s 2(6), (7). **Miles v Bull** [1968] 3 632, QBD.Effect of purchaser's knowledge—Purchaser acquiring property with notice of wife's occupation—Whether transaction a sham—Wife's interest not registered—Whether constructive trust arising out of purchaser's knowledge of her occupation—Whether unconscionable to allow wife to be evicted—Land Registration Act 1925, s 10(1)—Matrimonial Homes Act 1967, s 2(7). **Miles v Bull (No 2)** [1969] 3 1585, QBD.

Possession—

Action for possession by landlord—Purported surrender by husband of premises by agreement—Husband's furniture remaining on premises—No statutory ground for possession pleaded by landlord—Separate actions for possession against husband and wife—Consolidation of actions—Joinder of parties in one action. **Middleton v Baldock** [1950] 1 708, CA.Alternative accommodation—Order for possession on provision of suitable alternative accommodation—'Liberty to apply'—Variation of order—No change of circumstances. **Cristel v Cristel** [1951] 2 574, CA.

Registered land—

Overriding interest—Personal right not an overriding interest—Land Registration Act 1925, s 70(1)(g). **National Provincial Bank Ltd v Ainsworth** [1965] 2 472, HL.

Rent—

Application to tribunal—Application by wife to rent control tribunal to fix reasonable rent—No authority to act as husband's agent. **R v Twickenham Rent Tribunal, ex parte Dunn** [1953] 2 734, QBD.

Revocation of licence—

Dissolution of marriage—Revocation of licence to occupy premises—Length of notice to deliver up possession. **Vaughan v Vaughan** [1953] 1 209, CA.

Statutory tenancy—

Order for possession against husband—Right of wife to apply to set aside order. *See Rent restriction* (Possession—Order—Application to set aside).Purported surrender by husband of premises by agreement—Husband's furniture remaining on premises—Statutory tenancy not terminated. **Old Gate Estates Ltd v Alexander** [1949] 2 822, CA.

Undertaking by husband—

Subsequent conveyance—Undertaking by husband on summons for maintenance, to allow wife and children to remain in house rent free—Conveyance by husband to plaintiff—Right of wife to remain in house. **Thompson v Earthy** [1951] 2 235, KBD.Divorce. *See Divorce*.Domicile. *See Domicile* (Husband and wife).

Fatal accident—

Death of wife—

Quantum of damages. *See Fatal accident* (Damages—Death of wife).

Professional relationship—

Damages. *See Fatal accident* (Damages—Husband and wife—Professional relationship).

Financial provision—

Divorce. *See Divorce* (Financial provision).Foreign marriage. *See Marriage* (Foreign marriage).

Gift—

Presumption of resulting trust. *See Gift* (Presumption of resulting trust—Husband and wife).Guarantee. *See Guarantee* (Husband and wife).

Harbouring—

Husband—

Action by wife—Husband living apart from wife on property near and belonging to woman friend—Husband maintained by her—Whether tort of harbouring actionable at suit of wife. **Winchester v Fleming** [1958] 3 51, CA.

Wife—

Action by husband—Wife living with her parents and apart from husband. **Gottlieb v Gleiser** (1955) [1957] 3 715, QBD.Income tax. *See Income tax* (Husband and wife).

HUSBAND AND WIFE (cont)

- Inheritance—
 - Family provision. *See* **Family provision**.
- Injunction. *See* **Injunction** (Husband and wife).
- Insurance policy—
 - Benefit of wife and children—
 - Adopted child—No legal adoption—Married Women's Property Act 1882, s 11. **Re Clay's Policy of Assurance** [1937] 2 548, ChD.
 - Expressed to be for benefit of wife—
 - Memorandum that policy moneys payable to wife if alive at happening of event giving rise to claim—Married Women's Property Act 1882, s 11. **Re Gladitz** [1937] 3 173, ChD.
 - Lien on policy money—
 - Policy taken out by husband for benefit of wife—Death of wife—Husband continuing to pay premiums—Married Women's Property Act 1882, s 11. **Re Smith** [1937] 3 472, ChD.
- Interpleader—
 - Order directing trial. *See* **Interpleader** (Jurisdiction—Order directing trial of issue between claimants—Husband and wife).
- Intestacy—
 - Rights of surviving spouse. *See* **Intestacy** (Rights of surviving spouse).
- Invalid marriage—
 - Limitation of action—
 - Concealment of right of action by fraud. *See* **Limitation of action** (Concealment of right of action by fraud—Marriage contract—Invalid marriage).
- Issue estoppel—
 - Matrimonial proceedings. *See* **Estoppel** (Issue estoppel—Matrimonial proceedings).
- Joint account. *See* **Property**—Joint account, *post*.
- Joint employment—
 - Statutory minimum remuneration. *See* **Master and servant** (Remuneration—Statutory minimum—Joint employment of husband and wife).
- Joint tenancy—
 - Matrimonial property—
 - Severance. *See* **Joint tenancy** (Means of effecting severance—Application to determine interests in matrimonial property).
- Judicial separation—
 - Decree—
 - Form of decree—Findings—Inclusion of findings on which judge has adjudicated—Naming of woman found guilty of adultery. **Schlesinger v Schlesinger** (**Nystrom and Swanson intervening**) (**Hall cited**) [1959] 1 155, CA.
 - Reversal of decree—Absence of party—Decree made 'in the absence' of a party—Limited appearance by husband to wife's petition—Non-receipt of notice of wife's setting down for hearing—Consequent non-appearance at hearing—Court's power to reverse decree—Matrimonial Causes Act 1950, s 14(3). **Wilkinson v Wilkinson** [1962] 1 922, CA.
 - Discretion—
 - Prayer—Whether petition need include a prayer for the court's discretion—Whether a discretion statement need be lodged. **Haniver v Haniver** [1959] 3 854, Div.
- Form of petition—
 - Children or issue—Reference to there being no other children of the family. **Practice Note** [1959] 2 163, Div.
 - Inclusion of prayer for court's discretion. *See* **Judicial separation**—Discretion—Prayer, *ante*.
 - Printed forms—Use of printed forms sold by law stationers—Matrimonial Causes Rules 1971 (S I 1971 No 953), r 9, App 2, Form 2. **Practice Direction** [1971] 3 288, Div.
- Grounds for presentation of petition—
 - Desertion—Period of desertion required by statute—'Might have been presented'—Matrimonial Causes Act 1937, s 5(1). **Chadburn v Chadburn** [1941] 1 407, Div.
- Jurisdiction—
 - Residence. *See* **Judicial separation**—Residence, *post*.
 - Territorial jurisdiction—Time at which territorial jurisdiction must subsist. **Sinclair (formerly Steinbock) v Sinclair (formerly Steinbock)** [1967] 3 882, CA.
- Residence—
 - Husband abroad—Respondent husband in United States—Maintenance of matrimonial home in England continued by husband—Family supported there by husband—English education of children—Return of husband to matrimonial home in England after presentation of petition, and rejection of him by wife. **Sinclair (formerly Steinbock) v Sinclair (formerly Steinbock)** [1967] 3 882, CA.
 - Husband temporarily in England—Respondent husband temporarily in England for business and for proceedings to obtain custody of child—Supreme Court of Judicature (Consolidation) Act 1925, s 32. **Matalon v Matalon** [1952] 1 1025, CA.
 - Temporary residence—Respondent husband temporarily resident in England—Husband's purpose in coming to England to effect reconciliation and to seek court's protection with respect to child. **Keserue v Keserue** [1962] 3 796, Div.
- Kidnapping—
 - Child—
 - Removal of child from foreign jurisdiction—Wardship proceedings. *See* **Ward of court** (Jurisdiction—Kidnapping).
 - Wife—
 - Kidnapping of wife by husband. *See* **Criminal law** (Kidnapping—Husband and wife).
- Living apart—
 - Divorce. *See* **Divorce** (Separation).
- Lump sum order. *See* **Divorce** (Financial provision—Lump sum order).

HUSBAND AND WIFE (cont)

Maintenance—

Address—

Husband's address for service—Disclosure by government department. *Practice Note* [1957] 2 504, Div. *Practice Note* [1965] 2 670, Div. *Practice Direction* [1973] 1 61, FamD.

Agreement—

Compromise—New order—Agreement to pay weekly sum in compromise of proceedings—Payments under agreement duly made—Whether jurisdiction to make new order. *Morton v Morton* [1942] 1 273, Div.

Consideration—Covenant by wife not to sue providing payments punctually made—Covenants by wife to maintain herself and child and to have custody of child. *Goodinson v Goodinson* [1954] 2 255, CA.

Consideration—Wife in desertion—Agreement by wife to maintain herself, to indemnify husband against debts incurred by her, and not to pledge his credit—Wife's right to maintenance suspended, not forfeited. *Williams v Williams* [1957] 3 305, CA.

Duration—No express provision for duration or termination—Subsistence of marriage contemplated at time when agreement entered into—Decree absolute of divorce nearly four years later—Remarriage of wife about four months after that—Thereafter husband paid towards arrears computed to date of wife's remarriage—No claim to maintenance under agreement for period after remarriage until more than four years after remarriage, arrears claimed in respect of period since decree absolute—Whether agreement for maintenance ceased to have effect after decree absolute—Whether wife estopped from asserting claim. *Covell v Sweetland* [1968] 2 1016, QBD.

Jurisdiction—Permanent or continuing financial provisions but agreement not made for the purposes of living separately—Maintenance Agreements Act 1957, s 1(1)(3). *Ewart v Ewart* [1958] 3 561, Div.

Subject to approval of court—Binding effect—Agreement made in contemplation of divorce proceedings—Agreement reached on all essential matters—Whether agreement binding prior to court giving approval. *Smallman v Smallman* [1971] 3 717, CA.

Uncertainty of terms—Husband to pay weekly sum 'as long as I can manage it'—No consideration from wife—Whether intention to create legal relations. *Gould v Gould* [1969] 3 728, CA.

Variation of agreement. *See* Variation of maintenance agreement, *post*.

Amount—

Complaint by wife—One-third of joint earnings—Starting point for assessment—Sum of husband's gross income and wife's net income—Deduction of wife's earnings from one-third figure—Account to be taken of wife's reduced standard of living where parting not consensual—Account to be taken of fact that wife having to go out to work in consequence of separation. *Gengler v Gengler* [1976] 2 81, FamD.

Conduct of parties—Circumstances of case—Whether amount must be such, however reprehensible wife's conduct, as to provide necessities of life, if husband's means sufficient—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 2(1)(b). *Courtney v Courtney* [1966] 1 53, Div.

Conduct of parties—Cohabitation destroyed by wrongful conduct of husband—Assessment to ensure wife's standard of living suffers no more than inherent in circumstances of separation. *Kershaw v Kershaw* [1964] 3 635, Div.

Desire to effect reconciliation between parties—Conduct of parties—Summary Jurisdiction (Married Women) Act 1895, s 5(c). *Wharton v Wharton* [1952] 2 939, Div.

Earning capacity of husband—Overtime pay. *Klucinski v Klucinski* [1953] 1 683, Div.

Earning capacity of husband—Potential earning capacity—Husband unemployed—Justices entitled to take husband's earning capacity into account—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 2(1)(b), as amended by the Maintenance Orders Act 1968, s 1, Sch. *McEwan v McEwan* [1972] 2 708, Div.

Financial pressure on husband—Amount based on desire of justices to force husband to grant wife a tenancy of the matrimonial home. *Wakeford v Wakeford* [1953] 2 827, Div.

Husband's means—Ascertainment of fact—Whether appropriate to direct report by probation officer on means—Magistrates' Courts Act 1952, s 60. *Kershaw v Kershaw* [1964] 3 635, Div.

Means—Total means to be considered—Award to be of sum that is reasonable in circumstances of separation—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 2(1)(b). *Young v Young* [1962] 3 120, Div.

National assistance benefits—Whether regard to be had to national assistance. *Ivory v Ivory* [1954] 1 898, Div.

National assistance benefits—Whether regard to be had to national assistance—National Assistance Act 1948, s 43—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 2(1)(b). *Ashley v Ashley* [1965] 3 554, Div.

Obligations of husband to third party—Husband supporting mistress and her children—Whether relevant circumstances to be taken into account—Whether any priority to be given to legal obligations or to moral obligations of husband—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 2(1)(b). *Roberts v Roberts* [1968] 3 479, Div.

One-third rule—One-third joint income—Summary Jurisdiction (Married Women) Act 1895, s 5(c). *Ward v Ward* [1947] 2 713, Div.

Serving soldier. *Buttle v Buttle* [1953] 2 646, Div.

Wife and child—Separate assessment—Amount to support wife and each child to be assessed separately. *Northrop v Northrop* [1966] 3 797, Div.

Wife's resources—Maintenance reduced—Wife's income, including maintenance, would otherwise exceed husband's. *Attwood v Attwood* [1968] 3 385, Div.

Ante-dating of order—

Committal to prison—No direction for accrual of arrears—Magistrates' Courts Act 1952, s 75. *Starkey v Starkey* [1954] 1 1036, Div.

HUSBAND AND WIFE (cont)**Maintenance (cont)—****Ante-dating of order (cont)—**

Divisional Court's finding that wife's complaint proved—Direction to justices to assess maintenance—Ante-dating maintenance order to date of dismissal of complaint or to date of Divisional Court's finding and direction. **Meyer v Meyer** [1957] 2 456, Div.

Appeal—

Case stated—Jurisdiction of Divorce Divisional Court—Magistrates' Courts Act 1952, s 87(1), (2)—RSC, Ord 59, r 29(2). **Boulton v Boulton** [1956] 3 255, Div.

Application to High Court—

Appeal—Variation of order by Court of Appeal—Applicability of rule that appellate court does not interfere with quantum of an award unless amount ordered was greatly out of scale. **Williams v Williams** [1964] 3 526, CA.

Costs—No enquiry by wife's solicitors as to husband's income and liabilities—Failure of application—Liability of wife's solicitors to pay husband's costs—Matrimonial Causes Act 1950, s 23. **Edwards v Edwards** [1958] 2 179, Div.

Decree of judicial separation already pronounced—Matrimonial Causes Act 1950, s 23(1). **King v King** [1953] 2 1029, CA.

Interim order—Matrimonial Causes Act 1950, s 23(1)—Matrimonial Causes Rules 1950 (S I 1950 No 1940) r 56(10). **S v S** [1954] 1 11, Div.

Jurisdiction—Matrimonial Causes Act 1950, s 23(1). **Woodward v Woodward** [1952] 2 226, Div.

Jurisdiction—Order for permanent alimony already in existence—Jurisdiction to make order on ground of wilful neglect to provide reasonable maintenance—Matrimonial Causes Act 1950, ss 20, 23. **Hodges v Hodges** [1963] 1 197, Div.

Order—Re-hearing—Application to Divisional Court on ground of fresh evidence—Evidence such as satisfied conditions of admissibility of fresh evidence on appeal—Whether Divisional Court had jurisdiction—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 36(1). **Hext v Hext** [1963] 1 774, Div.

Parties resident in same house—Husband discharging all outgoings—Matrimonial Causes Act 1950, s 23(1). **Caras v Caras** [1955] 1 624, Div.

Practice—Trial—No case to answer—Submission by intervener of no case—Whether intervener should be put to election before making submission—Matrimonial Causes Act 1950, ss 5, 23—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 58(17), as substituted by Matrimonial Causes (Amendment) Rules 1958 (S I 1958 No 2082). **Holzer v Holzer (Morley intervening)** [1964] 3 989, Div.

Reasonable belief in wife's adultery—Dismissal of petition for divorce based on this belief—Continued validity of this defence to claim maintenance. **Allen v Allen** [1951] 1 724, CA.

Separation agreement—Covenant by husband for periodical payments—Consideration of existence, terms and effect of agreement—Matrimonial Causes Act 1950, s 23(1). **Morton v Morton** [1954] 2 248, CA.

Undefended owing to accidents in solicitor's office—No error of court—Application to Divisional Court for re-hearing—Matrimonial Causes Act 1950, s 23—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 36(1). **Kosianowski-Lorenz v Kosianowski-Lorenz** [1964] 2 99, Div.

Variation or discharge of order—Adultery by wife subsequent to order—Matrimonial Causes Act 1950, ss 23(1), 28(1). **Spence v Spence** [1964] 3 61, Div.

Wife or child—Husband's whereabouts unknown—Disclosure of husband's address by government departments—Disclosure at request of registrar—Particulars to be certified in request—Information to be supplied to registrar by solicitors prior to request. **Practice Direction** [1973] 1 61, FamD.

Wife or child—Power of court to order payments direct to children—Matrimonial Causes Act 1950, s 23(1). **Logan v Logan** [1954] 2 619, Div.

Arrears—

Action in county court—Petition by husband for divorce on ground of wife's adultery—Proof of adultery relevant on issue of payment of maintenance—Adjournment of action pending hearing of divorce petition. **Hickson v Hickson** [1953] 1 382, CA.

Remission—Power to remit arrears—Discretion—Exercise of discretion—Practice—Time limit—Retrospective time limit of one year—Usual practice to remit earlier years—Magistrates' Courts Act 1952, s 76. **Ross v Pearson** [1976] 1 790, FamD.

Remission of part—Considerations governing exercise of power to remit—Magistrates' Courts Act 1952, s 76. **Pilcher v Pilcher (No 2)** [1956] 1 463, Div.

Summons for arrears—Counter-summons issued and made returnable on day of hearing—Particulars of adultery. **Olding v Olding** [1936] 3 189, Div.

Suspension of committal order—Committal order suspended on condition that current payments made, with further payments on account of arrears—Payment of arrears, but failure to make current payments—Appropriation of payments—Right to discharge of committal order—Summary Jurisdiction Act 1879, s 21(1)—Summary Jurisdiction (Married Women) Act 1895, s 9. **R v Miskin Lower Justices, ex parte Young** [1953] 1 495, QBD.

Attachment of earnings—

Contents of order—Protected earnings rate—Calculation—Factors to be considered—Jurisdiction of justices—Attachment of Earnings Act 1971, s 6(5). **Billington v Billington** [1974] 1 546, FamD.

Potential earning power—Whether potential earning power in another occupation may be considered—Maintenance Orders Act 1958, s 6(3). **Pepper v Pepper** [1960] 1 529, Div.

Protection of employer acting on order—Marriage subsequently declared not to be subsisting—No breach of obligation by employer's compliance with attachment of earnings order—Maintenance Orders Act 1958, s 10(1). **Sammy-Joe v GPO Mount Pleasant Office** [1966] 3 924, ChD.

HUSBAND AND WIFE (cont)

Maintenance (cont)—

Bankruptcy of husband on own petition—

Arrears of maintenance not provable in bankruptcy—Leave of bankruptcy court not required—Magistrates' Courts Act 1952, s 74(6), as substituted by Maintenance Orders Act 1958, s 16(1)—Bankruptcy Act 1914, s 7(1). **James v James** [1963] 2 465, Div.

Cessation of order—

Application by wife—Genuine offer of home by husband—Application dismissed—Lapse of year—No steps taken by wife—Fresh application—Fresh offer of home—Finding that offer untrue—Order for maintenance—Validity. **Balchin v Balchin** [1937] 3 733, Div.

Resumption of cohabitation—Order obtained while wife living apart from husband—Wife's return to husband's house to live in separate rooms as tenant—Summary Jurisdiction (Separation and Maintenance) Act 1925, s 2(2). **Thomas v Thomas** [1948] 2 98, KBD.

Child—

Adopted child—Bigamous marriage. *See Adoption* (Application—Joint application by spouses—Spouses—Order made on application of two 'spouses' jointly—'Spouses' bigamously married—Liability of 'husband' for maintenance of child).

Divorce suit. *See Divorce* (Financial provision—Child—Maintenance).

Order—Settlement for tax purposes. *See Income tax* (Settlement—Meaning—Any trust—Children—Maintenance order).

Conduct of parties—

Previous experience of husband's conduct—No opportunity given to husband to deal with inferences drawn by justices from previous proceedings. **Thomas v Thomas** [1961] 1 19, Div.

Wife complainant having withdrawn from cohabitation. **Waters v Waters** [1967] 3 417, Div.

Conflict of jurisdiction—

Application in High Court for maintenance on ground of wilful neglect to maintain—Summons for maintenance in magistrates' court—Co-equal jurisdiction—Magistrates should adjudicate only in exceptional cases. **Kaye v Kaye** [1964] 1 620, Div.

Decree of judicial separation—Application to High Court for permanent alimony discharged—Summons for maintenance in court of summary jurisdiction. **Cooper v Cooper** [1952] 2 857, Div.

Summons for maintenance and custody of children before justices—Petition for divorce pending in High Court—Discretion in justices to adjudicate in exceptional cases. **Lanitis v Lanitis** [1970] 1 466, Div.

Variation or discharge of order—Change of circumstances—Factors to be considered—Husband ordered to pay wife £4 a week maintenance—Husband at date of order in employment—Husband subsequently made redundant—Supplementary Benefits Commission paying him full amount of supplementary benefit—Husband failing to find employment—Commission not making reduction in amount of benefit paid to husband—Husband applying for reduction of maintenance order—Justices not satisfied husband made genuine attempts to find employment—Application dismissed—Justices ignoring inference that husband not voluntarily unemployed to be drawn from fact commission continuing to pay husband full benefit—Whether factor which ought to have been considered by justices. **Williams (L A) v Williams (E M)** [1974] 3 377, FamD.

Variation or discharge of order—Conflicting decisions of High Court and magistrates' court—No concurrent jurisdiction—Fresh evidence—Refusal to discharge order—Appeal to Divisional Court—Summary Jurisdiction (Married Women) Act 1895, ss 7, 10, 11. **Smyth v Smyth** [1956] 2 476, Div.

Variation or discharge of order—Husband's application for discharge of order—Magistrate certifying that application 'would be more conveniently dealt with by the High Court'—Jurisdiction of High Court with regard to maintenance orders—No original jurisdiction of High Court—Summary Jurisdiction (Married Women) Act 1895, ss 4, 7, 10, 11. **Perks v Perks** [1945] 2 580, CA.

Consensual separation—

Implication of agreement. *See Separation*—Consensual separation—Implication of agreement by husband partly to maintain wife, *post*.

No agreement to maintain wife while living apart from husband—No change of circumstances—Whether wife entitled to maintenance. **Pinnick v Pinnick** [1957] 1 873, Div.

Copies of order—

Maintenance and separation orders—Duty to supply properly certified copies. **Hearn v Hearn and Jarvis** [1953] 1 797, Div.

Deceased former husband—

Provision from estate of deceased former husband. *See Divorce* (Financial provision—Deceased former spouse—Maintenance for surviving spouse out of deceased's estate).

Defence of adultery—

Admissibility of wife's statement reflecting on paternity of child—Rule in **Russell v Russell**—Summons dismissed—Wife's costs—Summary Jurisdiction (Married Women) Act 1895, s 6. **Roast v Roast** [1937] 4 423, Div.

Belief of husband—Conduct of wife—Effect on deserting husband's mind—Reasonable and honest belief of adultery exonerating husband. **Glenister v Glenister** [1945] 1 513, Div.

Notice—Defence of reasonable belief in wife's adultery—Need for notice and particulars. **Jones v Jones** [1954] 3 476, Div.

Res judicata—Allegation of wife's adultery—Previous finding of adultery in county court in action to enforce separation agreement—Summary Jurisdiction (Married Women) Act 1895, s 6. **Whittaker v Whittaker** [1939] 3 833, Div.

Desertion—

Defence of reasonable and honest belief by husband in wife's adultery—Standard of proof. **Jones v Jones** [1953] 2 345, Div.

Expulsion from matrimonial home—Reasonable belief in husband's adultery induced by his conduct. **Baker v Baker** [1953] 2 1199, Div.

HUSBAND AND WIFE (cont)

Maintenance (cont)—

Desertion (cont)—

Parties unlikely to live happily together—Complainant cause of separation—Whether order ought to be made. **Fleming v Fleming** [1942] 2 337, Div.

Divorce suit. *See* **Divorce** (Maintenance).

Examination of witnesses—

Complaint by wife on ground of desertion—Husband not legally represented—In evidence husband testified to refusal by wife of sexual intercourse without justification—No challenge to this in cross-examination on behalf of wife who was legally represented—Magistrates not asked to recall wife and did not do so on their own initiative—Appeal by wife on ground that there had been failure by the court to observe the requirement of the Magistrates' Courts Act 1952, s 61. **Ratcliff v Ratcliff** [1964] 3 351, Div.

Husband's obligation to maintain wife—

Separation of husband and wife—No matrimonial offence by wife—National Assistance Act 1948, s 42. **Stopher v National Assistance Board, National Assistance Board v Parkes** [1955] 1 700, QBD.

Income tax—

Child relief. *See* **Income tax** (Child relief—Income of child—Maintenance).

Injunction. *See* **Injunction** (Husband and wife—Maintenance proceedings).

Jurisdiction—

Application for order against person resident in dominions outside the United Kingdom—Application by wife ordinarily resident in Manchester to justices in Manchester for order against husband resident in Isle of Man—Husband absent from hearing—Wife's cause of complaint wholly arising outside United Kingdom—Jurisdiction to entertain application where wife or husband ordinarily resident within petty sessional area of the court to which the application is made even though cause of complaint arising outside United Kingdom—Maintenance Orders (Facilities for Enforcement) Act 1920, s 3—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 1(2). **Collister v Collister** [1972] 1 334, FamD.

Husband ordinarily resident in Scotland—Wife residing in England at wish of husband—Summary Jurisdiction (Married Women) Act 1895, s 4. **Forsyth v Forsyth** [1947] 2 623, CA.

Husband ordinarily resident in Scotland—Wife resident in England—Summary Jurisdiction (Married Women) Act 1895, s 4. **Macrae v Macrae** [1949] 2 34, CA.

Husband resident in Northern Ireland—Last ordinarily resided together as man and wife in England—Maintenance Orders Act 1950, s 1(1). **Lowry v Lowry** [1952] 2 61, Div.

Parties resident in England—Husband domiciled in South Africa—Husband's application for leave to commence divorce proceedings in South Africa—Wife served with notice before determination of proceedings before justices—Justices refusing to entertain wife's summons for want of jurisdiction—Appeal by wife—Jurisdiction of justices' court not dependent on domicile of parties—Determination of proceedings within the discretion of justices. **Klosser v Klosser** [1945] 2 708, Div.

Registered order—Variation or discharge—Order made by Gibraltar magistrate registered in magistrates' court in England—No jurisdiction in English court to hear complaint by husband for variation or discharge of registered order—Maintenance Orders (Facilities for Enforcement) Act 1920, s 1(1). **Pilcher v Pilcher** [1955] 2 644, Div.

Summons taken out in district where husband residing—Jurisdiction of magistrates of that district—Summary Jurisdiction (Married Women) Act 1895, s 4. **Clarke v Clarke** [1942] 2 274, Div.

Limitation of time—

Maintenance and non-cohabitation orders—Adultery—Whether running from date of adultery or discovery thereof—Constructive desertion founded on adultery—Necessity to prove intention to persist in adultery—Matrimonial Causes Act 1937, s 1. **Teall v Teall** [1938] 3 349, Div.

Non-cohabitation clause—

Clause struck out on appeal—Date on which deletion operative—Effect on petition for divorce on grounds of desertion. **Thory v Thory** [1948] 1 553, Div.

Order—

Ante-dating of order. *See* **Maintenance**—Ante-dating of order, *ante*.

Cessation of order. *See* **Maintenance**—Cessation of order, *ante*.

Divorce—Concurrent order—Order made by justices—Wife granted divorce—Application to Divorce Court for maintenance order for nominal amount during currency of justices' order—Election by wife—Supreme Court of Judicature (Consolidation) Act 1925, s 190(2). **Kilford v Kilford** [1947] 2 381, Div.

Income tax.

Order for sum free of tax—Use of rubber stamp—Practice of the High Court. **Wallis v Wallis** [1941] 2 291, Div.

Refusal to make order. *See* **Maintenance**—Refusal to make order, *post*.

Revival of order. *See* **Maintenance**—Revival of order, *post*.

Revocation of order. *See* **Maintenance**—Revocation of order, *post*.

Variation or discharge. *See* **Variation or discharge of maintenance order, post**.

Overseas order—

Enforcement—Order made in New South Wales—Award to wife and child—Custody given to wife—Validity of custody order—Amount of order exceeding jurisdiction of English court—Maintenance Orders (Facilities for Enforcement) Act 1920, ss 4(1)(3), 10. **Harris v Harris** [1949] 2 318, Div.

Periodical payments order by High Court—

Ability of husband—Husband living with mistress as if husband and wife and acting as business partner and manager for mistress—Husband failing to make proper disclosure of property and income—Court entitled to draw inferences adverse to husband as to his capacity or faculties—Award for wife and children—Matrimonial Causes Rules 1957 (S I 1957 No 619), r 58(4)—Matrimonial Causes Act 1950, s 23(1). **Ette v Ette** [1965] 1 341, Div.

HUSBAND AND WIFE (cont)**Maintenance (cont)—****Periodical payments order by High Court (cont)—**

Date of commencement of payments—Matrimonial Causes Act 1950, s 23(1). **McLellan v McLellan** [1954] 1 1, Div.

Husband's obligations—Expenditure by husband on education of children by his previous marriage—Expenditure by wife on education of children by her previous marriage—Wife's application. **P (J R) v P (G L)** [1966] 1 439, Div.

Husband's realisable capital given to mistress and used by her to purchase mink farm—Husband living free on farm but receiving no wages—Husband in receipt of service pension—Ordered to pay whole of pension to wife for her and two children—Matrimonial Causes Act 1950, s 23(1). **Donaldson v Donaldson** [1958] 2 660, Div.

Retrospective effect—Security—Whether order retrospective to date of application—Whether for wife's life or joint lives—Matrimonial Causes Act 1950, s 23(1) (2). **Piggott v Piggott** [1957] 3 432, CA.

Second wife's application—Expenditure by husband on boarding school education and maintenance of son by previous marriage. **Williams v Williams** [1964] 3 526, CA.

Procedure—

Absence of one justice during part of hearing—Evidence subsequently read over—Case remitted for hearing—Matrimonial Causes Rules 1937 (SR & O 1937 No 1113), r 67(6). **Whittle v Whittle** [1939] 1 374, Div.

Finding of neglect—Adjournment and interim order—Second hearing—Court differently constituted—Evidence not heard de novo—Purported confirmation of interim order. **Fulker v Fulker** [1936] 3 636, Div.

Husband not legally represented—Inadequate cross-examination of wife—Duty of court—Husband's letter to court put to him at end of his evidence—Wife's application for adjournment refused—Refusal by justices to hear legal submission on behalf of wife—Magistrates' Courts Act 1952, s 61. **Marjoram v Marjoram** [1955] 2 1, Div.

Report by probation officer—Necessity for observance of statutory provisions—Summary Procedure (Domestic Proceedings) Act 1937, ss 4, 5. **Higgs v Higgs** [1941] 1 214, Div.

Reasonable maintenance—

Amount—Considerations—Security for life of wife—Matrimonial Causes Act 1950, s 23(1) (2). **Bradley v Bradley** [1956] 1 543, Div.

Deductions from husband's gross income—Infant children provided for under deed of covenant—Jurisdiction to order maintenance for children while living with wife—Matrimonial Causes Act 1950, s 23(1). **Ridley v Ridley** [1953] 1 798, Div.

Desertion of wife by husband—Wife under no duty to earn—Liability of husband—Matrimonial Causes Act 1950, s 23(1). **Le Roy-Lewis v Le Roy-Lewis** [1954] 3 57, Div.

Tests of reasonableness—Husband's common law liability—Previous standard of living—Absence of security or certainty of continuance of existing allowance—Law Reform (Miscellaneous Provisions) Act 1949, s 5(1). **Scott v Scott** [1951] 1 216, Div.

Refusal to make order—

No concurrent jurisdiction—Appeal to Divisional Court—Summary Jurisdiction (Married Women) Act 1895, ss 10, 11. **Davies v Davies** [1957] 2 444, Div.

Revival of order—

Desertion by husband—Order for maintenance—Desertion condoned by resumption of cohabitation—Subsequent persistent cruelty—Summary Jurisdiction (Married Women) Act 1895, s 7—Criminal Justice Administration Act 1914, s 30(3)—Money Payments (Justices Procedure) Act 1935, s 9. **Markham v Markham** [1946] 2 737, Div.

Revocation of order—

Maintenance order in favour of wife—Complaint by husband to reduce amount of order—Revocation of order by justices—Magistrates' Courts Act 1952, s 53. **Bowen v Bowen** [1958] 1 770, Div.

Small maintenance payments—

Income tax—Divorce. *See* **Divorce** (Maintenance—Income tax—Small maintenance payments).

Income tax—Order should not refer to income tax—Income Tax Act 1952, s 206(1). **Jefferson v Jefferson** [1956] 1 31, CA.

Income tax. *See* **Divorce** (Maintenance—Income tax—Small maintenance payments).

Summons—

Particulars—Charge of adultery by husband—Need for particulars of charge—Summary Jurisdiction (Married Women) Act 1895, s 6. **Duffield v Duffield** [1949] 1 1105, Div.

Suspension of committal order—

Examination of husband as to means—Committal order suspended on condition that current payments made, with further payments on account of arrears—Failure to comply with terms of suspension—Issue of warrant of commitment—No further enquiry as to husband's failure to pay—Money Payments (Justices Procedure) Act 1935, s 8(1)(a). **R v Governor of Bedford Prison, ex parte Ames** [1953] 1 1002, QBD.

Variation of maintenance agreement. *See* Variation of maintenance agreement, *post*.

Variation or discharge of order—

Estoppel. *See* **Estoppel** (Husband and wife—Maintenance—Variation or discharge of order).

Generally. *See* Variation or discharge of maintenance order, *post*.

Wife residing with husband—

Enforceability of and liability under order—'Resides with'—Wife in state of desertion but continuing to live in same house as husband—Whether wife residing with husband—Summary Jurisdiction (Separation and Maintenance) Act 1925, s 1(4). **Naylor v Naylor** [1961] 2 129, Div.

Husband living in wife's house—Summary Jurisdiction (Separation and Maintenance) Act 1925, s 1(4). **Curtin v Curtin** [1952] 1 1348, QBD.

Husband returning after interval to live with wife—Residence for more than three months under same roof—No resumption of cohabitation—Summary Jurisdiction (Separation and Maintenance) Act 1925, ss 1(4), 2(2). **Hewitt v Hewitt** [1952] 2 250, QBD.

HUSBAND AND WIFE (cont)

Maintenance (cont)—

Wife residing with husband (cont)—

Parties living under same roof—Summary Jurisdiction (Separation and Maintenance) Act 1925, ss 1(4), 2(2). **Wheatley v Wheatley** [1949] 2 428, KBD.

Wife continuing to live in separate part of husband's house—Summary Jurisdiction (Separation and Maintenance) Act 1925, s 1(4). **Evans v Evans** [1947] 2 656, KBD.

Wilful neglect to maintain. *See* Wilful neglect to maintain, *post*.

Marriage—

Dissolution. *See* Divorce.

Generally. *See* Marriage.

Nullity. *See* Nullity.

Marriage settlement— *See* Settlement (Marriage settlement).

Matrimonial home—

Bankruptcy. *See* Bankruptcy (Property available for distribution—Matrimonial home).

Both parties contributing to purchase—

Apportionment of beneficial interest—Basis of apportionment—Resulting trust—Proportions in which parties contributed to purchase moneys—Inference of agreement or intention as to shares in which parties to be treated as having provided purchase money—Application of principles of equitable accounting—Wife making cash contribution to purchase price—Husband raising balance by means of loans including mortgage on house—Husband solely responsible for mortgage repayments—Wife making overdue interest payments on mortgage. **Cowcher v Cowcher** [1972] 1 943, FamD.

Contributions by wife in looking after home and caring for family—Contributions to cost of improving home—Imputed trust—House purchased by husband before marriage contemplated—Husband sole owner at all times—Wife's contributions in looking after home, etc not sufficient to entitle her to beneficial interest in home—Contributions to cost of improving home entitling her to share—Married Women's Property Act 1882, s 17—Matrimonial Proceedings and Property Act 1970, s 37. **Kowalczyk v Kowalczyk** [1973] 2 1042, CA.

Contribution by wife to family income—House acquired in husband's name by means of loans from his parents and building society—Husband paying mortgage instalments—Wife's earnings used for her own and children's clothing and to supplement housekeeping allowance—Wife claiming share in matrimonial home—Whether wife's contributions referable to acquisition of home—Whether relevant that husband could have paid mortgage instalments without wife's contribution. **Hazell v Hazell** [1972] 1 923, CA.

Conveyance to spouses jointly—Wife providing £2,000 from own moneys, the remainder being borrowed on mortgage—Mortgage payments made by husband—Entitlement, as between spouses, to proceeds of sale of house—Married Women's Property Act 1882, s 17. **Hine v Hine** [1962] 3 345, CA.

Deposit—Contributions to deposit in unequal shares—Husband paying outgoings on house and wife paying housekeeping—Entitlement to profit on sale. **Chapman v Chapman** [1969] 3 476, CA.

Determination of beneficial interests—Respective beneficial interests not ascertainable by reference to amounts of contributions—Married Women's Property Act 1882, s 17. **Rimmer v Rimmer** [1952] 2 863, CA.

Direct and indirect contributions. **Gissing v Gissing** [1970] 2 780, HL. **Falconer v Falconer** [1970] 3 449, CA. **Davis v Vale** [1971] 2 1021, CA.

Home acquired by joint efforts—Wife contributing to purchase of plot, and abandoning her own work to help with building operations—Labour and materials paid for by husband's mother—Wife's work not mere leisure activity—Beneficial ownership in husband and wife jointly, in equal shares. **Smith v Baker** [1970] 2 826, CA.

House in wife's name as sole mortgagor—Husband and his father sureties—Mortgage instalments paid by wife out of fund consisting of husband's housekeeping allowance and wife's earnings—Husband paid £105 towards building costs—Husband and wife beneficially entitled to house jointly, in equal shares—Principles applicable on beneficial ownership of matrimonial home. **Falconer v Falconer** [1970] 3 449, CA.

Husband alone making mortgage repayments—Court order for sale with vacant possession—Sale inappropriate when matrimonial proceedings pending—Married Women's Property Act 1882, s 17. **Cobb v Cobb** [1955] 2 696, CA.

Husband sole owner at law—Beneficial interests—Common intention of parties at date of acquisition—Wife making contribution to purchase price—Husband undertaking to pay mortgage instalments—Wife undertaking to pay off mortgage out of anticipated legacy—Wife's undertaking unenforceable—Wife paying off mortgage out of legacy five years later—Whether wife entitled to share of beneficial interest in home. **Re Nicholson (decd)** [1974] 2 386, ChD.

Husband sole owner at law—Intention to divide responsibility for repairs and improvements—Mortgage instalments paid by husband—Finally expenses paid by wife—Husband and wife beneficially entitled to house jointly in equal shares—Principles applicable to beneficial ownership of matrimonial home—Married Women's Property Act 1882, s 17—Matrimonial Proceedings and Property Act 1970, s 37. **Davis v Vale** [1971] 2 1021, CA.

Husband sole owner at law—Land conveyed to husband alone—Claim by wife to beneficial interest—Entitlement—Evaluation of wife's share. **Heseltine v Heseltine** [1971] 1 952, CA.

Intention of parties—Married Women's Property Act 1882, s 17. **Re Rogers' Question** [1948] 1 328, CA. **Frabance v Frabance** [1957] 1 357, CA.

Land conveyed to husband alone—No second trustee of land—Husband entered into contract to sell matrimonial home—Injunction sought by wife to restrain sale or lease without her consent. **Waller v Waller** [1967] 1 305, ChD.

HUSBAND AND WIFE (cont)

Matrimonial home (cont)—

Both parties contributing to purchase (cont)—

Purchase before marriage—Wife contributing cash and husband procuring mortgage—Conveyance to husband alone—Both spouses at work and contributing to common fund for household expenses—Equity of redemption of house held beneficially for them as tenants in common equally. **Ulrich v Ulrich and Felton** [1968] 1 67, CA.

Separation of parties—Husband's sale of house and furniture—Wife's application for determination of question as to proceeds—No identifiable fund on which order could operate—No power to order payment of money—Married Women's Property Act 1882, s 17. **Tunstall v Tunstall** [1953] 2 310, CA.

Subsequent contributions—Direct and indirect contributions—House acquired in husband's name by 100 per cent loan to him from his employers—Loan secured by life policy taken out by husband—No initial contribution by wife to purchase of house—Wife paying substantial sums to household expenses out of her own pocket—Wife also paying deposit on new car—Wife's contributions enabling husband to pay life policy premiums and relieving husband of expenses on house and car which he would otherwise have had to pay—Wife's entitlement to half share of proceeds of sale of house and car on break-up of marriage. **Hargrave v Newton (formerly Hargrave)** [1971] 3 866, CA.

Breach of undertaking to leave home—

Decree absolute—After decree husband undertaking to vacate matrimonial home—Breach of undertaking—Court's jurisdiction to commit husband for contempt. **Stewart v Stewart** [1973] 1 31, FamD.

Conduct of parties—

Relevance in taking accounts on sale of home following breakdown of marriage—Mortgage repayments—Capital and interest payments. *See* Matrimonial home—Mortgage repayments—Capital and interest repayments, *post*.

Relevance in taking accounts on sale of home following breakdown of marriage—Parties each entitled to half share in home—Parties each contributing to payment of mortgage instalments and household expenses whilst living in home—Wife leaving husband for another man—Husband thereafter paying all mortgage instalments—Husband having sole use of home—Husband entitled to credit for mortgage instalments paid since wife's departure—Entitled to deduct half amount paid from wife's share in proceeds of sale of home in view of her conduct in leaving home voluntarily. **Cracknell v Cracknell** [1971] 3 552, CA.

Costs—

Registration of land charge. *See* Matrimonial home—Land charge—Registration—Cost of registration allowed, *post*.

Death—

Intestacy—Right of surviving spouse to acquire home. *See* Intestacy (Appropriation by personal representatives—Surviving spouse—Matrimonial home).

Declaration of trust—

Beneficial interests—Conveyance to husband in sole name—Execution of trust deed—Husband and wife possessed of property as 'joint tenants beneficially'—Terms of trust deed conclusive of parties' beneficial interests. **Leake (formerly Bruzzi) v Bruzzi** [1974] 2 1196, CA.

Divorce of parties—Wife seeking sale of property—Entitlement to proceeds of sale—Whether courts would go behind express trust—Intention of parties—Whether wife could be put on terms to grant tenancy to husband. **Re John's Assignment Trusts** [1970] 2 210, ChD.

Mortgage repayable by instalments—Separation of spouses—Matrimonial home sold—Mortgage repayments made by husband before and after separation—Entitlement as between spouses to proceeds of sale of house—Married Women's Property Act 1882, s 17. **Wilson v Wilson** [1963] 2 447, CA.

Property purchased out of husband's savings—Husband carrying on business on property—Wife deserting husband—Wife's entitlement to share in property—Whether order for sale of property should be made—Payment by husband of weekly sum in respect of wife's interest—Injunction restraining wife from dealing with her interest—Married Women's Property Act 1882, s 17. **Bedson v Bedson** [1965] 3 307, CA.

Sale under trust for sale—Joint tenants—Wife deserting husband—Two years' absence—No divorce proceedings but marriage in fact at an end—Only child of marriage an adult—Discretion of court—Order for sale with vacant possession—Whether jurisdiction under Married Women's Property Act 1882, s 17—Law of Property Act 1925, s 30—Matrimonial Causes (Property and Maintenance) Act 1958, s 7(7). **Rawlings v Rawlings** [1964] 2 804, CA.

Deserted wife's right to remain in matrimonial home. *See* Deserted wife's right to remain in matrimonial home, *ante*.

Family enterprise—

Agreement by both spouses and wife's mother to buy, furnish and equip a house to live in—Initial payment for house by wife and wife's mother—Property conveyed to husband alone—Mortgage to husband alone. **Macdonald v Macdonald** [1957] 2 690, ChD.

Purchase by wife and her parents as home for themselves and for husband and wife and their child—Husband absent on naval service—Monthly allotments from his pay to wife—Deposit, mortgage payments and repairs paid from wife's bank account—Contributions by her parents towards mortgage payments—Whether husband part owner of house—Married Women's Property Act 1882, s 17. **Richards v Richards** [1958] 3 513, CA.

Husband sole owner at law—

Beneficial interests—Purchase by husband—Wife contributing to household expenses—Intention—Whether wife had beneficial interest in property. **Allen v Allen** [1961] 3 385, CA.

HUSBAND AND WIFE (cont)**Matrimonial home (cont)—****Husband sole owner at law (cont)—**

Both parties contributing to purchase. *See* **Matrimonial home**—Both parties contributing to purchase—Husband sole owner at law, *ante*.

Claim by wife to beneficial interest—Basis of claim—Principles applicable to beneficial ownership—Inference or imputation of intention. **Davis v Vale** [1971] 2 1021, CA.

Claim by wife to beneficial interest—Basis of claim—Estate owner holding as trustee. **Gissing v Gissing** [1970] 2 780, HL.

Extension to home—Beneficial interest of wife—Married Women's Property Act 1882, s 17. **Muetzel v Muetzel** [1970] 1 443, CA.

Joint efforts of husband and wife in business—Inference that wife entitled to joint interest—Inference not ousted by previous matrimonial home in joint names—Husband owning business before marriage—Husband contributing to original matrimonial home from savings—Married Women's Property Act 1882, s 17. **Nixon v Nixon** [1969] 3 1133, CA.

Wife's contributions—Wife paid for furniture and contributed to household expenses—Whether wife entitled to beneficial interest in house. **Gissing v Gissing** [1970] 2 780, HL.

Improvements—

Joint enterprise—Improvements by husband—Conversion of wife's house into flats—Work done by husband—Proportions in which profits to be shared not agreed—Divorce proceedings—Determination of husband's share of profits—Married Women's Property Act 1882, s 17—Matrimonial Causes (Property and Maintenance) Act 1958, s 7(3). **Jansen v Jansen** [1965] 3 363, CA.

Wife sole legal owner—Improvements by husband—Wife leaving husband and petitioning for divorce on grounds of cruelty—Husband seeking restitution of conjugal rights—Husband working at matrimonial home and willing to pay rent—Whether order for sale forthwith of house should be made—Whether husband entitled to part of proceeds when house sold—Married Women's Property Act 1882, s 17. **Appleton v Appleton** [1965] 1 44, CA.

Wife sole legal owner—Improvements to matrimonial home effected by husband—No bargain between husband and wife that he should acquire beneficial interest in matrimonial home in return for his work—Wife left husband and obtained divorce—Family assets—Common intention of parties—Application of presumption of resulting trust and presumption of advancement—Whether husband entitled to beneficial interest in matrimonial home in respect of the improvements—Whether husband entitled to payment of the amount thereof—Married Women's Property Act 1882, s 17. **Pettitt v Pettitt** [1969] 2 385, HL.

Injunction—

Exclusion of spouse from home. *See* **Injunction** (Exclusion of spouse from matrimonial home).

Generally. *See* **Injunction** (Husband and wife—Matrimonial home).

Intestacy—

Rights of surviving spouse. *See* **Intestacy** (Rights of surviving spouse—Rights as respects matrimonial home).

Land charge—

Registration—Cost of registration allowed—Matrimonial Homes Act 1967, s 2(6) (7). **Practice Direction** [1968] 1 456, Div.

Registration—Rights of occupation—Spouse not in occupation—Leave of court required before registration—Matrimonial Homes Act 1967, ss 1(1)(b), 2(6). **Rutherford v Rutherford** [1970] 3 422, ChD.

Registration—Right of occupation—Spouse not in occupation—Right of occupation subject to leave of court—Registered land—Whether non-occupying spouse having right to register notice of charge before obtaining leave of court—Matrimonial Homes Act 1967, ss 1(1)(b), 2(7). **Watts v Waller** [1972] 3 257, CA.

Wife registering charge—Interim order giving wife right to exclusive occupation—Refusal to adjourn to enable husband to prove all circumstances—Validity of order—Matrimonial Homes Act 1967, s 1. **Baynham v Baynham** [1969] 1 305, CA.

Maintenance order—

Husband entitled to deduct sum while wife resided in the house—Whether tenancy created by conduct—Availability. **Bramwell v Bramwell** [1942] 1 137, CA.

Mortgage—

Deserted wife's right to be joined in proceedings against husband by mortgagee. *See* **Mortgage** (Action by mortgagee for possession—Parties).

Priority of wife's equitable interest. *See* **Mortgage** (Equitable interest—Priority—Husband and wife's joint purchase of matrimonial home).

Mortgage repayments—

Capital and interest repayments—Home in beneficial ownership of both parties—Wife leaving home—Husband thereafter making mortgage repayments—Husband in sole occupation—Wife obtaining divorce based on husband's behaviour—Petition undefended—Sale of home—Parties entitled to equal shares in proceeds of sale—Husband entitled to credit for mortgage repayments in respect of capital—Husband not entitled to credit for interest payments. **Leake (formerly Bruzzi) v Bruzzi** [1974] 2 1196, CA.

No relationship of landlord and tenant—

Proceedings not properly constituted—Married Women's Property Act 1882, s 17—County Court Rules, Ord 6, r 7(1). **Pargeter v Pargeter** [1946] 1 570, CA.

Occupation—

Home jointly owned by spouses—No jurisdiction to enforce right of occupation—Matrimonial Homes Act 1967, s 1. **Gurasz v Gurasz** [1969] 3 822, CA.

HUSBAND AND WIFE (cont)**Matrimonial home (cont)—****Possession—**

Adulterous wife in possession—Wife petitioning for divorce on ground of cruelty—Summons by husband for possession adjourned by registrar till after hearing of divorce suit or provision of alternative accommodation—Jurisdiction—Discretion—Appeal against registrar's order—Whether interlocutory or final—Married Women's Property Act 1882, s 17—RSC, Ord 58, r 4(1). **Short v Short** [1960] 3 6, CA.

Presumption of advancement—

Matrimonial home conveyed into wife's name—Purpose of putting property in wife's name to avoid claim by creditors of husband's business—Husband acting honestly. **Tinker v Tinker** [1970] 1 540, CA.

Wife sole legal owner—Financial contributions by husband—Presumption now rarely applicable where question arises of beneficial ownership of matrimonial home—Mortgage instalments for house in wife's name paid out of fund partly comprising husband's housekeeping allowance to wife—No presumption of advancement. **Falconer v Falconer** [1970] 3 449, CA.

Wife sole legal owner—Part of purchase money defrayed by mortgage to building society—Repayments out of money provided by husband—Married Women's Property Act 1882, s 17. **Silver v Silver** [1958] 1 523, CA.

Protection against eviction—

Husband entitled to occupy by virtue of estate or interest—Wife obtaining separation order containing non-cohabitation clause—Wife's application for order excluding husband from matrimonial home—Jurisdiction of court—Whether order 'regulating the exercise' of the husband's right to occupy the property—Matrimonial Homes Act 1967, s 1(2). **Tarr v Tarr** [1972] 2 295, HL.

Procedure—Appeal from registrar—Forum of appeal—Matrimonial Homes Act 1967, s 1—RSC Ord 58, r 1(1). **Tinker v Tinker (Roberts cited)** [1970] 3 958, Div.

Procedure—Application may be heard by registrar—RSC, Ord 32, r 11—RSC, Ord 89, r 1, r 3—Matrimonial Homes Act 1967, s 1. **Practice Direction** [1968] 2 135, Div.

Rateable occupier—

Husband divorced from wife—Wife in occupation. *See Rates* (Rateable occupation—Occupation by relatives—Husband and wife—Former matrimonial home—Wife in occupation by agreement).

Rates—

Occupation by wife after separation—Husband's liability for rates. **Cardiff Corp'n v Robinson** [1956] 3 56, QBD.

Sale under trust for sale—

Bankruptcy—Husband and wife joint tenants—Property purchased with money provided by husband in cash and by mortgage, he keeping down the mortgage payments—Husband deserted wife in 1954—Consent order for maintenance made in 1960 containing undertaking by him to allow wife to reside rent-free in property for life—Husband adjudicated bankrupt in 1964—Whether wife's rights under undertaking amounted to an interest in land binding on trustee in bankruptcy—Discretion to order sale of property—Law of Property Act 1925, s 30. *Re A Debtor, ex parte The Trustee v Solomon* [1966] 3 255, ChD.

Joint tenants—One party not wishing to sell—Discretion of court to order sale with vacant possession—Husband applying to court for order—Husband found by justices to have deserted wife—Wife living in matrimonial home—Marriage irretrievably broken down but no divorce—Parties each living on welfare income of £8 a week—House worth £4,000 to £5,000 and too large for wife on her own—Whether just and equitable to order sale of house with vacant possession—Law of Property Act 1925, s 30—Trustee Act 1925, s 57. **Jackson v Jackson** [1971] 3 774, CA.

Power to postpone sale—Power of court to order sale—Discretion—Declaration as to property rights—Declaration that husband holding property in trust for himself and wife in equal shares—Husband and wife divorced—Wife living in house with two children of marriage—Factors to be taken into consideration by court when determining whether to order sale—Duty of husband to provide for children—Whether relevant consideration—Married Women's Property Act 1882, s 17. **Burke v Burke** [1974] 2 944, CA.

Refusal of trustee to concur in sale. *See Trust and trustee* (Trust for sale—Refusal of trustees to concur in sale—Husband and wife).

Sale with vacant possession—

Duty of vendor to bring proceedings to obtain possession. *See Specific performance* (Sale of land—Sale with vacant possession—Duty of vendor to bring proceedings to obtain possession).

Separation of parties—

Right to remain in home—Trespass—Wife owner of home—Husband remaining in home—Whether husband trespasser—Wife forming association with another man—Husband expelling wife from home—Possibility of husband applying to court for leave to remain in home—Husband not a trespasser until court order to leave or decree absolute of divorce—Husband liable as trespasser for mesne profits after date of decree absolute. **Morris v Tarrant** [1971] 2 920, QBD.

Transfer—

Order of court—Application for order on decree of divorce, nullity or judicial separation—Mortgaged property—Mortgagee to have notice of application and opportunity to be heard—Matrimonial Proceedings and Property Act 1970, s 4. **Practice Direction** [1971] 1 896, Div.

Wife deserted by husband—Agreement to transfer home to wife—Enforceability of agreement. *See Contract* (Intention to create legal relationship—Presumption against intention—Presumption inapplicable—Husband and wife not living in amity—Evidence disclosing intention to create legal relationship—Agreement after separation—Husband providing for wife—Wife paying off mortgage on matrimonial home).

HUSBAND AND WIFE (cont)

Matrimonial home (cont)—

Unmarried couple. *See* **Trust and trustee** (Constructive trust—Unmarried couple—House acquired by joint efforts for joint benefit).

Wife in occupation after separation—

Liability for rates. *See* **Rates** (Rateable occupation—Joint rateable occupation—Husband separated from wife).

Wife in peril of physical ejection—

Discretion of court—Married Women's Property Act 1882, s 17. **Stewart v Stewart** [1947] 2 813, CA.

Matrimonial order—

Interim order—

Appeal to High Court from order of magistrates—Whether High Court has power to ante-date interim order—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 6(1)(c). **Bould v Bould (by her Guardian)** [1967] 2 1128, Div.

Power to make interim order after a finding—Order for maintenance—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 6. **Robbins v Robbins** [1970] 2 742, Div.

Non co-habitation clause—

Matters to be considered in exercising discretion to include clause. **Corton v Corton** [1962] 3 1025, Div.

Non-cohabitation clause—

Complaint by wife of husband's desertion—Variation of maintenance order by insertion of provision that defendant should be no longer bound to cohabit with complainant—Want of jurisdiction—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 2(1)(a). **Wall v Wall** [1967] 3 408, Div.

Finding of wilful neglect to maintain. **Gollins v Gollins** [1963] 2 966, HL.

Finding of wilful neglect to maintain—No other circumstances making separation order necessary—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 2(1)(a). **Vaughan v Vaughan** [1963] 2 742, Div.

Inappropriate in cases of simple desertion or wilful neglect to maintain—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 2(1)(a). **Jolliffe v Jolliffe** [1963] 3 295, Div.

Matters to be considered in exercising discretion to include clause. **Corton v Corton** [1962] 3 1025, Div.

Murder—

Provocation—

Confession of adultery. *See* **Criminal law** (Murder—Provocation—Wife's confession of adultery).

Mutual wills—

Identical terms. *See* **Will** (Mutual wills—Identical terms—Husband and wife).

Necessaries—

Right of wife to pledge husband's credit—

Dispute as to title of property—Legal proceedings by husband against wife—Wife's costs—Liability of husband—Married Women's Property Act 1882, s 17. **J. N. Nabarro and Sons v Kennedy** [1954] 2 605, QBD.

Wife independently possessed of means—

Liability of husband to repay loans made to her to buy necessities. **Biberfeld v Berens** [1952] 2 237, CA.

Wife's implied authority to pledge husband's credit—

Costs in divorce proceedings—Court's jurisdiction to grant wife security for costs in husband's appeal. **King v King** [1943] 2 253, CA.

Nullity of marriage. *See* **Nullity**.

Payment out of court to wife—

Affidavit of no settlement—

Affidavit no longer needed. **Practice Direction** [1958] 2 785, ChD.

Polygamous marriage—

Maintenance—

Wife and children—National assistance. *See* **National assistance** (Recovery of cost of assistance from husband—Polygamous marriage).

Practice—

Shorthand note of proceedings in matrimonial causes. *See* **Practice** (Matrimonial causes—Trial—Shorthand note of proceedings).

Presumption of advancement—

Guarantee—

Husband surety for wife's banking account—Payment by husband of overdraft—Recovery from wife. **Anson v Anson** [1953] 1 867, QBD.

Joint bank accounts—

Current and deposit accounts—Each spouse having authority to draw on the account, but account operated in fact solely by husband—Wife having separate bank account—Joint accounts kept in credit for many years before husband's death—Whether balances credited to joint accounts belonged to wife on husband's death. **Re Figgis (decd)** [1968] 1 999, ChD.

Rebuttal—

Stocks purchased by husband in name of wife—Intention to evade foreign tax. **Re Emery's Investments' Trusts, Emery v Emery** [1959] 1 577, ChD.

Presumption of death—

Absence of other party for seven years—

Presumption of death of previous husband—Banns of second marriage read in wife's maiden name—Validity of second marriage—Marriage Act 1823, s 22. **Chipchase v Chipchase** [1939] 3 895, Div.

Reason to believe that other party has been living within that time—Whether inference is a reason—Whether reason must be due to something happening within the seven years—Matrimonial Causes Act 1950, s 16(2). **Thompson v Thompson** [1956] 1 603, Div.

HUSBAND AND WIFE (cont)

Presumption of death (cont)—

Continuance of life—

Husband going through second ceremony of marriage sixteen years after wife last known to be alive—Continuance of life a question of fact—When presumption of death arises. **Chard v Chard (otherwise Northcott)** [1955] 3 721, Div.

Jurisdiction—

Parties domiciled abroad—Petitioner resident in England—Matrimonial Causes Act 1937, s 8(1). **Wall v Wall** [1949] 2 927, Div.

Onus of proof—

Analogy to bigamy prosecutions—Offences against the Person Act 1861, s 57—Matrimonial Causes Act 1937, s 8(2). **Parkinson v Parkinson** [1939] 3 108, Div.

Validity of marriage—

Second marriage contracted ten years after disappearance of first husband—Exhaustive enquiries—No evidence that first husband dead at date of second marriage—Desertion by second husband. **Tweney v Tweney** [1946] 1 564, Div.

Probation officer—

Extent of authority in matrimonial proceedings. *See* **Probation** (Officer—Extent of authority—Matrimonial proceedings).

Procedure—

Trial—

Shorthand note of proceedings. *See* **Practice** (Matrimonial causes—Trial—Shorthand note of proceedings).

Professional relationship—

Damages—

Fatal accident. *See* **Fatal accident** (Damages—Husband and wife—Fatal accident).

Property—

Acquisition by joint efforts—

Property acquired in husband's name—Trust of property for husband and wife jointly—Onus of proof on wife as to her contribution—Effect of husband's death—Claim by wife against husband's estate—Corroboration of wife's evidence—Business carried on by husband and wife jointly—Takings of business handed over to husband—Husband paying wife household and personal expenses but not wages—Properties acquired by husband—No direct evidence that properties acquired out of profits of business—No evidence that husband had source of income other than business—Purported disposition of properties in husband's will—Wife receiving only small legacy—Onus on wife of proving entitlement to half share in husband's assets—Whether corroboration of wife's evidence necessary. **Re Cummins (decd)** [1971] 3 782, CA.

Adjustment order—

Divorce. *See* **Divorce** (Property—Adjustment order).

Army separation allowance—

Purpose of allowance—Whether wife's absolute property—Allowance used by wife to pay instalments of building society mortgage on house purchased by husband as matrimonial home—Whether wife has lien on proceeds of sale of house. **Re A Question between Sims and Sims** [1946] 2 138, ChD.

Bankruptcy—

Avoidance of settlement—Meaning of 'settlement'. *See* **Bankruptcy** (Avoidance of settlement—Meaning of 'settlement'—Husband and wife).

Contribution by spouse in money or money's worth to improvement of property—

Claim to beneficial interest by reason of contribution—Divorce proceedings—Claim in proceedings for ancillary relief—Lump sum order—Contribution to be taken into account in determining amount of lump sum order rather than being made subject of separate order—Matrimonial Proceedings and Property Act 1970, ss 5(1)(f), 37. **Griffiths v Griffiths** [1974] 1 932, CA.

Contribution of substantial nature—Acquisition of beneficial interest by virtue of contribution—Need for contribution to be identifiable with relevant improvement—More general contributions not sufficient—Matrimonial Proceedings and Property Act 1970, s 37. **Harnett v Harnett** [1973] 2 593, FamD.

Cost of contribution—Assessment—Method of computing claim—Matrimonial Proceedings and Property Act 1970, s 37. **Griffiths v Griffiths** [1973] 3 1155, FamD.

Spouse acquiring enlarged share of beneficial interest—Valuation of enlarged share—Cost of improvement to be added to value of property and of spouse's share at date of improvement—Matrimonial Proceedings and Property Act 1970, s 37. **Re Nicholson (decd)** [1974] 2 386, ChD.

Work done by wife of a kind that a wife would ordinarily do—Whether wife entitled to beneficial interest in house or its proceeds of sale—Married Women's Property Act 1882, s 17. **Button v Button** [1968] 1 1064, CA.

Devise—

Survival beyond specified period—Duration of period. *See* **Time** (Duration of specified period—Month—Devise of house to wife if she should be living at the expiration of a period of three months from the testator's death).

Divorce—

Adjustment order. *See* **Divorce** (Property—Adjustment order).

Estate duty—

Exemption—Property which has borne duty on death of spouse. *See* **Estate duty** (Exemption—Property which has borne duty on death of spouse).

Former possession or control of husband—

Shares—Either shares or money with which they were bought formerly within husband's possession or control within the jurisdiction—Shares now out of jurisdiction—Jurisdiction of court—Married Women's Property Act 1882, s 17—Matrimonial Causes (Property and Maintenance) Act 1958, s 7(1). **Razelos v Razelos** [1969] 3 929, Div.

HUSBAND AND WIFE (cont)

Property (cont)—

Hire-purchase acquisition—

Motor car being acquired by husband under hire-purchase agreement—Wife's name entered in registration book—Whether wife acquired legal interest in motor car or in hire-purchase agreement—Whether informal dealing without intention to create legal relationship. **Spellman v Spellman** [1961] 2 498, CA.

Imputation of trust—

Wife's assets transferred to husband—Transfers intended for family purposes and not as gifts—Transfers on advice of husband to save estate duty and to enable him to become a 'name' at Lloyd's—Wife not separately advised—Breakdown of marriage—Inequitable for husband to claim beneficially. **Heseltine v Heseltine** [1971] 1 952, CA.

Investments purchased in name of one or other spouse with money from joint account—

Moneys in account contributed solely by wife—Account operated by husband for family purposes for administrative convenience only—Holiday homes bought with money from joint account held by husband in trust for wife. **Heseltine v Heseltine** [1971] 1 952, CA.

No indication that joint account kept for specific or limited purpose—Investments belonged beneficially to spouse in whose name they were purchased—Money standing to credit of joint bank account belonging jointly to spouses with no equity to qualify legal ownership. **Re Bishop (decd)** [1965] 1 249, ChD.

Unequal contribution of moneys to account—Joint incomes of spouses paid into husband's bank account—Wife having power to draw on account—Both spouses drawing on account from time to time for own purposes—Spouses withdrawing moneys from account for investments made in husband's name—Husband to be regarded as holding one half of balance of moneys in account and investments in trust for wife. **Jones v Maynard** [1951] 1 802, ChD.

Joint account—

Legal rights during marriage—Whether arrangement for joint banking account creates legal rights between spouses during marriage. **Gage v King** [1960] 3 62, QBD.

Presumption of advancement. *See* Presumption of advancement—Joint bank account, *ante*.

Joint tenancy—

Land—Severance. *See* Joint tenancy (Means of effecting severance—Application to determine interests in matrimonial property).

Matrimonial home—

Generally. *See* Matrimonial home, *ante*.

Parties judicially separated—Married Women's Property Act 1882, s 17. **Hutchinson v Hutchinson** [1947] 2 792, KBD.

Partnership business—

Beneficial interests—Assessment—Conduct of parties—Relevance—Business partnership between husband and wife—Business carried on from matrimonial home—Home in joint names—Wife leaving husband to remarry—Business thereafter carried on by husband alone—Date for assessing beneficial shares in business—Conduct of wife in leaving constituting abrogation of essential term of agreement on which claim to share in business based—Whether wife's share to be based on value of business at date of separation or date of order. **Bothe v Amos** [1975] 2 321, CA.

Separate property of wife—

Death of wife—Funeral expenses—Medical and nursing fees—Liability of executors—Common law liability of husband—Effect of married women's property legislation—Married Women's Property Act 1882, s 1(1)—Administration of Estates Act 1925, ss 32(1), 33(1), (2), (7), 34(1), (3), 45 (1), (2), 46(1), sched 1, Part I—Law Reform (Married Women and Tortfeasors) Act 1935, ss 1, 2. **Rees v Hughes** [1946] 2 47, CA.

Savings from housekeeping allowance while parties living together—Right of husband to savings. **Blackwell v Blackwell** [1943] 2 579, CA.

Spouses living apart—

Home occupied by one spouse—Whether other spouse may give permission to third party to enter. *See* Trespass to land (Defence—Leave and Licence—Husband and wife living apart).

Summary proceedings—

Adjournment—Petition by husband for divorce on ground of wife's adultery—Adjournment of application. **Hickson v Hickson** [1953] 1 382, CA.

Appeal to judge in chambers from order of divorce registrar—Married Women's Property Act 1882, s 17. **Bernbaum v Bernbaum** [1949] 1 344, CA.

Application—Procedure by originating summons—Absence of respondent—Powers of registrar—Direction to respondent to attend on specified date—Failure to obey direction—Power of registrar to make order debaring respondent from defending—Power of registrar to make order in default—Married Women's Property Act 1882, s 17. **Isaac v Isaac** [1972] 2 1169, CA.

Application—Procedure by originating summons—Married Women's Property Act 1882, s 17. **Practice Direction** [1968] 2 116, Div.

Chose in action—Jurisdiction—Married Women's Property Act 1882, s 17. **Spellman v Spellman** [1961] 2 498, CA.

Chose in action—Loan by wife to husband—Married Women's Property Act 1882, s 17—Matrimonial Causes (Property and Maintenance) Act 1958, s 7. **Crystall v Crystall** [1963] 2 330, CA.

Jurisdiction—Polygamous marriage—Application by party to polygamous marriage—Marriage valid according to law of parties' domicile—Application for declaration of parties' interests in matrimonial home—Whether court having jurisdiction to entertain application—Whether parties 'husband and wife'—Married Women's Property Act 1882, s 17. **Chaudhry v Chaudhry** [1976] 1 805, CA.

Land charge—Registration. *See* Land charge (Vacation of entry in register—Pending action—Matrimonial proceedings).

HUSBAND AND WIFE (cont)

Property (cont)—

Summary proceedings (cont)—

Limitation of time—Application by husband for enquiries to investigate extent to which wife had proceeds of sale of properties which had been sold more than six years previously—Whether action for account and so time-barred—Married Women's Property Act 1882, s 17—Matrimonial Causes (Property and Maintenance) Act 1958, s 7(6)—Limitation Act 1939, s 2(2). **Spoor v Spoor** [1966] 3 120, Div.

Matters subsequent to decree absolute—Mortgage instalments on matrimonial home paid by wife after decree absolute—Married Women's Property Act 1882, s 17. **Strachan v Strachan** [1965] 2 77, CA.

Money claim—Questions involving enquiry as to the existence of fund on which the court's decision could operate—Questions the answer to which will merely show an indebtedness—Whether court has jurisdiction—Married Women's Property Act 1882, s 17. **Re Camkin's Questions** [1957] 1 69, ChD.

Order of court—Jurisdiction of court to quantify shares in money terms—Whether court having power to order payment of sum so assessed—Whether order for payment should include order for transfer of share—Married Women's Property Act 1882, s 17. **Bothe v Amos** [1975] 2 321, CA.

Order of registrar—Appeal to judge in chambers—Married Women's Property Act 1882, s 17—RSC, Ord 54, r 12A—Matrimonial Causes Rules 1947 (SR & O 1947 No 523), rr 59, 82. **Bernbaum v Bernbaum** [1949] 1 344, CA.

Order referring matter to registrar for inquiry and report—Marriage dissolved by decree absolute before termination of inquiry—Dissolution of marriage no bar to completion of inquiry—Married Women's Property Act 1882, s 17. **Hichens v Hichens** [1945] 1 451, CA.

Polygamous marriage—Jurisdiction. *See* Property—Summary proceedings—Jurisdiction—Polygamous marriage, *ante*.

Possession or title—Community of property according to the law of parties' domicile—Husband's application for determination of questions as to possession—Under law of domicile husband having management and control of property—Whether application raising question of possession—Married Women's Property Act 1882, s 17. **Re Bettinson's Question** [1955] 3 296, ChD.

Presumption of advancement—Purchase by intended husband in name of intended wife—Subsequent marriage. **Moate v Moate** [1948] 2 486, ChD.

Reference to official referee—Jurisdiction to determine issues—Married Women's Property Act 1882, s 17—Administration of Justice Act 1956, s 15(1)(a)—RSC, Ord 36A, r 1. **Re Edward's Questions** [1961] 3 580, QBD.

Related application in divorce proceedings—Desirability of applications being heard together—Married Women's Property Act 1882, s 17—Matrimonial Proceedings and Property Act 1970, ss 2, 4. **G v G (Practice: Transfer of Applications)** [1973] 2 1187, FamD.

Related application in divorce proceedings—Desirability of applications being heard together—Similarly appeals—Married Women's Property Act 1882, s 17—Matrimonial Homes Act 1967—Matrimonial Causes Rules 1968 (SI 1968 No 219), r 78(2)(as amended by SI 1970 No 1349)—RSC Ord 32, r 1. **Practice Direction** [1971] 1 895, Div.

Related application in divorce proceedings—Real or leasehold property—Application for transfer of such property—Procedure—Married Women's Property Act 1882, s 17—Matrimonial Proceedings and Property Act 1970, s 4. **Practice Direction** [1973] 1 143, FamD.

Summons issued after decree nisi—Hearing of summons after decree absolute—Whether court had jurisdiction—Married Women's Property Act 1882, s 17—Matrimonial Causes Rules 1950 (SI 1950 No 1940), r 75. **Fribance v Fribance** [1955] 3 787, Div.

Title deeds of land held by husband as trustee—Retention of deeds by wife—Married Women's Property Act 1882, s 17. **Re Knight's Question** [1958] 1 812, ChD.

Title to property—

Money found in matrimonial home after death of spouses—Wife owner of matrimonial home—Intention to form joint fund accruing to survivor. **Re Cohen (decd)** [1953] 1 378, ChD.

Wedding presents—

No principle of law that they are joint property—Married Women's Property Act 1882, s 17—Matrimonial Causes (Property and Maintenance) Act 1958, s 7. **Samson v Samson** [1960] 1 653, CA.

Rape. *See* Criminal law (Rape—Husband and wife).

Reconciliation agreement—

Provision for future separation of spouses—

Validity—Proceeding 'founded on' adultery with named woman. **Lurie v Lurie** [1938] 3 156, ChD.

Restitution of conjugal rights—

Answer to petition—

Grave and weighty conduct falling short of cruelty. **Timmins v Timmins** [1953] 2 187, CA.

Prayer for dissolution of marriage—Competency—Supreme Court of Judicature (Consolidation) Act 1925, s 32—Matrimonial Causes Act 1950, s 6. **Barber v Barber** [1954] 2 307, CA.

Jurisdiction—

Matrimonial home—Cessation of cohabitation—Residence within jurisdiction. **Milligan v Milligan** [1941] 2 62, Div.

No cohabitation between spouses—

Husband's refusal to provide home—Prior cohabitation unnecessary to found suit. **Fassbender v Fassbender** [1938] 3 389, Div.

HUSBAND AND WIFE (cont)

Restitution of conjugal rights (cont)—

Petitioner's refusal to share matrimonial home with mother-in-law—

Departure from matrimonial home—Willingness to resume cohabitation elsewhere—Order that respondent 'return home to the petitioner and render to her conjugal rights'. **Munro v Munro** [1950] 1 832, CA.

Plea of justification—

Right to begin. **Hewitt v Hewitt** [1948] 1 242, CA.

Sincere wish for husband's return—

Right to decree—Relevance of question whether wife had any affection for husband. **Wells v Wells** [1954] 3 491, CA.

Restraint on anticipation—

Order for payment of costs—

Order in form prescribed since passing of 1935 Act—Discovery after order—Appointment of receiver—Law Reform (Married Women and Tortfeasors) Act 1935, ss 1, 2(1). **Re Meredith's Trusts** [1938] 3 199, ChD.

Validity—

Imposition by will dated 1932—Codicils dated 1937 confirming will—Law Reform (Married Women and Tortfeasors) Act 1935, s 2(1), (2). **Re Heath's Will Trusts** [1949] 1 199, ChD.

Separation—

Agreement—

Enforceability of terms. *See Contract* (Intention to create legal relationship—Presumption against intention—Presumption inapplicable—Husband and wife not living in amity—Evidence disclosing intention to create legal relationship—Agreement after separation).

Consensual separation—

Implication of agreement by husband partly to maintain wife—Maintenance of wife. **Northrop v Northrop** [1967] 2 961, CA.

Withdrawal of consent. *See Divorce* (Desertion—Consensual separation—Withdrawal of consent).

Divorce. *See Divorce* (Separation).

Maintenance—

Duration of maintenance agreement. *See Maintenance—Agreement—Duration, ante.*

Occupation of former matrimonial home by wife—

Liability for rates. *See Rates* (Rateable occupation—Joint rateable occupation—Husband separated from wife).

Separation agreement—

Abrogation—

Arrears—Wife residing in enemy territory throughout the war—Whether separation agreement abrogated by outbreak of war. **Bevan v Bevan** [1955] 2 206, QBD.

National assistance—

Assistance granted to wife—Proceedings by National Assistance Board for recovery of cost from husband—Whether separation agreement a bar—National Assistance Act 1948, s 43. **Stopher v National Assistance Board, National Assistance Board v Parkes** [1955] 1 700, QBD.

Payment of weekly sum to wife—

Failure to continue payments under separation agreement—Summons for maintenance—Magistrates' order for weekly sum less than that stipulated for by separation agreement—Order operating to extinguish obligations to pay under separation agreement—Summary Jurisdiction (Married Women) Act 1895, s 5. **Finch v Finch** [1945] 1 580, KBD.

Payments without deduction of income tax—

Annuity payable in weekly instalments—Arrears—Arrears exceeded by income tax which could have been deducted—Set-off—Income Tax Act 1918, All Schedules Rules, r 19. **Taylor v Taylor** [1937] 3 571, CA.

Arrears—Payments discharged only in respect of amount actually paid—Tax deductible on balance only—Income Tax Act 1918, All Schedules Rules, r 19(1). **Hemsworth v Hemsworth** [1946] 2 117, KBD.

Provision for payment of specific sum weekly—Stopping of weekly payments—Wife's action for wilful neglect to maintain—Order for maintenance—Income Tax Act 1918, All Schedules Rules, r 19. **Johnson v Johnson** [1946] 1 573, Div.

Separation deed—

Covenant by husband to pay annuity to wife—

Term during which annuity payable not stated—Death of husband—Whether husband's estate liable for payments—Law of Property Act 1925, s 80(1). **Langstone v Hayes** [1946] 1 114, CA.

Covenant by wife not to claim financial provision—

Subsequent receipt of national assistance by wife—Husband's liability to contribute to cost of assistance. **National Assistance Board v Parkes** [1955] 3 1, CA.

Covenant not to sue in respect of matrimonial offences committed before the date of the deed—

Petition by husband on the ground of the wife's subsequent adultery—Allegations of husband's matrimonial offences before the date of the deed struck out of wife's and co-respondent's answer. **N v N and L** [1957] 1 914, Div.

Payment of weekly sum to wife during her life—

Death of husband—Whether husband's estate liable for payments—Law of Property Act 1925, s 80(1). **Kirk v Eustace** [1937] 2 715, HL.

Supplementary agreement—

Retrospective effect—Consideration—Supplemental amending agreement providing retroactively for deduction of tax from periodical payments—Possible claim for rectification as consideration for amending agreement. **Horton v Horton** [1960] 3 649, CA.

HUSBAND AND WIFE (cont)

Separation order—

Arrears—

Recovery—Claim by widow to recover against estate of husband—Summary Jurisdiction (Married Women) Act 1895, ss 5(c), 9. **Re Bidie (decd)** [1948] 2 995, CA.

Reconciliation—

Husband's occupation preventing parties from residing together—Whether amounting to resumption of cohabitation—Summary Jurisdiction (Separation and Maintenance) Act 1925 s 2(2). **Abercrombie v Abercrombie** [1943] 2 465, Div.

Variation—

Deletion of non-cohabitation clause—Husband's desire to make amends and resume married life—Summary Jurisdiction (Married Women) Act 1895 s 7. **Haynes v Haynes** [1952] 2 439, Div.

Deletion of non-cohabitation clause—No physical violence—Possibility of reconciliation. **Guinness v Guinness** [1956] 1 560, Div.

Wilful neglect to maintain—

Persistence by husband in revolting or inordinate demands—Justification of wife in withdrawing from cohabitation. **Holborn v Holborn** [1947] 1 32, Div.

Summary proceedings—

Adjournment of complaint—

Different justices at different hearings of same complaint—Justice not manifestly seen to be done—Magistrates' Courts Act 1952, s 98(6). **Munday v Munday** [1954] 2 667, Div.

Adultery—

Conduct conducing to husband's adultery—Expulsion of husband from matrimonial home—No suspicion by wife that husband committing or likely to commit adultery—Matrimonial Causes Act 1937, s 11(3). **Jenkins v Jenkins** [1956] 2 596, Div.

Conduct conducing to husband's adultery—Wife's improper but not adulterous association with another man—Ignorance of husband—Matrimonial Causes Act 1937, s 11(1) (3). **Brown v Brown** [1956] 2 1, Div.

Limitation of time—Admission by husband of adultery more than six months previously—Whether condonation—Whether husband prejudiced by absence of particulars—Need to give proper particulars to other side—Magistrates' Courts Act 1952, s 104—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 12(1). **Hind v Hind** [1969] 1 1083, Div.

Reasonable belief by one spouse that the other has committed adultery—Notice of substance of case sufficient. **Sullivan v Sullivan** [1956] 1 611, Div.

Aggravated assault—

Husband conditionally discharged after pleading guilty to assaulting wife and causing her grievous bodily harm—Case dealt with summarily—Whether an aggravated assault within Offences against the Person Act 1861, s 43—Whether a conviction for the purposes of the Summary Jurisdiction (Married Women) Act 1895, s 4—Criminal Justice Act 1948, s 12(1). **Cassidy v Cassidy** [1959] 3 187, Div.

Appeal to Divisional Court—

Delay—Legal aid—Need to avoid unnecessary delay on appeals to Divisional Court. **Practice Direction** [1968] 2 247, Div.

Exhibits—Documents produced and shown to justices not exhibited. **Grainger v Grainger** [1954] 2 665, Div.

Exhibits—Lodgment of copies. **Practice Note** [1962] 2 992, Div.

Extension of time—Certificate by appellant's solicitor or appellant giving reasons for delay and dates. **Practice Direction** [1962] 3 795, Div.

Extension of time—Factors material to exercise of courts' discretion to extend time—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 73(4). **Edwards v Edwards** [1967] 2 1032, Div.

Extension of time—Principles upon which court will act—RSC, Ord 59, rr 12, 16. **Finding v Finding** [1939] 2 173, Div.

Failure of justices to supply to High Court statement of reasons for their decision—Matrimonial Causes Rules 1950 (SI 1950 No 1940), r 71(3). **Ormsby v Ormsby** [1952] 2 1005, Div.

Failure of justices to supply to High Court statement of reasons for their decision—Questions directed to justices—Matrimonial Causes Rules 1950 (SI 1950 No 1940), r 71(3). **Starkie v Starkie** [1953] 2 1255, Div.

Fraud—Notice of motion—Jurisdiction—Summary Jurisdiction (Married Women) Act 1895, s 11. **Byatt v Byatt** [1957] 3 620, Div.

Hearing of appeal—Time for—Fixed period in term—Urgent applications—Procedure. **Practice Direction** [1969] 2 1024, Div.

Infant respondent—Service on infant respondent instead of on guardian ad litem—Infant legally aided—Whether good service—Matrimonial Causes Rules 1950 (SI 1950 No 1940), r 64(3). **Levy (by her next friend) v Levy** [1957] 1 478, Div.

No case to answer—Re-hearing ordered by Divisional Court—Right to call evidence at re-hearing notwithstanding election at former hearing. **Horton v Horton** [1960] 1 503, Div.

Note of evidence—Best evidence of what occurred before justices—Courses open if note imperfect—Affidavit evidence not to replace note—Affidavit of justices supplementing note not appropriate—Review of Justices Decisions Act 1872, s 2 inapplicable to appeals to Divisional Court in matrimonial cases. **Bond v Bond** [1964] 3 346, Div.

Note of evidence—Double space typing—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 73(3). **Practice Direction** [1964] 3 482, Div.

Note of evidence—Exhibits—Documents produced before justices—Need to make exhibits to notes. **Stretton v Stretton** [1953] 2 1227, Div.

Notes of evidence and reasons—Need to supply before appeal set down—Matrimonial Causes Rules 1950 (SI 1950 No 1940), r 71(3). **Padley v Padley** [1953] 2 1197, Div.

Notice of appeal—Compliance with Rules of Supreme Court—RSC, Ord 55, r 3(2). **Johnson v Johnson** [1969] 2 722, Div.

HUSBAND AND WIFE (cont)

Summary proceedings (cont)—

Appeal to Divisional Court (cont)—

Notice of appeal—Not case stated—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 11—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 73(2). **Tickle v Tickle** [1968] 2 154, Div.

Only issue as to quantum of maintenance—Application to magistrates to vary order—Magistrates' Courts Act 1952, s 53—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 8. **Kaye v Kaye** [1964] 1 620, Div.

Other proceedings—Certificate—Appellant's solicitor to certify whether any other matrimonial proceedings pending. **Practice Direction** [1958] 3 539, Div.

Petition for divorce contemplated but not pending—Discretion of Divisional Court whether to hear or adjourn appeal. **Dawkins v Dawkins** [1962] 3 66, Div.

Powers of appellate court—Improper rejection of evidence—Substantial wrong or miscarriage of justice occasioned—Cross-examination of witness refused—Test possibility of effect on decision—Redetermination by magistrates required—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 73(7)—RSC, Ord 59, r 11(2). **Blaise v Blaise** [1969] 2 1032, CA.

Provisional maintenance order made in South Africa—Confirmation by court of summary jurisdiction in England—Appeal to Probate, Divorce and Admiralty Division—Jurisdiction—Maintenance Orders (Facilities for Enforcement) Act 1920, s 4(7). **Hague v Hague** [1937] 2 539, Div.

Refusal to make order on ground High Court more convenient forum—Summary Jurisdiction (Married Women) Act 1895, s 10, s 11. **Davies v Davies** [1957] 2 444, Div.

Rehearing—Application for—Jurisdiction—Divisional Court has no jurisdiction to direct rehearing before itself or another Divisional Court—Principles applicable to determination of such application for rehearing—Fresh evidence by husband and wife admitted on appeal by wife from dismissal of her complaint—Evidence conflicting—Important bearing on result of case if justices were to reject husband's explanation given in his fresh evidence—Rehearing ordered—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 11(3)—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 73(7). **Simm v Simm** [1967] 1 618, Div.

Complaint—

Dismissal—Minute of adjudication—Desirability of magistrates' clerk recording dismissal. **Baker v Baker** [1961] 2 746, Div.

Hearing—Speeches—Leave to address court second time—Granting of leave in matrimonial causes—Magistrates' Courts Rules 1968 (SI 1968 No 1920), r 14(5). **Mayes v Mayes** [1971] 2 397, Div.

Limitation of time—Cruelty condoned but revived—Condoned cruelty occurring more than six months before date of complaint—Acts reviving cruelty occurring within six months before date of complaint—Magistrates' Courts Act 1952, s 104. **Dunn v Dunn** [1962] 3 587, Div.

Particulars of matrimonial offence alleged—Distinction between High Court and magistrates' court procedure—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 1(1). **Frith v Frith** [1963] 1 43, Div.

Condonation—

Cohabitation—Resumption of cohabitation—Motive for resumption—Whether motive relevant. **Hearn v Hearn** [1969] 3 417, Div.

Cohabitation—Resumption of cohabitation—Cohabitation for ten years—No intercourse during cohabitation—No affection between parties—Whether condonation—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 2(3). **Hearn v Hearn** [1969] 3 417, Div.

Forgiveness—Meaning of term. **Hearn v Hearn** [1969] 3 417, Div.

Reinstatement—Meaning of term. **Hearn v Hearn** [1969] 3 417, Div.

Consideration of evidence—

Decision of justices reached after considering evidence not dealt with in open court—Denial of right of party to deal with all evidence before justices. **Brinkley v Brinkley** [1963] 1 493, Div.

Constructive desertion—

Adultery—Constructive desertion founded on adultery—Proof of intention to persist in adultery. **Teall v Teall** [1938] 3 349, Div.

Appeal court—Function—No man's land of fact and degree—Appellate court should not interfere unless justices' finding plainly wrong. **Saunders v Saunders** [1965] 1 838, Div.

Conduct equivalent to expulsion of other spouse—Intention to disrupt the home—Conduct of husband probably resulting in departure of wife from home—Relationship to cruelty. **Waters v Waters** [1956] 1 432, Div.

Expulsive words—Previous cruelty charge dismissed—Repetition of evidence relating to expulsive words—Estoppel. **Cooper v Cooper** [1954] 3 358, Div.

Corroboration—

Need for corroboration—When corroboration necessary before finding matrimonial offence proved—When appellate court will interfere in the absence of corroboration. **Alli v Alli** [1965] 3 480, Div.

Cruelty—

Desertion by wife—Separation order with non-cohabitation clause granted to wife—Appeal by husband—Degree of cruelty—Deletion of non-cohabitation clause from order—Wife's refusal to return to husband—Order discharged—Summary Jurisdiction (Married Women) Act 1895, s 10. **Perks v Perks** [1945] 2 580, CA.

Desertion—

Complaint—Withdrawal of previous summons based on same facts—Right to make subsequent complaint within statutory time limit—Estoppel—Res judicata. **Land v Land** [1949] 2 218, Div.

Condonation of adultery—Revival of adultery. **Roe v Roe** [1956] 3 478, Div.

Constructive desertion. *See* Summary proceedings—Constructive desertion, *ante*.

HUSBAND AND WIFE (cont)

Summary proceedings (cont)—

Desertion (cont)—

Continuance of desertion—Reconciliation—Whether efforts of deserting spouse towards reconciliation sufficient to end desertion—Whether deserting spouse exonerated from further efforts. **Bevan v Bevan** [1955] 3 332, Div.

Decision inconsistent with previous High Court finding—Justices ignorant of previous finding—Order for re-hearing. **Sanders (or se Saunders) v Sanders (or se Saunders)** [1952] 2 767, Div.

Defence of adultery—Conduct of wife—Effect on deserting spouse's mind—Reasonable and honest belief of adultery exonerating husband. **Glenister v Glenister** [1945] 1 513, Div.

Defence of adultery—Reasonable and honest belief of adultery exonerating husband—Reasonableness of belief. **Cox v Cox** [1958] 1 569, Div.

Evidence—Notes of proceedings on earlier summons. **Lane v Lane** [1952] 1 223, CA.

Intention—Medical advice that separation or temporary separation from wife required by husband's health—Intention on part of husband to make separation permanent. **Tickle v Tickle** [1968] 2 154, Div.

Jurisdiction—Domicile—Parties resident in England—Husband domiciled in South Africa—Husband's application for leave to commence divorce proceedings in South Africa—Wife served with notice before determination of proceedings before justices—Justices refusing to entertain wife's summons for want of jurisdiction—Appeal by wife—Jurisdiction of justices' court not dependent on domicile of parties—Determination of proceedings within the discretion of justices. **Klosser v Klosser** [1945] 2 708, Div.

Maintenance order—Necessaries supplied to wife during stay at boarding house—Wife's authority to pledge husband's credit—Liability of husband—Effect of maintenance order—Summary Jurisdiction (Married Women) Act 1895, ss 4, 5(a), (c)—Supreme Court of Judicature (Consolidation) Act 1925, s 194—Law Reform (Married Women and Tortfeasors) Act 1935, Sch 1. **Sandilands v Carus** [1945] 1 374, CA.

Order that wife should have custody of child and for payment of maintenance—Husband subsequently applying for discharge of order—Application amended for variation of amount of maintenance payable—Amended application based on evidence available at original hearing—'Fresh evidence'—'Cause shown'—Evidence available at original hearing not 'cause shown'—Summary Jurisdiction (Married Women) Act 1895, s 7—Criminal Justice Administration Act 1914, s 30(3)—Money Payments (Justices Procedure) Act 1935, s 9. **Underwood v Underwood** [1945] 2 561, Div.

Parties continuing to live in same house. **Angel v Angel** [1946] 2 635, Div.

Quarrels between parties—Wife's withdrawal from cohabitation—Wife's offer to resume cohabitation rejected by husband—Husband continuing in desertion by refusal of wife's offer—Summary Jurisdiction (Married Women) Act 1895, s 4. **Thomas v Thomas** [1946] 1 170, Div.

Res judicata—Amendment of summons—Charge of desertion substituted for wilful neglect to maintain—Dismissal of summons—Further summonses alleging desertion and wilful neglect to maintain. **Molesworth v Molesworth** [1947] 2 842, Div.

Resumption of cohabitation—Husband in desertion at time of wife's complaint—Resumption of cohabitation before adjudication on complaint—Simple desertion unaccompanied by disruptive conduct—Return of husband to matrimonial home on advice of solicitor—Husband willing to resume matrimonial relations—Wife's children by former marriage hostile—Whether entitlement of wife to maintenance by virtue of desertion negated by husband's return. **Irvin v Irvin** [1968] 1 271, Div.

Simple desertion—Termination—Assurances for future not required—Husband resuming matrimonial relations on advice of solicitor. **Irvin v Irvin** [1968] 1 271, Div.

Expulsive conduct—

Written particulars of alleged matrimonial offence to be given. **Hind v Hind** [1969] 1 1083, Div.

Justices' clerk—

Presence of justices' clerk in retiring room while justices consider decision. **Practice Direction** [1954] 1 230, PDA.

Justices' reasons—

Appeals affecting minors—Heading—Statement of names of justices—Signing of reasons—Absence of signature of one of justices—Need to state reason for absence of signature—Guardianship of Minors Act 1971, s 16(3)—RSC Ord 90, r 9. **Re Nicoll (a minor)** [1972] 2 232, FamD.

Content—Evidence—Evidence of wife unchallenged—Justices' rejection of wife's evidence without giving clear reasons for doing so. **Brewster v Brewster** [1971] 2 993, Div.

Majority decision—Need of dissenting justice to give reasons. **Kemp v Kemp** [1953] 2 553, Div.

Litigant in person—

Duty of court—Husband not legally represented—Wife not cross-examined—Husband no positive case to put—Magistrates' Courts Act 1952, s 61. **Brewster v Brewster** [1971] 2 993, Div.

Persistent cruelty—

Consequences of order in regard to possible future divorce taken into account—Misdirection. **Hudson v Hudson** [1966] 2 82, Div.

Contribution to breakdown of marriage—Husband's cruelty not sole cause of breakdown of marriage—Whether wife entitled to matrimonial order on ground of cruelty. **Brewster v Brewster** [1971] 2 993, Div.

Degree of cruelty necessary to be proved—Summary Jurisdiction (Married Women) Act 1895, s 4. **Barker v Barker** [1949] 1 247, Div.

Desertion—Rejection of charge of persistent cruelty but constructive desertion found to be proved—Evidence showing threat to limb—Inconsistent findings—Correct test for constructive desertion. **Griffiths v Griffiths** [1964] 3 929, Div.

Evidence of cruelty outside period of six months immediately preceding date of complaint—Relevance. **Brewster v Brewster** [1971] 2 993, Div.

HUSBAND AND WIFE (cont)

Summary proceedings (cont)—

Persistent cruelty (cont)—

Indifference—Neglect of wife and child by husband—Whether conduct amounting to desertion can be cruelty. **Cade v Cade** [1957] 1 609, Div.

Natural consequence of respondent's acts—No act of violence—Intention to be cruel—Unwarrantable indifference as to consequences to other spouse—Relationship to constructive desertion. **Waters v Waters** [1956] 1 432, Div.

Parties not cohabitating—Subsistence of marriage not dependent on cohabitation—Persistent cruelty established although parties were not cohabitating—Matrimonial order to be made—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 1(1). **Waters v Waters** [1967] 3 417, Div.

Reasonable belief in husband's adultery—Belief deliberately induced in wife's mind by husband—Injury to wife's health. **Walker v Walker** [1961] 3 14, Div.

Reconciliation—Trivial acts after reconciliation—Evidence of acts of cruelty on which an order prior to reconciliation was founded excluded—Denial of justice not merely improper rejection of evidence—Matrimonial Causes Rules 1957, (S I 1957 No 619) r 73(7). **Bond v Bond** [1964] 3 346, Div.

Res judicata—Dismissal of summons—Fresh summons—Admission of evidence of incidents prior to first summons. **Richards v Richards** [1952] 2 904, Div.

Sexual offences by husband against third parties—Bullying and aggressive attitude towards wife—Different forms of mental ill-treatment taken together to found charge of persistent cruelty. **Crawford v Crawford** [1955] 3 592, Div.

Sexual offences by husband against third parties—Indecent assault by him on child of marriage. **Cooper v Cooper** [1954] 3 415, Div.

Sodomy with wife—Corroboration. **Lawson v Lawson** [1955] 1 341, CA.

Sodomy with wife—Form of justices' finding—Need of corroboration of charge—Acquiescence by wife. **Davidson v Davidson** [1953] 1 611, Div.

Time limit for commencement of proceedings—Act of cruelty within previous six months—Issue of summons by husband claiming custody of the youngest child, within six months before the wife's complaint—Whether act of cruelty—Magistrates' Courts Act 1952, s 104. **Buxton v Buxton** [1965] 3 150, Div.

Wilful neglect to maintain as act of cruelty. **Dunn v Dunn** [1962] 3 587, Div.

Potentially polygamous marriage—

Right to matrimonial relief—Ceremony of marriage in India in 1942 in accordance with rites of Sikhs—Husband coming to England in 1955 and joined by wife in 1963—Whether polygamous marriage can become monogamous—Whether character of marriage to be considered at its inception or at time when proceedings taken—Whether conversion from polygamous to monogamous marriage can take place by legislation—Whether wife can obtain matrimonial relief in England—Hindu Marriage Act 1955 (No 25), ss 5(i), 11, 17. **Parkasho v Singh** [1967] 1 737, Div.

Right to matrimonial relief—Marriage by proxy in Ghana valid by local law but potentially polygamous—Failure to have second ceremony before registrar or in church to make marriage monogamous union—Whether wife can obtain matrimonial relief in England—Marriage Ordinance 1884 (c 127 of Laws of the Gold Coast (1951) Revised), s 44. **Sowa v Sowa** [1961] 1 687, CA.

Property. *See* Property—Summary proceedings, *ante*.

Rehearing—

Procedure—Whether judgment directing rehearing should be read to magistrates' court before they heard evidence. **Claxton v Claxton** [1959] 1 386, Div.

Right to stop case at conclusion of complainant's evidence—

Desirability of hearing both sides in matrimonial dispute. **Ramsden v Ramsden** [1954] 2 623, Div.

Right of complainant's advocate to address court—Whether right must be claimed. **Mayes v Mayes** [1971] 2 397, Div.

Separation order. *See* Separation order, *ante*.

Tax advantage—

Counteracting tax advantage—

Wife's property. *See* Income tax (Tax advantage—Married woman—Not separately assessed).

Title to property. *See* Property—Title to property, *ante*.

Torts—

Husband's liability for wife's tort—

Agency—Need to prove wife had committed tort as husband's agent—Law Reform (Married Women and Tortfeasors) Act 1935, ss 3, 4(1)(b). **Barber v Pigden** [1937] 1 115, CA.

Injury to wife due to husband's negligence—

Liability of husband's employer. **Broom v Morgan** [1953] 1 849, CA.

Protection of separate property—

Tort by husband before marriage—'Thing in action'—Married Women's Property Act 1882, ss 12, 24. **Curtis v Wilcox** [1948] 2 573, CA.

Right of wife to sue husband in tort—

Protection or security of property—Loss of expectation of life—Married Women's Property Act 1882, s 12—Law Reform (Married Women and Tortfeasors) Act 1935, s 6. **Chant v Read** [1939] 2 286, KBD.

Tort committed before marriage—

Right of husband to sue wife for tort committed before marriage—Married Women's Property Act 1882, s 12—Law Reform (Married Women and Tortfeasors) Act 1935, s 1. **Baylis v Blackwell** [1952] 1 74, KBD.

Tort committed by husband as agent of third party—

Action against third party. **Smith v Moss** [1940] 1 469, KBD.

HUSBAND AND WIFE (cont)

Total income for tax purposes—

Deduction of annual payments—

Allowance paid to separated wife. *See* **Income tax** (Total income—Deduction of annual payments—Husband and wife—Separation—Allowance by husband to wife).

Transfer of proceedings between Divisions of High Court. *See* **Practice** (Transfer of proceedings between Divisions of High Court—Husband and wife).

Variation of maintenance agreement—

Backdating of order—

Extent of court's jurisdiction—Husband agreeing to make monthly payments to wife—Husband failing to pay sums due—Husband applying for order varying agreement—Husband seeking to have order backdated to date of agreement—Jurisdiction of court to backdate order—Matrimonial Causes Act 1973, s 35. **Carr (G A) v Carr (D V)** [1974] 3 366, FamD.

Change in circumstances—

Maintenance agreement conferring rights on both parties—Husband subsequently voluntarily giving up employment and starting to study to become a teacher—Not earning during qualifying period—Subsequent lower rate of earnings expected—Whether there was a 'change in the circumstances'—Whether agreement ought to be altered—Maintenance Agreements Act 1957, s 1(3). **Ratcliffe v Ratcliffe** [1962] 3 993, CA.

Objective approach—Separation agreement negotiated on the basis that the husband would not pay maintenance to the wife—Wife working at the date of agreement—Subsequently became incapable of earning—Husband's income increased considerably since date of agreement—Whether there was a relevant change in the circumstances—Whether agreement ought to be altered—Maintenance Agreements Act 1957, s 1(3). **Gorman v Gorman** [1964] 3 739, CA.

Realisation of expectation held at time of agreement—Whether change in circumstances—Maintenance Agreements Act 1957, s 1(3)(a). **K v K** [1961] 2 266, CA.

Death of party—

Application by surviving party after the death of the other party to the agreement—Time—Extension of time for applying—Matrimonial Causes Act 1965, s 25—Family Provision Act 1966, s 5. **Practice Direction** [1967] 1 832, Div.

Leave—Alteration of agreement after death of one party—Application for leave—Maintenance Agreements Act 1957, s 2. **Practice Direction** [1958] 1 464, Div.

Variation or discharge of maintenance order—

Adultery—

Condonation—Sexual intercourse as proof of reinstatement of wife—Summary Jurisdiction (Married Women) Act 1895, s 7, as amended by Summary Jurisdiction (Separation and Maintenance) Act 1925, s 2(1). **Marczuk v Marczuk** [1956] 1 657, CA.

Fresh evidence—Evidence available on previous application by wife to vary order—Summary Jurisdiction (Married Women) Act 1895, s 7. **Brammer v Brammer** [1954] 1 649, Div.

Fresh evidence—Husband unaware of wife's adultery at date of maintenance order—Summary Jurisdiction (Married Women) Act 1895, s 7. **Newman v Newman** [1957] 3 698, Div.

Application to discharge made to different magistrates' court—

Form of complaint and of summons—Magistrates' Courts Act 1952, s 122(1)(g), (2)—Magistrates' Courts Rules 1952 (SI 1952 No 2190), r 34. **Meaney v Meaney** [1957] 2 415, Div.

Transmission of information by original court to new court—Magistrates' Courts Rules 1952 (SI 1952 No 2190), r 34(2), (7). **John v John** [1959] 1 389, Div.

Change of circumstances—

Justices entitled to proceed on basis that original order properly made—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 8(1). **McEwan v McEwan** [1972] 2 708, Div.

Conduct after dissolution of marriage—

Sexual intercourse by former wife, after dissolution of marriage—Intercourse with man not her former husband—Whether ground for discharge of order—Financial implication of wife's conduct—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 8(1). **Stead v Stead** [1968] 1 989, Div.

Sexual intercourse by former wife after dissolution of marriage—No evidence that alleged intercourse occurred with married man—Summary Jurisdiction (Married Women) Act 1895, s 7. **Chorlton v Chorlton** [1952] 1 611, Div.

Continued residence with husband for three months—

Husband obtaining subsequent variation of order and remission of arrears under it—Husband not stopped from showing order had ceased to have effect—Summary Jurisdiction (Separation and Maintenance) Act 1925, s 1(4). **Harris v Harris** [1952] 1 401, KBD.

Date—

Remarriage of wife, after divorce, prior to date of complaint for discharge—Payments by former husband to collecting officer continued after re-marriage—Whether any jurisdiction to remit sums paid prior to date of complaint for discharge—Summary Jurisdiction (Married Women) Act 1895, s 5(c)—Magistrates' Courts Act 1952, s 76. **Fildes (formerly Simkin) v Simkin** [1959] 3 697, Div.

Dissolution of marriage—

Foreign decree—Decree of divorce granted to husband by foreign court of competent jurisdiction—Decree on grounds of non-cohabitation—Service of proceedings ineffective—Wife ignorant of proceedings until after decree—Wife innocent of any matrimonial offence under English law—Summary Jurisdiction (Married Women) Act 1895, s 7. **Wood v Wood** [1957] 2 14, CA.

Foreign decree—Decree of divorce granted to wife by Scottish court—Discretion of justices. **Kirk v Kirk** [1947] 2 118, Div.

Foreign decree—Foreign nationals—Dissolution of marriage by foreign court—Ground not recognised in England—Discretion of justices. **Mezger v Mezger** [1936] 3 130, Div.

HUSBAND AND WIFE (cont)

Variation or discharge of maintenance order (cont)—

Dissolution of marriage (cont)—

Inconsistent finding in divorce proceedings—Decree of divorce granted to husband on ground of wife's constructive desertion—Previous order in magistrates' court for maintenance of wife and children on ground of husband's desertion—Inconsistency with subsequent finding of High Court—Discharge of provision for wife's maintenance in maintenance order—Whether agreement by husband not to apply for discharge might be effective—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 8. **Sternberg v Sternberg** [1963] 3 319, Div.

Remarriage of husband—Materiality of second wife's ability by working herself to relieve husband of financial anxieties. **Grainger v Grainger** [1954] 2 665, Div.

Evidence of matters available at original hearing—

Admissibility—Summary Jurisdiction (Married Women) Act 1895, s 7. **Roberts v Roberts** [1953] 2 1248, Div.

High Court order registered in magistrates' court—

Appeal—High Court procedure—Matrimonial Causes Act 1950, s 19 to s 27—Maintenance Orders Act 1958—RSC, Ord 41D, r 3(3). **Practice Note** [1960] 2 238, Div.

Conflict of jurisdiction—Application for variation—Remission of case for consideration by High Court—Circumstances in which case should be remitted to High Court—Maintenance Orders Act 1958, s 4(4). **Gsell v Gsell** [1971] 1 559, Div.

Variation by magistrates of rate of payments—Matters to be considered—Appeal to judge in chambers—Maintenance Orders Act 1958, s 4(2)(a), (7)—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 61. **Miller v Miller** [1960] 3 115, Div.

Jurisdiction of justices—

Adultery after dissolution of marriage—Preferable jurisdiction of Divorce Court—Summary Jurisdiction (Married Women) Act 1895, s 7. **Abson v Abson** [1952] 1 370, Div.

Order for maintenance of wife and child—

Birth of another child—Attachment of earnings order made against husband—Husband's earnings reduced—Whether magistrates on wife's complaint to increase order can reduce maintenance to husband's 'normal deduction rate' under Maintenance Orders Act 1958 s 6(3)—Summary Jurisdiction (Married Women) Act 1895 s 7. **Pepper v Pepper** [1960] 1 529, Div.

Variation of order on remarriage of wife—Summary Jurisdiction (Married Women) Act 1895, s 7. **Moore v Napier (formerly Moore)** [1953] 2 1401, Div.

Persistent cruelty—

Subsequent inconsistent finding of High Court on same facts—Right of husband to discharge of order. **Kendall v Kendall** [1952] 2 1038, Div.

Petition for divorce—

Application for alimony pendente lite. **Pooley v Pooley** [1952] 1 395, Div.

Resumption of cohabitation—

Decree of divorce granted to wife—Parties subsequently living together—Discretion of justices—Summary Jurisdiction (Separation and Maintenance) Act 1925, s 2(2). **Prest v Prest** [1949] 2 790, Div.

Intention of parties—Sexual intercourse—Summary Jurisdiction (Married Women) Act 1895, s 7. **Marczuk v Marczuk** [1956] 1 657, CA.

Revival of discharged or revoked order—

Complaint asking that order be revived—Whether order capable of being revived—Magistrates' Courts Act 1952, s 53. **Bowen v Bowen** [1958] 1 770, Div.

Summons charging adultery limited to particular incident—

Evidence of adulterous association for a period of two years—Justices adjudicating on particular charge only—Jurisdiction of Divisional Court—Power to amend summons—Summary Jurisdiction (Married Women) Act 1895, s 7. **Amos v Amos** [1945] 2 657, Div.

Undertaking by husband's parents to make voluntary allowance—

Decree of divorce in favour of wife—Cesser of allowance. **Plunkett v Plunkett** [1937] 3 736, Div.

Variation by Divisional Court of justices' order—

No jurisdiction to substitute a finding on a different charge—Matrimonial Causes Rules 1937 (SR & O 1937 No 1113), r 67(6). **Rigby v Rigby** [1944] 1 336, CA.

Vicarious liability—

Vehicle owner's liability for driver's negligence—

Third party driving car as wife's agent. *See* **Vicarious liability** (Vehicle owner's liability for driver's negligence—Husband and wife).

Wardship proceedings. *See* **Ward of court**.

Wilful neglect to maintain—

Belief in adultery—

Reasonable and honest belief of wife's adultery. **Chilton v Chilton** [1952] 1 1322, Div.

Reasonable and honest belief in wife's adultery—Belief induced by wife—Whether husband connived at or conduced to her conduct—Summary Jurisdiction (Married Women) Act 1895, s 6. **Hartley v Hartley** [1955] 1 625, Div.

Reasonable belief in wife's adultery—Dismissal of petition for divorce based on that adultery—No retrospective effect—Matrimonial Causes Act 1950, s 23(1). **West v West** [1954] 2 505, CA.

Change of circumstances—

Knowledge of husband—Punctual payments by husband under order made under National Assistance Act—No proof that change in wife's circumstances known to husband—Whether wilful neglect on his part to provide reasonable maintenance established—National Assistance Act 1948, s 43—Summary Jurisdiction (Married Women) Act 1895, s 4. **Jones v Jones** [1958] 3 410, Div.

HUSBAND AND WIFE (cont)

Wilful neglect to maintain (cont)—

Consensual separation—

Implication of agreement by husband to support wife as well as child to the extent to which wife precluded by her obligations to child from supporting herself—Maintenance order on ground of husband's neglect to maintain wife, as distinct from child—Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 2(1)(b). **Northrop v Northrop** [1967] 2 961, CA.

No agreement as to maintenance—Liability of husband. **Stringer v Stringer** [1952] 1 373, Div.

No agreement as to maintenance—No change of circumstances after separation—Summary Jurisdiction (Married Women) Act 1895, s 4. **Pinnick v Pinnick** [1957] 1 873, Div.

Deed of separation—

Covenant by husband for periodical payments—No default in payments—Improvement in husband's financial position—Law Reform (Miscellaneous Provisions) Act 1949, s 5(1). **Tulip v Tulip** [1951] 2 91, CA.

Desertion—

Wife in state of desertion—Right to claim maintenance suspended—Summary Jurisdiction (Married Women) Act 1895, s 4. **Naylor v Naylor** [1961] 2 129, Div.

Drunkenness—

Desertion—Claim for maintenance for wilful neglect falling with complaint for constructive desertion. **Hall v Hall** [1962] 3 518, CA.

Foreign decree of divorce obtained—

Whether wife entitled to order—Matrimonial Causes Act 1965, s 22. **Turczak v Turczak** [1969] 3 317, Div.

Husband's duty to provide reasonable maintenance—

Wife in default—Adultery since leaving husband admitted by wife—Adultery not condoned, connived at or condoned to by husband—Whether husband under duty to maintain wife—Whether wife debarred from relief—Matrimonial Causes Act 1973, s 27. **Gray v Gray** [1976] 3 225, FamD.

Maintenance agreement—

Covenant by wife not to sue providing payments punctually made—No default in payment—Deterioration in wife's financial position. **Dowell v Dowell** [1952] 2 141, Div.

Meaning of wilful—

Wilfulness connoting deliberate conduct with knowledge of facts—Husband suffering from psychotic delusion that wife was going to kill or injure him—Husband leaving wife—Justices finding that husband had no animus deserendi because of delusion—Evidence that husband knowing of circumstances of wife and of his legal duty to maintain her—Husband failing to pay maintenance to wife—Whether wilfulness connoting an element of malice or wickedness—Whether in spite of delusion husband's conduct 'wilful'. **Brannan v Brannan** [1973] 1 38, FamD.

Mental illness alleged—

Refusal to undergo electrical shock treatment—Wife justified in withdrawing from cohabitation—Failure by husband to prove mental disability—Summary Jurisdiction (Married Women) Act 1895, s 4. **Stirland v Stirland** [1959] 3 891, Div.

No matrimonial misconduct by husband—

Wife suffering from neurosis—Danger to wife's mental health if she resumed cohabitation—No liability on husband—Liability of husband under National Assistance Act 1948, s 42, s 43—Summary Jurisdiction (Married Women) Act 1895, s 4. **Lilley v Lilley** [1959] 3 283, CA.

Originating summons—

Cross-examination of party on his affidavit—Wife's originating summons for maintenance—Both parties' affidavits read—Husband's submission of no case to answer—Wife's right to cross-examine husband on affidavit notwithstanding submission of no case—Submission of 'no case' not applicable to proceedings on originating summons—Matrimonial Causes Rules 1957 (SI 1957 No 619), r 58(17). **Lindwall v Lindwall** [1967] 1 470, CA.

Provision of matrimonial home—

Reasonable accommodation offered—Sharing of husband's parents' home—Wife securing flat elsewhere—Husband's refusal to occupy flat. **McGowan v McGowan** [1948] 2 1032, Div.

Separation order. *See* Separation order—Wilful neglect to maintain, *ante*.

Wife and child—

Wife claiming for herself and for child—Separate subjects of complaint—Reasonable belief by husband in wife's adultery—Answer to wife's complaint of maintenance for herself but no answer to her complaint for maintenance for child—Summary Jurisdiction (Married Women) Act 1895, s 4. **Cooke v Cooke** [1960] 3 39, Div.

Wife living apart from husband—

No evidence justifying wife's refusal to live in home provided by husband—Whether husband guilty of wilful neglect to maintain wife—Matrimonial Causes Act 1965, s 22. **Lindwall v Lindwall** [1967] 1 470, CA.

Wife obtained maintenance order from magistrates—

Husband paid as required by order—No change of circumstances—Matrimonial Causes Act 1965, s 22. **Baynham v Baynham** [1969] 1 305, CA.

Will—

Revocation by remarriage. *See* Will (Revocation—Covenant not to revoke—Revocation by remarriage).

Witness for prosecution—

Competence. *See* Criminal evidence (Competence as witness—Spouse as witness for prosecution).

HYDROCARBON OILSDuty on. *See* Customs (Hydrocarbon oils).

HYPOTHETICAL QUESTION

Declaration—

Jurisdiction to grant declaration on hypothetical question. *See* **Declaration** (Jurisdiction—Hypothetical question).**ICE CREAM VAN**

Chimes in street—

Advertisement. *See* **Advertisement** (Trade or business—Use of loudspeaker for advertising purposes—Prohibition against loudspeaker being operated in street for purpose of advertising any trade or business).**IDENTIFICATION PARADE**Criminal proceedings. *See* **Criminal evidence** (Identity—Identification parade).**IDENTITY**

Defamation cases—

Identification of plaintiff as person defamed. *See* **Libel and slander** (Identification of plaintiff as person defamed).

Evidence—

Criminal proceedings. *See* **Criminal evidence** (Identity).Evidence in criminal proceedings. *See* **Criminal evidence** (Identity).

Mistake—

Contract. *See* **Contract** (Mistake—Identity of party).Lessee's identity. *See* **Mistake** (Identity of party—Identity of lessee).

Witness—

Order against disclosure of witness's identity—

Criminal proceedings. *See* **Criminal law** (Trial—Witnesses—Identity).**ILLEGAL DISTRESS**Damages. *See* **Distress** (Distress for rent—Illegal distress—Damages).**ILLEGAL ENTRANT**Detention. *See* **Immigration** (Detention—Illegal entrant).**ILLEGAL PREMIUM**Lease. *See* **Rent restriction** (Premium).**ILLEGAL SALE**Aiding and abetting. *See* **Criminal law** (Aiding and abetting—Illegal sale).**ILLEGAL USER**Premises. *See* **Landlord and tenant** (Lease—Illegal purpose—Illegal user of premises).**ILLEGALITY**Bill of exchange. *See* **Bill of exchange** (Illegality).Building contract. *See* **Building contract** (Illegality).

Commission—

Estate agent. *See* **Estate agent** (Commission—Illegal commission).Contract. *See* **Contract** (Illegality).

Hire-purchase—

Generally. *See* **Hire-purchase** (Illegality).Passing of property under illegal agreement. *See* **Contract** (Illegality—Passing of property—Hire-purchase agreement).

Lease—

Agreement for lease. *See* **Landlord and tenant** (Agreement for lease—Illegality).

Covenant—

Exclusion of jurisdiction of court. *See* **Contract** (Illegality—Public policy—Jurisdiction of court—Exclusion—Lease).**ILLEGALLY OBTAINED EVIDENCE**Criminal proceedings. *See* **Criminal evidence** (Illegally obtained evidence).**ILLEGITIMACY**Declaration of legitimacy. *See* **Legitimation** (Declaration of legitimacy).**ILLEGITIMATE CHILD**

Adoption—

Consent. *See* **Adoption** (Consent—Parent or guardian—Parent—Parent of illegitimate child).Generally. *See* **Adoption** (Illegitimate child).Affiliation proceedings. *See* **Affiliation**.

Child of family—

Divorce. *See* **Divorce** (Infant—Child of family).

Custody—

Child in care. *See* **Child** (Care—Local authority—Assumption by authority of parental rights—Illegitimate child—Custody).Generally. *See* **Minor** (Illegitimate child—Custody).

Custody and adoption—

Conflicting applications. *See* **Adoption** (Custody—Illegitimate child—Conflicting applications).

Local authority—

Assumption of parental rights. *See* **Child** (Care—Local authority—Assumption by authority of parental rights—Illegitimate child).Maintenance. *See* **Minor** (Maintenance—Illegitimate child).

Mental patient's child—

Settlement. *See* **Mental health** (Patient's property—Settlement—Illegitimate son).

Succession to personal property in England—

Will. *See* **Will** (Legitimacy—Succession to personal property in England).

ILLEGITIMATE CHILD (cont)**Will—**

Children. *See* Will (Children—Illegitimate child).

ILL-TREATMENT**Child—**

Proceedings in juvenile court. *See* Children and young persons (Care—Proceedings in juvenile court—Conditions to be satisfied before making order—Neglect or ill-treatment of child or young person).

IMMIGRANT

Commonwealth. *See* Commonwealth immigrant.

IMMIGRATION**Appeal—**

Time limit for appealing—

Appeal to tribunal from adjudicator—Appeal to tribunal within prescribed period—Leave to appeal granted by adjudicator on oral application—Notice of appeal to be served on tribunal as soon as practicable thereafter—Whether time limit applicable where leave given on oral application—Whether notice of appeal to be served as soon as practicable and in any event within prescribed period—Immigration Appeals (Procedure) Rules 1970 (S I 1970 No 794), rr 13(1)(2), 14(1)(2). **R v Immigration Appeal Tribunal, ex parte Samaraweera** [1974] 2 171, QBD.

Notice not given within limitation period—Discretion of adjudicator or tribunal to allow appeal to proceed—Discretion where by reason of special circumstances just and right to do so—Matters constituting 'special circumstances'—Merits of case—Mistake on part of appellant's legal advisers—Immigration Appeals (Procedure) Rules 1972, (S I 1972 No 1684), r 11(4). **Mehta v Secretary of State for the Home Department** [1975] 2 1084, CA.

Assisting illegal entry into United Kingdom—

Assisting entry—

Knowingly carrying out arrangements for facilitating entry of anyone known or believed to be illegal entrant—Arrangements carried out after entrant having entered United Kingdom—Whether an offence—Immigration Act 1971, s 25(1). **R v Singh (Amarjit), R v Meuwesen** [1973] 1 122, CA.

Commonwealth citizen. *See* Commonwealth immigrant.

Conspiracy to evade controls. *See* Criminal law (Conspiracy—Act injurious to public interest—Immigration controls—Evasion).

Contravention of order prohibiting entry—

Mens rea. *See* Singapore (Criminal law—Mens rea—Immigration).

Deportation—

Expiration of leave to remain in United Kingdom—

Variation of leave—Refusal of application to vary leave—Appeal pending—Applicant not to be deported so long as appeal pending—Applicant who has a limited leave to enter or remain in the United Kingdom—Applicant's leave having expired before application made for further period of leave—Whether applicant immune from deportation until application determined and appeal procedure exhausted—Immigration Act 1971, ss 3(5)(a), 14(1). **R v Immigration Appeal Tribunal, ex parte Subramaniam** [1976] 3 604, CA, **Suthendran v Immigration Appeal Tribunal** [1976] 3 611, HL.

Detention—

Habeas corpus—

Return to writ—Enquiry into truth of return. *See* Habeas corpus (Return to writ—Enquiry into truth of facts set out in return—Onus of proof—Detention—Evidence that detention unlawful—Gaoler's return valid on its face—Immigrant).

Illegal entrant—

Detention pending deportation—Rights of entrant—Temporary release—Right to marry—Right to temporary release to get married—Whether illegal entrant entitled to release for purpose of getting married—Immigration Act 1971, Sch 2, para 21(1)—Convention for the Protection of Human Rights and Fundamental Freedoms 1950, art 12. **R v Secretary of State for Home Affairs, ex parte Bhajan Singh** [1975] 2 1081, CA.

Illegal entrant not given leave to enter or remain in United Kingdom—Detention pending directions for removal—Persons entering United Kingdom and present there in breach of immigration laws—Commonwealth immigrant—Immigrant entering United Kingdom clandestinely in breach of laws relating to Commonwealth immigrants previously in force—Immigrant no longer liable to prosecution under previous laws—Whether immigrant 'settled' in United Kingdom and deemed to have indefinite leave to remain—Whether immigrant 'illegal entrant' liable to detention and removal—Commonwealth Immigrants Act 1962, ss 4, 4A (as added by the Commonwealth Immigrants Act 1968, s 3)—Immigration Act 1971, ss 1(2), 4(2), 33(1)(2), 34(1)(a), Sch 2, paras 9, 16(2). **Azam v Secretary of State for the Home Department** [1973] 2 765, HL.

Unlawful detention—

Remedy—Habeas corpus—Appeal—Detainee making out a prima facie case that he is not an illegal entrant—Whether entitled as of right to writ of habeas corpus—Whether bound to rely on statutory appeal procedure—Immigration Act 1971, s 16. **R v Governor of Pentonville Prison, ex parte Azam** [1973] 2 741, CA.

False statement—

Statement to person lawfully acting in execution of statute—

Investigation of allegation that accused an illegal immigrant—Statement made by accused to constable investigating allegation—Whether constable 'acting in the execution of' statute—Immigration Act 1971, s 26(1)(c). **R v Gill** [1976] 2 893, CA.

IMMIGRATION (cont)

Illegal entry and other offences—

Time limit for prosecution—

Continuing offences—Remaining in United Kingdom beyond time limited for leave—Failure to observe condition of leave—Entrant given leave to enter limited to one month—Entrant taking up employment during month in breach of condition of leave—Entrant remaining in employment in United Kingdom for four years—Whether entrant committing offences four years later—Immigration Act 1971, ss 24(1)(b)(3), 28(1). **Singh (Gurdev) v The Queen** [1974] 1 26, QBD.

Immigration officer—

Examination of entrant—

Natural justice—Duty of officer to act fairly—Duty to allow entrant to give explanation of why he should be given leave to enter—Whether duty to give entrant an opportunity to explain evidence tending to contradict statements made by entrant. **R v Secretary of State for the Home Department, ex parte Mughal** [1973] 3 796, CA.

Immigration ordinance—

Fiji—

Repugnancy to British Nationality Act 1948. *See* **Fiji** (Deportation—Immigration ordinance—Repugnancy).

Leave—

Indefinite leave—

Person having indefinite leave to enter and remain in United Kingdom at coming into force of Immigration Act 1973 and settled there—In the United Kingdom—Physical presence at relevant date—Non-patrial settled in United Kingdom before relevant date—Non-patrial on visit abroad on relevant date—Whether to be treated as being in the United Kingdom on that date—Immigration Act 1971, s 1(2). **R v Secretary of State for the Home Department, ex parte Mughal** [1973] 3 796, CA.

Non-patrial—

Right of entry—Expellee—Obligation of country under international law to receive back its nationals expelled from other countries—British protected person—Non-patrial expelled from normal country of residence—Expellee claiming to be British protected person—Right of British protected person to enter United Kingdom—Expellee refused leave to enter United Kingdom as of right for purpose of settling there permanently—Immigration Act 1971, s 3(1). **Thakrar v Secretary of State for the Home Department** [1974] 2 261, CA.

Right of entry—Onus of satisfying immigration officer of right to enter—Non-patrial treated as having indefinite leave to enter and remain in United Kingdom—Non-patrial returning to United Kingdom after visit abroad—Whether entitled to entry as of right—Whether onus on non-patrial to satisfy immigration officer of right to enter—Immigration Act 1971, ss 1(2), (5), 3(2)—Immigration Rules (1973), r 51. **R v Secretary of State for the Home Department, ex parte Mughal** [1973] 3 796, CA.

Non-patrial—

Deportation. *See* **Deportation, ante**.

Patrial—

Right of abode—

Wife of patrial—Proof of patriality—Certificate of patriality—Right of wife to certificate—Grant of certificate not to be refused arbitrarily or delayed without good reason—Wife of patrial arriving in United Kingdom without certificate—Application to Home Office for certificate—Home Office rejecting application on ground that it could be dealt with more satisfactorily in wife's country of origin—Long delay in country of origin because of large number of applicants—Most applicants seeking leave to enter—Whether Home Office bound to consider wife's application on merits—Immigration Act 1971, ss 2(1)(a)(2), 3(9)—Immigration Rules (1973), r 4. **R v Secretary of State for the Home Department, ex parte Phansopkar** [1975] 3 497, QBD.

Wife of patrial—Wife an alien—Wife entitled to be registered as United Kingdom citizen—Husband a patrial having a right of abode in United Kingdom—Wife arriving in United Kingdom—Whether wife having a right to enter—British Nationality Act 1948, s 6(2). **R v Secretary of State for the Home Office, ex parte Akhtar** [1975] 3 1087, QBD.

Procedure—

Appeal. *See* **Appeal, ante**.

Rules—

Commonwealth citizens, wives and children settled in United Kingdom at coming into force of statute—

Rules not to make Commonwealth citizens less free to enter or leave United Kingdom than if statute had not been passed—Amendment to passed—197630843 Amendment following withdrawal of Pakistan from Commonwealth—Wife of Pakistani citizen settled in United Kingdom treated as non-Commonwealth citizen and required to obtain visa to enter United Kingdom—Wives of Commonwealth citizens required to obtain entry clearance—Whether amendment to rules affecting wife of Pakistani citizen valid—Immigration Act 1971, s 1(5)—Immigration Rules for Control on Entry: EEC and Non-Commonwealth Nationals (1973), para 13. **R v Chief Immigration Officer, Heathrow Airport, ex parte Salamat Bibi** [1976] 3 843, CA.

Statute controlling immigration—

Retrospective operation—

Penal provisions—Illegal entry—Possession of false passport—Acts performed before statute creating offences came into force—Statute applied to persons entering United Kingdom before it came into force—Acts done under former immigration laws having effect as if done under statute—Whether statute creating offences in respect of acts performed before it came into force—Immigration Act 1971, ss 24(1)(a), 26(1)(d), 34(1). **Waddington v Miah** [1974] 2 377, HL.

IMMIGRATION (cont)

Workers—

Freedom of movement—

Nationals of member states of European Economic Community—Restrictions imposed by member states on freedom of movement—Public policy—Measures imposing restrictions to be based exclusively on personal conduct of individual concerned—Personal conduct—Meaning—Membership of socially harmful organisation—Voluntary act of individual in associating with organisation—Organisation not unlawful—Church of Scientology—Dutch Scientist wishing to enter United Kingdom to take up employment with Church—Church regarded by United Kingdom government as socially harmful—Whether act of associating with Church 'personal conduct'—Whether government permitted to refuse Scientist leave to enter United Kingdom—EEC Directive 64/221, art 3(1). *Van Duyn v The Home Office* (No 2) [1975] 3 190, CJEC.

IMMORAL EARNINGS

Prostitution. *See* **Criminal law** (Prostitution—Living on earnings of prostitution).

IMMORAL USER

Premises—

Forfeiture of lease—

Court's discretion to grant relief. *See* **Landlord and tenant** (Relief against forfeiture—Immoral user of premises—Court's discretion to grant relief).

IMMUNITY

Civil action. *See* **Action** (Immunity from civil action).

Diplomatic immunity from legal process. *See* **Constitutional law** (Diplomatic privilege—Immunity from legal process).

Foreign sovereign state—

Immunity from suit. *See* **Constitutional law** (Foreign sovereign state—Immunity from suit).

Suit—

Arbitrator—

Negligence. *See* **Negligence** (Immunity from suit—Arbitrator).

Foreign sovereign state—

Immunity from suit. *See* **Constitutional law** (Foreign sovereign state—Immunity from suit).

Immunity from suit—

Foreign Sovereign state. *See* **Constitutional law** (Immunity from suit—Foreign sovereign state).

Judge. *See* **Judge** (Immunity from suit).

Vicarious—

Tort. *See* **Tort** (Vicarious immunity).

IMPERFECT TRUST PROVISION

Validation by statute. *See* **Charity** (Validation by statute—Imperfect trust provision).

IMPERSONATION

Police officer. *See* **Police** (Impersonation).

IMPLEMENTS OF FORGERY

See **Criminal law** (Forgery—Implements of forgery).

IMPLICATION

Gift in will. *See* **Will** (Gift—Implication).

IMPLIED CONDITION

Sale of land. *See* **Sale of land** (Condition—Implied condition).

IMPLIED INDEMNITY

See **Indemnity** (Implied indemnity).

IMPLIED TERM

Contract—

Generally. *See* **Contract** (Implied term).

Sale of goods—

Feeding stuffs. *See* **Agriculture** (Feeding stuffs—Sale for use as food for cattle or poultry—Implied warranty suitable for use as such).

Master and servant—

Contract of service. *See* **Master and servant** (Contract of service—Implied term).

Sale of goods—

Fitness. *See* **Sale of goods** (Implied condition as to fitness).

Merchantable quality. *See* **Sale of goods** (Implied condition as to merchantable quality).

Quiet possession. *See* **Sale of goods** (Implied warranty as to quiet possession).

IMPORT

Licence—

Duty to obtain. *See* **Licence** (Import licence—Duty to obtain).

IMPORT DUTY

Commonwealth preference. *See* **Customs and excise** (Duties—Commonwealth preference).

Interest. *See* **Customs and excise** (Imported goods—Delivery on giving security for duty—Interest on security).

IMPORTATION

Drugs—

Assisting in importation of drugs into foreign country. *See* **Drugs** (Dangerous drugs—Assisting in or inducing commission of offences outside United Kingdom).

IMPORTATION (cont)

Goods—

Customs duty—

Dealing with goods on which duty has not been paid. *See* **Customs and excise** (Dealing with goods chargeable to duty which has not been paid).

Prohibited goods. *See* **Customs and excise** (Importation of prohibited goods).

IMPORTED FOOD

Marks of origin. *See* **Food and drugs** (Marks of origin—Imported food).

IMPORTED GOODS

Trade description. *See* **Trade description** (Indication of origin of imported goods).

IMPORTUNING

Immoral purposes. *See* **Criminal law** (Soliciting for immoral purposes—Importuning).

IMPOSSIBLE ATTEMPT

Crime. *See* **Criminal law** (Attempt—Impossible attempt).

IMPOTENCE

Damages—

Disability resulting from brain injury. *See* **Damages** (Personal injury—Brain damage—Disabilities resulting from brain injury—Loss of sense of taste and smell—Sexual impotence).

IMPOTENT PERSONS

Relief—

Charitable purpose. *See* **Charity** (Benefit to community—Impotent person).

IMPRISONMENT

Contempt of court—

Criminal contempt—

Power to commit instantly to prison. *See* **Contempt of court** (Criminal contempt—Power to commit instantly to prison).

Release from custody—

Factors to be taken into account. *See* **Contempt of court** (Committal—Breach of undertaking—Period of custody).

Extended term. *See* **Sentence** (Extended term of imprisonment).

False imprisonment. *See* **False imprisonment**.

Generally. *See* **Sentence** (Imprisonment).

Youthful offender. *See* **Sentence** (Youthful offender—Imprisonment).

IMPROVEMENT

Business premises—

Tenancy—

Compensation. *See* **Landlord and tenant** (Improvements—Business premises—Compensation).

Dwelling—

Notice. *See* **Housing** (Improvement notice).

Dwelling-house—

Protected tenancy—

Application for determination of new fair rent. *See* **Rent restriction** (Rent—Determination of fair rent—Application—Change in condition of dwelling-house).

Income tax—

Capital or revenue expenditure. *See* **Income tax** (Deductions in computing profits—Capital or revenue expenditure—Improvements).

Matrimonial home. *See* **Husband and wife** (Matrimonial home—Improvement).

Trunk roads. *See* **Highway** (Trunk roads—Improvement).

IMPROVEMENT NOTICE

House. *See* **Housing** (Improvement notice).

INACTIVITY

Estoppel by conduct. *See* **Estoppel** (Conduct—Silence or inactivity).

INCAPACITY

Incapacity to consummate marriage. *See* **Nullity** (Incapacity to consummate marriage).

Partner—

Incapacity. *See* **Partnership** (Dissolution—Incapacity of partner).

INCEST

See **Criminal law** (Incest).

INCITEMENT

Generally. *See* **Criminal law** (Incitement).

Race relations—

Unlawful discrimination. *See* **Race relations** (Incitement).

Racial hatred. *See* **Criminal law** (Public order—Incitement to racial hatred).

INCITEMENT TO DISAFFECTION

Indictment—

Duplicity. *See* **Indictment** (Duplicity—Incitement to disaffection).

INCOME

Accumulation. *See* **Accumulation**.

Capital distinguished—

Administration of estates. *See* **Administration of estates** (Capital or income).

INCOME (cont)

Legal aid cases—

Assessment of resources of income. *See* **Legal aid** (Entitlement—Assessment of resources).

Resources—

Supplementary benefit—

Calculation of benefit. *See* **Supplementary benefit** (Calculation of benefit—Deduction of resources from requirements—Income resources).

Settlement—

Capital or income. *See* **Settlement** (Capital or income).

Will—

Forfeiture clause—

Income vesting in another. *See* **Will** (Forfeiture—Income vesting in another).Gift of income. *See* **Will** (Gift—Income).

Residue—

Intermediate income. *See* **Will** (Residue—Intermediate income).**INCOME TAX**

Accommodation—

Perquisites or profits from employment—

Occupation of house. *See* **Emoluments from office or employment—Perquisites or profits—Occupation of house, post.**

Provision to employee by body corporate—

Income tax. *See* **Emoluments from office or employment—Benefits in kind—Expense incurred by body corporate—Accommodation, post.**

Residence provided by employers—

Rent in part paid by employers. *See* **Emoluments from office or employment—Expenses wholly, exclusively and necessarily incurred—Residence provided by employers to employee, post.**

Accountancy principles—

Computation of profits. *See* **Computation of profits—Accountancy principles, post.**

Accounting period—

Company—

Alteration of period—Effect—Alteration of period of account of company—Decision and direction of Commissioners of Inland Revenue fixing periods of account—Appeal to Special Commissioners—Hardship—Power of Special Commissioners to grant such relief as just—Effects of alteration in accounting period—Double use of nine month period of profits in assessment to tax—Increase in liability to corporation tax—Income Tax Act 1952, s 127(2) (b)(3) as amended by Income Tax Management Act 1964, Sch 4. **Inland Revenue Comrs v Helical Bar Ltd** [1972] 1 1205, HL.

Accrued expenses—

Deduction in computing profits. *See* **Deduction in computing profits—Expenses wholly and exclusively laid out for purposes of trade—Accrued expenses, post.**

Additional assessment—

Discovery—

Facts known to commissioners adequate to support assessment—Assessment made on basis of erroneous belief that facts otherwise—Competency of assessments—Income Tax Act 1918, s 125(1). **Earl Beatty v Inland Revenue Comrs** [1952] 2 758, ChD.Mistake—Mistake in general law—No new facts discovered—Income Tax Act 1952, s 41(1). **Cenlon Finance Co Ltd v Ellwood (Inspector of Taxes)** [1962] 1 854, HL.Mistake—Mistake in general law—Discovery that a person chargeable has been undercharged—'Discovers'—Discovery that mistake made in applying law to facts—Income Tax Act 1918, s 125(1). **Commercial Structures Ltd v Briggs (Inspector of Taxes)** [1948] 2 1041, CA.Mistake—Mistaken view of law applicable to facts—Finality of determination—Appeal against original assessment determined by agreement—Subsequent additional assessment—Discovery being inspector's change of mind on treatment of dividends—Validity of assessments—Income Tax Act 1952, ss 41(1), 50(2), 510(1). **Cenlon Finance Co Ltd v Ellwood (Inspector of Taxes)**, **Ellwood (Inspector of Taxes) v Cenlon Finance Co Ltd**, **Tableau Holdings Ltd v Williams (Inspector of Taxes)**, **Williams (Inspector of Taxes) v Tableau Holdings Ltd** [1962] 1 854, HL.Onus on inspector—No onus to show prima facie case—Income Tax Act 1952, s 41, Sch D, Case III, Case V. **Hume (Inspector of Taxes) v Asquith** [1969] 1 868, ChD.

Fraud or wilful default—

Default committed on behalf of any person—False returns by taxpayer's accountant—Taxpayer not personally in default—Power to make additional assessment at any time—Income Tax Act 1952, s 47(1). **Clixby v Pountney (Inspector of Taxes)** [1968] 1 802, ChD.

Neglect—

Normal year—Time limit—Assessment for 'normal year' made before statute enabling Crown to go back beyond six-year period enacted—Validity—Income Tax Act 1952, s 47(1)—Finance Act 1960, s 51. **Thurgood v Slarke (Inspector of Taxes)** [1971] 3 606, ChD.Procedure—Application for leave to make assessment for six years immediately preceding normal year—Taxpayer given no opportunity to be heard—Finance Act 1960, s 51—Income Tax Management Act 1964, s 6. **Pearlberg v Varty (Inspector of Taxes)** [1972] 2 6, HL.

Time limit—

Normal year. *See* **Additional assessment—Neglect—Normal year—Time limit, ante.**Partnership—Additional assessment on partnership—One partner dead more than three years—Years of assessment more than six years before his death—Validity of assessment—Liability of executors and of surviving partner—Income Tax Act 1952, ss 47(2), 144(1)—Finance Act 1960, ss 53, 63(3). **Harrison (Inspector of Taxes) v Willis Brothers (W H Willis and Executors of H H Willis (decd))** [1965] 3 753, CA.

INCOME TAX (cont)

Additional assessment (cont)—

Valuation of property—

Preparatory year and year of revaluation—Income Tax Act 1918, s 125—Finance Act 1930, ss 28, 31, 32, Sch I, Part I. *Kliman (Inspector of Taxes) v Stone, Hills (Inspector of Taxes) v London Freehold and Leasehold Property Co Ltd* [1936] 1 859, KBD.

When annual value determined for purposes of tax under Schedule A—Income Tax Act 1952, ss 35, 53. *BP Refinery (Kent) Ltd v Kent River Board* [1956] 2 834, QBD.

Advantage. *See* Tax advantage, *post*.

Adventure in the nature of trade. *See* Trade—Adventure in the nature of trade, *post*.

Allowances—

Annual Value of land. *See* Land—Annual value—Allowances, *post*.

Apportionment of undistributed income. *See* Undistributed income—Computation of income for apportionment—Allowances, *post*.

Capital allowances. *See* Capital allowances, *post*.

Child. *See* Child relief, *post*.

Depreciation—

Canada. *See* Canada (Income tax—Allowances—Depreciation).

Depreciation allowance—

Deduction in computing profits. *See* Deduction in computing profits—Depreciation allowance, *post*.

Expenses allowances—

Emoluments from office or employment. *See* Emoluments from office or employment—Expenses allowances, *post*.

Investment grant. *See* Investment grant.

Married person's allowance. *See* Husband and wife—Married person's allowance, *post*.

Amortisation of capital—

Capital or income receipts. *See* Capital or income receipts, *ante*.

Annual income—

Interest. *See* Interest—Interest, annuities and other annual income, *post*.

Annual payment—

Annuity—

Monthly loans by insurance company—Life assurance—Loans to assured—Recovery out of amount payable at death—Payments not in nature of annuities—Income Tax Act 1918, Sch D, Case III, All Schedules Rules, r 21. *Inland Revenue Comrs v Wesleyan and General Assurance Society* [1948] 1 555, HL.

Appropriation to taxed profits—

Interest—Attribution by taxpayer of part to capital—Effect—Part of annual payments (mortgage interest) attributed in company's accounts to capital—Amount available for dividend thereby increased—Profits available to meet the annual payments—Whether attribution of part of annual payments to capital was binding for income tax purposes—Income Tax Act 1952, ss 169, 170. *Chancery Lane Safe Deposit and Offices Co Ltd v Inland Revenue Comrs* [1966] 1 1, HL.

Payment out of profits—Profits already largely absorbed by dividends—No other fund from which to pay dividends—Annual payments in fact set in special ledger account against capital instalments received—Whether the annual payments could be treated as between company and Revenue as paid out of taxed profits—Whether company must account to Revenue for income tax deducted from annual payments—Income Tax Act 1952, ss 169, 170. *B W Nobes & Co Ltd v Inland Revenue Comrs* [1966] 1 30, HL.

Capital or income—

Annuity—Deficiency—Will—Direction in will to make up deficiency of income out of capital—Payments made prior to ascertainment of residue—'Residuary estate'—Payments 'in respect of income'—Irrelevant that payments made out of capital—Recurrent payments—'Annual payment'—Whether payment 'in respect of' a limited interest in residue—Income Tax Act 1918, Sch D, Case III, r 1(a), All Schedules Rules, r 21—Finance Act 1927, s 26—Finance Act 1938, ss 30(1)(2), 35(3). *Trustees of the will of Florence Cunard v Inland Revenue Comrs, Ella McPheeters v Same* [1946] 1 159, CA.

Consideration for transfer of capital asset—Rentcharges. *See* Capital or income receipts—Transfer of capital asset—Cash receipts of fixed amounts over fixed period as consideration for transfer—Rentcharges, *post*.

Debt—Payment by instalments—Instalments to continue during life of creditor—Whether instalments payments of capital from which tax not deductible—Income Tax Act 1918, All Schedules Rules, r 19. *Dott v Brown* [1936] 1 543, CA.

Purchase price—Interest element—Price payable by instalments—Total price exceeding current value of property sold—Price computed having regard to interest factor—Dissection of annual payment into capital and interest for tax purposes. *Vestey v Inland Revenue Comrs, Inland Revenue Comrs v Vestey* [1961] 3 978, ChD.

Compensation for nationalisation—

Interim income payment—Payments in respect of compensation on nationalisation of coal industry—Recurrence—Pure income profit—Payment by the Crown—Income Tax Act 1918, Sch D, Case III, r 1(a)—Coal Industry Nationalisation Act 1946, s 22(1)(2)(3)(4)—Coal Industry (No 2) Act 1949, s 1(1)(2)(3). *Whitworth Park Coal Co Ltd (in liquidation) v Inland Revenue Comrs, Ramshaw Coal Co Ltd (in liquidation) v Same, Brancepeth Coal Co Ltd (in liquidation) v Same* [1959] 3 703, HL.

Contingent and variable in amount—

Guarantee of fixed dividend—Taxpayer company undertaking to make up dividends of another company to fixed amount—Dividends paid in each of five years—Different amounts paid in each year—Whether annual payments liable to tax—Income Tax Act 1918, Sch D, Case III, r 1(a), All Schedules Rules, r 21—Finance Act 1927, s 26. *Moss' Empires Ltd v Inland Revenue Comrs* [1937] 3 381, HL.

INCOME TAX (cont)

Annual payment (cont)—

Covenanted payments to charity—

Benefit in return for payment—Club accepted as charity—Club providing benefits and facilities to members—Members paying subscriptions under seven year covenant—Whether club entitled to recover tax deducted from payments—Income Tax Act 1952, s 447(1)(b). **Inland Revenue Comrs v National Book League** [1957] 2 644, CA.

Benefit in return for payments—Common intention that covenanted payments should be used by charity to buy business of covenantor's educational establishment—Plan to covert tutorial establishment to educational trust—Whether covenanted payments income in hands of charity and thus annual payments—Income Tax Act 1952, ss 169(1), 447(1)(b). **Campbell (Trustees of Davies's Educational Trust) v Inland Revenue Comrs** [1968] 3 588, HL.

Benefit in return for payments—Covenantor obtaining benefit of counter-obligations by charity—Obligations not importing absence of bounty—Payments not income in the hands of charity trustees—Educational trust intended to provide means of purchasing goodwill of covenantor's tutorial business—Application of moneys received by trustees on application for charitable purposes, but no tax relief as covenanted sums not annual payments—Income Tax Act 1952, ss 169, 447(1)(b). **Campbell (Trustees of Davies's Educational Trust) v Inland Revenue Comrs** [1966] 2 736, ChD.

Deduction from total income. *See* Total income—Deduction of annual payments, *post*.

Deduction of tax—

Failure to deduct—Rent on long lease—Liability of recipient to be assessed—Income Tax Act 1952, ss 1, 122, 148, 170(1)(2)(3), 177(2), Sch D. **Grosvenor Place Estates Ltd v Roberts (Inspector of Taxes)** [1961] 1 341, CA.

Insufficient deduction—Recovery of money overpaid—Payment under mistake of fact—Rent under long lease—Payment without deduction of tax at standard rate—Lessee's erroneous belief that lease for short term—Income Tax Act 1918, General Rules Applicable to All Schedules, r 19(2)—Finance Act 1940, s 17(1)(a)(2). **Turvey v Dentons (1923) Ltd** [1952] 2 1025, QBD.

Local authority—Retention of tax deducted from interest payment—Separate undertakings—Whether excess of taxed income in one account can be set off against excess of interest payments in another account—Income Tax Act 1918, All Schedules Rules, rr 19, 21—Local Government Act 1933, ss 185, 194—South Shields Corporation Act 1935, ss 112—115. **Allchin (Inspector of Taxes) v Coulthard** [1943] 2 352, HL.

Notification to payee of tax deducted—Allowance to wife under separation deed—Necessity for calculation and notification of deduction—Income Tax Act 1918, All Schedules Rules, r 19(1). **Hemsworth v Hemsworth** [1946] 2 117, KBD.

Past income—Arrears—Weekly payments under maintenance agreement between husband and wife—Right of husband to deduct tax on making payment of arrears—Income Tax Act 1918, All Schedules Rules, r 19. **Taylor v Taylor** [1937] 3 574, CA.

Payment out of profits already taxed. *See* Annual payment—Payment out of profits already taxed—Deduction of tax, *post*.

Street works—Cost payable to local authority in annual instalments—Instalments including sum for interest—Whether payments subject to deduction of tax on whole amount. **Goole Corp v Trustees of the Aire and Calder Navigation** [1942] 2 276, KBD.

Insurance premiums—

Payments—Liability to tax—Contracts with mutual society providing for weekly payments in event of disability—Premiums to society to continue during receipt of benefit payments—Liability of payments to tax—Income Tax Act 1918, Sch D, Case III, r 1. **Forsyth v Thompson** [1940] 3 465, KBD.

Meaning—

Dividend distinguished—Agreement between two companies for sharing of profits and losses—Payment of share of profits under agreement by one company to other—Whether dividend or annual payment—Whether dividend—Income Tax Act 1918, Sch D, Case III, All Schedules Rules, rr 20, 21—Finance Act 1931, s 7(1). **Utol Ltd v Inland Revenue Comrs** [1944] 1 190, KBD.

Order of court—

Maintenance order—Maintenance to be paid free of tax—Certificate given for deduction of tax—Maintenance payments allowed as deduction against income—Right of divorced woman to repayment. **Spilsbury (Inspector of Taxes) v Spofforth** [1937] 4 487, KBD.

Maintenance order—Order to pay 'free of tax'—Effect—Income Tax Act 1952, s 170. **J v J** [1955] 2 617, CA.

Payment free of tax—

Annuity—Settlement giving annuities free of tax—Effect—Right of annuitant to receive a net amount calculated after deduction of tax thereon—Income Tax Act 1918, All Schedules Rules, r 23. **Re Goodson's Settlement** [1943] 1 201, ChD.

Payment out of profits etc already taxed—

Deduction of tax—Deduction by person through whom payment paid—Dividends—Payment of dividends by company guaranteed by associated company—Guarantor authorising payment by company—Payment debited to guarantor—Company person through whom payment made—Effect of transaction payment of gross amount by guarantor—Payments income in shareholders' hands—Company liable to be charged for tax. **Aeolian Co Ltd v Inland Revenue Comrs, Inland Revenue Comrs v Aeolian Co Ltd** [1936] 2 219, KBD.

Inference that payment made net of tax—Royalties—Assignment of performance rights to American company—Royalties payable under assignment agreement—Taxability in hands of payee—No inference that payment made out of taxed profits by American company—Income Tax Act 1952, Sch D, Case III. **Hume (Inspector of Taxes) v Asquith** [1969] 1 868, ChD.

INCOME TAX (cont)

Annual payment (cont)—

Payment out of profits etc already taxed (cont)—

Remuneration—Trustees—Court order that annual sum be paid to trustees as 'remuneration for services'—Whether annual payment wholly out of profits or gains brought into charge—Whether trustees liable to assessment in respect thereof—Income Tax Act 1918, All Schedules Rules, r 19. **Hearn (Inspector of Taxes) v Morgan, Pritchard (Inspector of Taxes) v Harding Latham-Browne** [1945] 2 480, KBD.

Personal debt or obligation by virtue of contract—

Consideration for cancellation of service agreement—Payments made under contract—Right of payer to deduct tax at source—Payments pure income profit—Income Tax Act 1918, Sch D, Case III, r 1—All Schedules Rules, rr 19, 21. **Asher v London Film Productions Ltd** [1944] 1 77, CA.

Receipts payable as a personal debt or obligation—Medical practitioners—Agreement with Minister of Health—Payments by Minister towards maintenance of assurance policy—Whether payments assessable as annual payments. **Hawkins v Leahy** [1952] 2 759, ChD.

Trust—Beneficiaries children of settlor's employees—Payments to trustees—Consideration for payments—Covenant to pay sum to trustees for seven years—Trust as part of scheme for overseas employees of company—Provision for education of employees' children—Trustees' discretion to make payments to employees' children—No consideration from employee or child—Whether income tax deducted from payments recoverable. **Barclays Bank Ltd v Naylor (Inspector of Taxes)** [1960] 3 173, ChD.

Settlement—

Payments out of capital—Trustees directed to make up deficiency of income out of capital—Protective trust for benefit of settlor—Payments made to settlor out of capital—Capital or income payments—Treatment of sums paid as gross or net—Income Tax Act 1918, All Schedules Rules, r 21 (as amended by Finance Act 1927, s 26(1)). **Morant Settlement (Trustees) v Inland Revenue Comrs, Inland Revenue Comrs v Morant Settlement (Trustees)** [1948] 1 732, CA.

Special services—

Periodical payments—Payments in consideration of services rendered to company by taxpayer—Death of taxpayer—Periodical payments under contract received by trustees of will—Liability to tax—Income Tax Act 1918, Sch D, Case III—Income Tax Act 1952, Sch D, Case III. **Westminster Bank Ltd v Barford (Inspector of Taxes)** [1958] 1 829, ChD.

Statutory liability—

Payment to taxpayer under statutory liability—Payments to conservators of forest—Statutory liability to contribute to upkeep of forest—Amount of contribution ascertained by reference to excess of conservators' expenditure over other income—Right of contributor to deduct tax and of conservators to recover it—Income Tax Act 1918, Sch D, Case III, r 1(a). **Inland Revenue Comrs v City of London Corp'n (as the Conservators of Epping Forest)** [1953] 1 1075, HL.

Ultra vires payment—

Interest—Payments termed 'interest' on debentures—Finding that not in the nature of interest—Creation of debentures on requirement of controlling company—Not in furtherance of objects of company creating—Payments a nullity—Disallowance of repayment claim—Income Tax Act 1952, s 169. **Ridge Securities Ltd v Inland Revenue Comrs** [1964] 1 275, ChD.

Annual profits or gains. *See* Profits, *post*.

Annual value—

Valuation of property—

Additional assessment. *See* Additional assessment—Valuation of property, *ante*.

Annual value of land. *See* Land—Annual value, *post*.

Annuity—

Annual payment—

Generally. *See* Annual payment—Annuity, *ante*.

Payment free of tax. *See* Annual payment—Payment free of tax—Annuity, *ante*.

Capital or income. *See* Annual payment—Capital or income—Annuity, *ante*.

Anti-nationalisation campaign—

Deduction of expenses in computing profits. *See* Deduction in computing profits—Expenses wholly and exclusively laid out for purposes of trade—Prevention of seizure of business by state—Anti-nationalisation campaign, *post*.

Appeal—

Allowing—

Consent—Allowing appeal by consent—Appeal from Income Tax Commissioners—Dismissal or withdrawal on agreed terms giving effect to appellant's contention—Income Tax Act 1952, s 64(6). **Slaney (Inspector of Taxes) v Kean** [1970] 1 434, ChD.

Apportionment of income—

Investment company. *See* Investment company—Apportionment of income—Appeal, *post*.

Case stated. *See* Case stated, *post*.

Decision of commissioners—

Finality—Property tax—Deduction by occupier from rent—Relief under sched A in respect of unlet tenements—Disagreement between landlord and tenant as to deduction—Reference to General Commissioners—Income Tax Act 1918, All Schedules Rules, r 22—Finance Act 1930, s 21. **Ecclesiastical Comrs for England v Sackville Estates Ltd** [1937] 2 720, KBD.

Dismissal—

Consent—Appeal from Income Tax Commissioners—Dismissal of appeals by consent—Practice. **Practice Note** [1956] 1 880, ChD.

INCOME TAX (cont)

Appeal (cont)—

Failure to appeal—

Effect—Assessments made on taxpayer—Taxpayer failing to appeal within time limit—Proceedings by Crown to recover tax assessed—Denial of liability by taxpayer—No defence to proceedings by Crown—Income Tax Act 1918 s 169—Finance Act 1941, Sch I, para 5. **Inland Revenue Comrs v Pearlberg** [1953] 1 388, CA.

Findings of fact—

Appellate court—Jurisdiction to review findings—Findings of fact by commissioners—Power of appellate court to review. **Edwards (Inspector of Taxes) v Bairstow** [1955] 3 48, HL.

Hearing—

Adjournment—Unjustified refusal of adjournment—Effect—Whether ground for rehearing or for discharge of assessment—Assessment under Sch E made in respect of unexplained increase in taxpayer's wealth—Increase alleged by Crown to represent payments from undisclosed profits of private company controlled by taxpayer—Claim by taxpayer that increase arose from betting winnings—Taxpayer too ill to attend hearing and give evidence—Subsequent recovery in health would have enabled him to give evidence at adjourned hearing—Hearing in absence—Assessments affirmed by commissioners—Appeal to High Court—Order for rehearing—Decline in health of taxpayer following High Court decision—Taxpayer's ill-health precluding him from ever giving evidence—Effect of refusal of adjournment to deprive taxpayer of opportunity of ever giving evidence—Whether refusal justifying discharge of assessment. **Rose v Humbles (Inspector of Taxes)** [1972] 1, 314.

Separate appeals—Hearing of separate but connected appeals by different taxpayers simultaneously—Admission by one taxpayer accepted as evidence against other—Appeal by company against additional assessment to profits tax and excess profits tax in relation to alleged undisclosed profits—Appeal by taxpayer controlling company against additional assessments in relation to alleged remuneration from undisclosed profits of company—Application for separate hearings—Imperfectly stated refusal—Counsel for taxpayer and company reasonably understanding that application accepted—Counsel forbearing to submit that figures, calculations etc accepted by taxpayer and evidence by Crown not accepted by or evidence against company—No evidence against company—Discharge of assessment against company. **Rose v Humbles (Inspector of Taxes)** [1972] 1 314, CA.

House of Lords—

Leave to appeal—Terms imposed as condition of granting leave—Surtax. **Inland Revenue Comrs v Wood Bros (Birkenhead) Ltd (in liquidation)** [1958] 1 405, HL.

Jamaica. *See* Jamaica (Income tax—Appeal).

Penalty—

Summary award. *See* Penalty—Summary award of penalty—Appeal, *post*.

Point of law—

Point not raised before commissioners—Point arising on facts found by to raise on appeal. **W S Try Ltd v Johnson (Inspector of Taxes)** [1946] 1 532, CA.

Settlement—

Agreement—Settlement by agreement—Onus of proof on appeal—Whether point of substance settled previously by agreement—Income Tax Act 1952, s 510. **Skinner (Inspector of Taxes) v Berry Head Lands Ltd** [1971] 1 222, ChD.

Special commissioners—

Competence to hear appeal—Hearing by two commissioners—Unnecessary that all commissioners should be summoned—Income Tax Act 1918, ss 62(5), 137(1)(4), 230(2). **Hood-Barrs v Inland Revenue Comrs** [1946] 2 768, CA.

Tribunal—Constitution—Appeal to Special Commissioners—Whether two or three Special Commissioners necessary to constitute appeal tribunal—Income Tax Act 1918, ss 137(4), 230(2). **R v Hood-Barrs** [1943] 1 665, CCA.

Valuation of land—

Valuation by person of skill—Valuation not on face bad in law—Examination of valuer—Whether valuer may be required to justify valuation—Income Tax Act 1918, s 138—Finance Act 1923, s 26. **Lyons v Collins (Inspector of Taxes)** [1936] 3 788, CA.

Apportionment—

Undistributed income. *See* Undistributed income—Apportionment, *post*.

Apportionment of income—

Income arising under settlement. *See* Settlement—Income arising under a settlement—Apportioned income, *post*.

Investment company. *See* Investment company—Apportionment of income, *post*.

Appropriate year—

Deduction in computing profits. *See* Deduction in computing profits—Appropriate year, *post*.

Arrangement—

Settlement for tax purposes. *See* Settlement—Meaning—Arrangement, *post*.

Arrangement having purpose or effect of avoiding liability. *See* Avoidance—Arrangement having purpose or effect of avoiding liability, *post*.

Assessment—

Additional assessment. *See* Additional assessment, *ante*.

Appropriate year—

Bonus salary—Years to which attributable—Bonus paid in one year attributable to services rendered over several years—Income Tax Act 1918, Sch E, r 1, r 5. **Heasman v Jordan (Inspector of Taxes)** [1954] 3 101, ChD.

Compensation—Date when right to compensation arose rather than date payable or date of receipt—Trade receipt—Company engaged in ribbon development—Compensation paid to company for refusal of permission to build houses—Appropriate year of assessment—Income Tax Act 1918, Sch D, Case I—Restriction of Ribbon Development Act 1935, ss 1, 2, 7, 9. **W S Try Ltd v Johnson (Inspector of Taxes)** [1946] 1 532, CA.

INCOME TAX (cont)

Assessment (cont)—

Appropriate year (cont)—

Dividends—Declaration and payment—Dividends of foreign corporation—Dividend payable four years after declaration—Whether shareholders assessable in year of declaration or in year of payment. **Associated Insulation Products Ltd v Golder (Inspector of Taxes)** [1944] 2 203, CA.

Option to purchase shares—Exercise of option—Option to purchase its shares sold to company's employee—Subsequent exercise of right of purchase—Increase in value of shares since date of option—In what year value of option assessable—Income Tax Act 1952, s 156, Sch E, Case 1, r 1. **Abbott v Philbin (Inspector of Taxes)** [1960] 2 763, HL.

Balancing charge—

Wear and tear. *See* Balancing charge—Wear and tear—Assessment, *post*.

Emoluments from office or employment. *See* Emoluments from office or employment—Assessment, *post*.

Estoppel. *See* Estoppel (Crown—Assessment to income tax).

Partnership—

Assessment in partnership name. *See* Partnership—Assessment in partnership name, *post*.

Perquisite of office or employment—

Basis of assessment. *See* Emoluments from office or employment—Basis of assessment—Perquisite, *post*.

Res judicata—

Previous decision of board of review that trust income exempt as charitable—Whether estopped from alleging that income of future years was not held for charitable purposes—Ceylon Income Tax Ordinance, s 7(1)(c). **Caffoor (Trustees of the Abdul Gaffoor Trust) v Comr of Income Tax, Colombo** [1961] 2 436, PC.

Year of assessment—

Emoluments. *See* Emoluments from office or employment—Year of assessment, *post*.

Assets—

Transfer abroad. *See* Avoidance—Transfer of assets abroad, *post*.

Australia. *See* Australia (Income tax).

Author. *See* Profits—Profession or vocation—Author, *post*.

Avoidance—

Agreement or arrangement having purpose or effect of avoiding liability—

Medical partnership—Australia. *See* Australia (Income tax—Avoidance—Agreement or arrangement having purpose or effect of avoiding liability).

Arrangement having purpose or effect of altering incidence of tax—

New Zealand. *See* New Zealand (Income tax—Avoidance—Alteration having purpose or effect of altering incidence of tax).

Arrangement having purpose or effect of avoiding liability—

Arrangement—Meaning—Overt acts showing scheme to avoid tax—Undistributed profits of company—Dealings in company's shares having effect of avoiding liability under provisions relating to undistributed profits—Commonwealth Income Tax and Social Services Contribution Assessment Act 1936-61 (Australia), s 260. **Newton v Comr of Taxation of the Commonwealth of Australia** [1958] 2 759, PC.

Maintenance and advancement of taxpayer's family—Whether arrangement for the maintenance and advancement of taxpayer's family. **Mangin v Inland Revenue Comr** [1971] 1 179, PC.

Burden of proof—

Valid assessment on loan interest—Alteration of company's loan arrangements—Continuation of assessment—Necessity for authorities to show rearrangement not a real transaction. **Income Tax Comr (Bombay Presidency and Aden) v Bombay Trust Corpn Ltd** [1936] 2 1679, PC.

Deduction of tax from dividends. *See* Dividends—Deduction of tax—Tax avoidance transactions, *post*.

Jamaica. *See* Jamaica (Income tax—Avoidance).

Medical partnership—

Australia. *See* Australia (Income tax—Agreement or arrangement having purpose or effect of avoiding liability—Partnership of medical practitioners dissolved).

Surtax—

Sales cum dividend—Apportionment—'Exceptional and not systematic' avoidance—Single act of avoidance 'exceptional' even though planned and carried out by a number of sales—Finance Act 1927, s 33(3)(4). **Bisland v Inland Revenue Comrs** [1936] 2 616, KBD.

Transfer of assets abroad—

Associated operation—Connection between operations—Lapse of time between operations—Transfer of assets to English company—Purpose of transfer to release trustees of family estate—Subsequent decision to transfer assets to Canadian company—Whether transfer to Canadian company 'associated' with transfer to English company—Finance Act 1936, s 18—**Executrices of C J H Corbett v Inland Revenue Comrs** [1943] 2 218, CA.

Associated operation—Acquisition of rights by means of operation—Rights—Transfer of assets to company in Republic of Ireland—Whether transfer gave rise to right whereby there is power to enjoy income—'Right'—Income Tax Act 1952, s 412 (1)(3)(a)(4). **Inland Revenue Comrs v Herdman** [1969] 1 495, HL.

Associated operation—Settlement of interest in remainder—Transfer of assets to company in Canada in consideration of shares etc—Settlement of shares by transferor on taxpayer—Interest in remainder following transferor's life interest—Right to income required by virtue of settlement—Finance Act 1936, s 18(1)(2). **Bambridge v Inland Revenue Comrs** [1955] 3 812, HL.

INCOME TAX (cont)

Avoidance (cont)—

Transfer of assets abroad (cont)—

Associated operation—Transfer by company the greater part of the share capital in which is held by taxpayer—Transfer to company resident in United Kingdom which subsequently moves abroad—Finance Act 1936, s 18, Sch II, para 6—Finance Act 1938, s 28. **Congreve v Inland Revenue Comrs** [1948] 1 948, HL.

Associated operation—Transfer of assets to company in Republic of Ireland—Company charging assets to bank—Subsequent unsecured loan of cash by transferor to company—Payment into company's banking account—Whether loan an 'associated operation'—Whether income of company to be deemed that of transferor—Income Tax Act 1952, s 412(2)(4). **Fynn v Inland Revenue Comrs** [1958] 1 270, ChD.

Burden of proof of intention—Transfer of income of persons abroad—Operation part of transaction also necessary for protection of settlor—Burden of proof of avoidance—Death of taxpayer before passing of legislation—Liability of executors—Finance Act 1936, s 18. **Coltingham's Executors v Inland Revenue Comrs** [1938] 4 663, HL.

Income payable to persons abroad by virtue of a transfer of assets—Lease of foreign assets to company—Rent payable to trustees abroad—Trust deed executed by lessors directing trustees to hold rent for benefit of widows and issue of lessors as the lessors should appoint—Lessors retaining power to direct and vary investments—Whether power to direct investments an 'interest'—Whether power to determine lease rendered lessors 'entitled to property comprised in the settlement'—Whether benefit to a widow a benefit to a wife—'Power to enjoy income of a person resident out of the United Kingdom'—'Property payable to the settlor'—Income Tax Act 1918, All Schedules Rules, r 18—Finance Act 1936, s 18(1)(3)(5)(a)—Finance Act 1938, s 38(1)(2)(3)(4). **Vestey's (Lord) Executors v Inland Revenue Comrs, Same v Colquhoun (Inspector of Taxes)** [1949] 1 1108, HL.

Information—Power of commissioners by notice to require information—Power to require such information as commissioners think necessary for specified purposes—Commissioners not entitled to have regard to irrelevant considerations or to act unreasonably—Information as to introduction of customers to bank with view to carrying out specified transactions—Information as to advice given to customer resulting in carrying out transactions—Plaintiff London representative of bank incorporated in Bermuda—Bank providing facilities for and advice in relation to transfer of money to Bermuda—Commissioners serving notice on plaintiff requiring particulars of customers and transactions or operations—Validity of notice—Income and Corporation Taxes Act 1970, s 481(1)(2). **Clinch v Inland Revenue Comrs** [1973] 1 977, QBD.

Information—Power of commissioners by notice to require information—Power to require such particulars as commissioners think necessary for specified purposes—Ordinary banking transactions between bank and customer—Sales of gilt-edged stocks by bank on behalf of company incorporated abroad—Notice by commissioners to bank requiring particulars of transactions and of persons representing or interested in company—Whether particulars that may be required confined to particulars of transaction in which addressee of notice engaged—Whether sales of stock 'ordinary banking transactions'—Income Tax Act 1952, s 414(1)(3)(5). **Royal Bank of Canada v Inland Revenue Comrs** [1972] 1 225, ChD.

Power to enjoy income of person resident or domiciled overseas—partnership interest—Sale by taxpayer's wife to Rhodesian company in consideration of issue of shares and interest bearing debentures—Profits of company applied in redeeming debentures—Share of partnership profits becoming 'payable' to company—Wife having power to enjoy income—Finance Act 1936, s 18. **Latilla v Inland Revenue Comrs** [1943] 1 265, HL.

Power to enjoy income of person resident or domiciled overseas—Transfer of assets to company in Canada—Income operative to increase the value of taxpayer's assets—Finance Act 1936, s 18(3). **Lord Howard de Walden v Inland Revenue Comrs** [1942] 1 287, CA.

Prevention of avoidance of liability to tax—Income of transferee deemed to be income of transferor—Gains accruing from acquisition and disposal of chargeable assets—Short-term capital gains tax—Taxpayer transferring assets to investment company resident outside United Kingdom—Company selling certain assets and making gain—Abolition of short-term capital gains tax on companies—Whether company's gain deemed to be income of taxpayer—Whether gain to be computed in the same way as profits—Income Tax Act 1952, s 412(1)—Finance Act 1962, s 16(8), Sch 10—Finance Act 1968, s 82(2). **Lord Chetwode v Inland Revenue Comrs** [1976] 1 641, CA.

Prevention of avoidance of liability to tax—Income of transferee deemed to be income of transferor—Meaning of 'income'—Revenue or profit—Computation of income—Taxpayer resident in United Kingdom—Taxpayer transferring assets to investment company resident outside United Kingdom—Investment company incurring expenses in collecting dividends and managing portfolio—Whether management expenses deductible in computing income of company—Income Tax Act 1952, s 412(1). **Lord Chetwode v Inland Revenue Comrs** [1976] 1 641, CA.

Purpose of transfer—Avoidance of liability to taxation not one of purposes—Onus of proof—Onus on taxpayer to show that avoidance of tax not one of purposes—Transfer of assets by taxpayer's father having effect of avoiding tax—Failure to adduce evidence of transferor's purpose—Transferor resident in Republic of Ireland—Transfer of securities in United Kingdom companies to Irish residents prior to transferor changing own residence to Switzerland—Transferor's advice to son in relation to subsequent transaction effected for purpose of tax saving—Inference to be drawn as to transferor's purpose—Income Tax Act 1952, s 412(3)(a). **Philippi v Inland Revenue Comrs** [1971] 3 61, CA.

Balancing charge—

Wear and tear—

Assessment—Charge to be made by means of an additional assessment—No effect on amount of profit chargeable—Income Tax Act 1945, s 55(3). **Townsend v Electrical Yarns Ltd** [1952] 1 918, ChD.

INCOME TAX (cont)

Balancing charge (cont)—

Wear and tear (cont)—

Event occurring before trade is permanently discontinued—Sale of business as going concern—Business continued by purchaser—Balancing charge in respect of plant and fittings—Income Tax Act 1945, s 17(1). *Inland Revenue Comrs v Barr (Trading as Henry & Galt)* [1954] 2 218, HL.

Sale of undertaking to the Crown—Undertaking carried on by Crown—'Person [who] succeeds to any trade'—Inclusion of Crown—Assessment as if trade 'discontinued'—Balancing charge properly made—Income Tax Act 1918, sched D, Rules Applicable to Cases I and II, r 11(2), as substituted by Finance Act 1926, s 32(1)—Income Tax Act 1945, s 17(1). *Madras Electric Supply Corpn Ltd (in liquidation) v Boarland (Inspector of Taxes)* [1955] 1 753, HL.

Vehicles of road haulage company—Compulsory acquisition by British Transport Commission—'Sale' of machinery or plant—'Before the trade is discontinued'—'...a person succeeds to any trade'—Treatment of machinery or plant as if sold—Income Tax Act 1918, Sch D, Rules Applicable to Cases I and II, r 11(2), as substituted by Finance Act 1926, s 32(1)—Income Tax Act 1945, ss 17(1), 60(1). *Bramford's Road Transport Ltd v Evans (Inspector of Taxes)* [1953] 2 1308, ChD.

Wagons of coal merchants—Vesting in British Transport Commission—Whether a 'sale'—Income Tax Act 1945, s 17(1)—Transport Act 1947, ss 29, 30(1). *Kirkness (Inspector of Taxes) v John Hudson & Co Ltd* [1955] 2 345, HL.

Bank interest—

Relief. *See* Relief—Bank interest, *post*.

Benefit in kind—

Emoluments from office or employment. *See* Emoluments from office or employment—Benefits in kind, *post*.

Bets—

Winnings—

Incident of profession. *See* Profits—Profession or vocation—Profits arising from profession—Winnings from bets, *post*.

Bonus debentures. *See* Profits—Bonus debentures, *post*.

Bonus paid to employee. *See* Emoluments from office or employment—Personal gifts distinguished from emoluments—Bonuses, *post*.

Bonus salary—

Appropriate year of assessment. *See* Assessment—Appropriate year—Bonus salary, *ante*.

Book debt—

Profit on collection. *See* Profits—Trading receipts—Book debt, *post*.

Business expenses—

Deduction in computing profits. *See* Deduction in computing profits, *post*.

Canada. *See* Canada (Income tax).

Capital allowances—

Agricultural land and buildings—

Transfer of land—Right to allowance—Capital expenditure on land by owner—Owner's subsequent creation of settlement of land in favour of family—Trustees' lease back to owner for 40 years—Owner's right to allowance—Income Tax Act 1952, s 314(4). *Sargaison (Inspector of Taxes) v Roberts* [1969] 3 1072, ChD.

Industrial building or structure—

Crematorium—Expenditure incurred in construction of furnace chamber and chimney tower of crematorium—Whether furnace chamber and chimney tower industrial building or structure—Whether dead human bodies 'goods and materials'—Income Tax Act 1952, ss 265(1), 266, 271(1)(c). *Bourne (Inspector of Taxes) v Norwich Crematorium Ltd* [1967] 2 576, ChD.

Dual purpose—Building used for dual purpose—Part of use within definition and other part outside it—Warehouse used for storage of shoes—Whether warehouse an 'industrial building or structure'—Some shoes manufactured by group of companies, other shoes bought from other manufacturers—Income Tax Act 1952, s 271(1)(a)(iii)(2). *Inland Revenue Comrs v Saxone, Lilley & Skinner (Holdings) Ltd* [1967] 1 756, HL.

Excluded expenditure—Preparing, cutting, tunnelling or levelling land—Cutting—Meaning—Excavation of land by water undertaking—Income Tax Act 1945, s 14(1)(b). *McIntosh (Inspector of Taxes) v Manchester Corpn* [1952] 2 444, CA.

Single building—New factory comprising distinct blocks of buildings—Blocks connected by internal roads, etc—Administrative block excluded from initial allowances, being regarded as an office if taken alone—All buildings viewed collectively found not to be a single industrial building or structure—Question of fact for commissioners—Income Tax Act 1952, s 271(3)(4). *Abbott Laboratories Ltd v Carmody (Inspector of Taxes)* [1968] 2 879, ChD.

Machinery or plant—

Meaning of 'plant'. *See* Capital allowances—Plant, *post*.

Wear and tear—Right to allowance—Lessor and lessee—Full repairing covenants by lessee—Burden of liability for wear and tear on lessee—Whether lessor or lessee entitled to allowance—Income Tax Act 1952, ss 298, 299. *Lupton (Inspector of Taxes) v Cadogan Garden Developments Ltd* [1971] 3 460, CA.

Wear and tear—Use for trade—Lessor and lessee—Repairing covenants—Sublease of building containing heating equipment and lifts—Sublessors were property investment company and sublessee was a government department—Full repairing covenant by sublessee—Machinery likely to require replacement during currency of sublease—Whether allowance available only where machinery and plant used for trade—Whether sublet on terms that burden of wear and tear fell directly on sublessor—Income Tax Act 1952, s 298. *Macsaga Investment Co Ltd v Lupton (Inspector of Taxes)* [1967] 2 930, CA.

INCOME TAX (cont)**Capital allowances (cont)—****Plant—**

Apparatus used for carrying on business—Amenity value of apparatus—Apparatus rendering carrying on of business more comfortable not constituting plant—Petrol station with self-service pumps—Canopy over self-service area—Whether canopy 'plant'—Finance Act 1971, s 41(1). *Dixon (Inspector of Taxes) v Fitch's Garage Ltd* [1975] 3 455, ChD.

Apparatus used for carrying on business—Items forming a passive function constituting setting or place in which business carried on—Swimming pool—Taxpayer operating caravan site—Taxpayer providing amusement and recreational facilities for customers—Taxpayer constructing swimming pool in order to attract customers to site—Whether pool setting in which or plant with which taxpayer's trade carried on—Capital Allowances Act 1968, ss 18(1), 19(1). *Cooke (Inspector of Taxes) v Beach Station Caravans Ltd* [1974] 3 159, ChD.

Apparatus used for carrying on business—Knives and lasts used in manufacture of shoes replaced every three years or less—Capital or income expenditure—Deduction against profits allowed for supply, repair etc of implements used in trade—Whether taxpayer entitled to investment allowance—Finance Act 1954, s 16(1)C3(c). *Hinton (Inspector of Taxes) v Maden & Ireland Ltd* [1959] 3 356, HL.

Books—Books purchased by barrister—Necessary for barrister to consult books for purpose of carrying on his profession—Whether 'plant' limited to things used simply as physical objects—Whether expenditure on books expenditure on 'plant'—Finance Act 1971, s 41(1). *Munby v Furlong (Inspector of Taxes)* [1976] 1 753, ChD.

Books—Pattern books of paint and wallpaper retailer—Effective life of books two years—No value as separate asset and scrap when discarded—Finance Act 1954, s 16(3). *Rose & Co (Wallpaper & Paints) Ltd v Campbell (Inspector of Taxes)* [1968] 1 405, ChD.

Building distinguished from plant—Movable office partitioning—Income Tax Act 1952, ss 279(1), 280. *Jarrold (Inspector of Taxes) v John Good & Sons Ltd* [1963] 1 141, CA.

Designs incorporated on plant—Designs for wallpaper and furnishing fabrics—Incorporation on wood blocks, silk screens and rollers being objects conceded to be machinery or plant—Some designs never used—Whether cost of designs expenditure on the provision of machinery or plant—Finance Act 1954, s 16(1)(3). *McVeigh (Inspector of Taxes) v Arthur Sanderson & Sons Ltd* [1969] 2 771, ChD.

Dry dock—Excavation—Concreting—Dock considered as a functioning entity—Whether expenditure on excavating and concreting expenditure on the provision of plant—Income Tax Act 1952, s 279(1). *Inland Revenue Comrs v Barclay Curle & Co Ltd* [1969] 1 732, HL.

Part-time use otherwise than for trade purpose—Allowance to be such as is just and reasonable—Motor car purchased by company—Used partly for business and partly for private purposes—Choice of car not dictated solely by needs of company's trade—Reduction of gross capital allowance for personal choice—Income Tax Act 1952, s 289(1). *G H Chambers (Northiam Farms) Ltd v Watmough (Inspector of Taxes)* [1956] 3 485, ChD.

Vehicles—

Type not commonly used as private vehicles—Light vans—Evidence as to use—Registration statistics—Finance Act 1954, s 16(3). *Roberts (Inspector of Taxes) v Granada TV Rental Ltd* [1970] 2 764, ChD.

Type not commonly used as private vehicle—Mini van licensed for carriage of goods and used solely for purposes of business of radio engineer—Advertisements relating to business on the sides of van—Van of a type commonly used and suitable to be so used—No modification made to van—Whether van qualified for an investment allowance—Finance Act 1954, s 16(3). *Tapper (Inspector of Taxes) v Eyre* [1967] 2 636, ChD.

Capital gains. See Capital gains tax.**Capital or income payment—**

Disposition of income for short period. *See* Disposition of income for short period—Capital or income payment, *post*.

Capital or income receipts—**Amortisation of capital—**

Electricity undertakers—Centralisation of supply—Sterilisation of undertakings—Annual sums paid by central authority to undertakers—Sums for operating generating stations as agents of authority—Annual sums including sum required by undertakers for amortisation of capital expenditure—Whether sum capital receipt—Income Tax Act 1918, Sch D, Cases I and II, rr 3, 5(1). *Cattermole v Reigate Corp'n, Kneen v Woking Electric Supply Co Ltd* [1941] 2 765, CA.

Annuity—

Payment out of capital. *See* Annual payment—Capital or income—Annuity—Deficiency, *ante*.

Capital distribution by company—

Dividends paid in debentures—Debentures redeemable at any time on notice—Debentures paid to another company which subsequently paid dividends in cash—Cash dividends representing value of debentures—Whether payments in respect of debentures capital or income—Finance Act 1936, Sch II, para 3. *Aykroyd v Inland Revenue Comrs* [1942] 2 665, KBD.

Copyright—

Assignment—Lump sum consideration—Assignor not engaged in trade or profession of dealing in copyright—Assignment of film rights—Whether proceeds capital or income—Income Tax Act 1918, Sch D, Case VI. *Withers (Inspector of Taxes) v Nethersole* [1948] 1 400, HL.

Assignment—Sale of film rights of book—Sale by authoress of book—Whether consideration income or capital receipt—Whether profit from profession or vocation—Income Tax Act 1918, Sch D, Case II. *Howson (Inspector of Taxes) v Monsell* [1950] 2 1239, ChD.

INCOME TAX (cont)

Capital or income receipts (cont)—

Damages—

Breach of contract—Right of pre-emption—Loss of profit from right of pre-emption—Breach of contract to give pre-emption over surplus stocks—Whether taxable as a revenue receipt—Income Tax Act 1952, Sch D, Case I. **Sommerfields Ltd v Freeman (Inspector of Taxes)** [1967] 2 143, ChD.

Capital loss or loss of profit—Loss of profitable use of asset—Damage to jetty—Payment by shipowners responsible—Apportionment in negotiations with jetty owner's underwriters—Part attributed to loss of use of jetty—Income Tax Act 1952, s 137. **London and Thames Haven Oil Wharves Ltd v Attwooll (Inspector of Taxes)** [1967] 2 124, CA.

Loss of profit in respect of property—Damages awarded to landlord against tenant unlawfully remaining in occupation of property—Damages representing difference between rent paid by tenant and rent obtainable in open market—Whether damages liable to income tax as 'income'—Income Tax Act (Singapore), s 10(1). **Raja's Commercial College v Gian Singh & Co Ltd** [1976] 2 801, PC.

Disposal of capital asset—

Asset constituting whole structure of taxpayers' trade—Taxpayer company's exclusive agency—Major part of company's distributive trade—Grant of concurrent sub-agency to other company—Payments of lump sum consideration constituting income of taxpayer company—Income Tax Act 1952, Sch D. **Fleming (Inspector of Taxes) v Bellow Machine Co Ltd** [1965] 2 513, ChD.

Royalty agreement—Finding that initially it was stock-in-trade—Conversion by company as fixed capital asset—Inference of appropriation as such—Income Tax Act 1952, Sch D. **British-Borneo Petroleum Syndicate Ltd v Cropper (Inspector of Taxes)** [1969] 1 104, ChD.

Dividends—

Dividend paid out of capital profits of company—Whether dividend 'income' in hands of recipient—British Guiana Income Tax Ordinance, s 5(c). **Bieber Ltd v Comrs of Income Tax** [1962] 3 294, PC.

Emoluments from office or employment—

Capital distribution—Trust fund for benefit of employees—Trust determined—Proceeds of realisation of trust fund divided between employees in accordance with trust deed—Money paid to employee capital in hands of trustees—Whether liable to income tax as an emolument in hands of employee—Income and Corporation Taxes Act 1970, s 181(1)(Sch E). **Brumby (Inspector of Taxes) v Milner** [1975] 2 773, ChD.

Extrinsic evidence—

Admissibility—Rentcharge—Evidence to show whether rentcharge representing capital or income—Sale of reversion by long leaseholder to lessee in exchange for rentcharge—Lessee company deducting tax in paying rentcharges—Lessor charity seeking to recover tax deducted—Revenue claiming rentcharge representing partly income and partly capital and charity only entitled to recover tax on income element—Revenue seeking to adduce evidence relating to negotiations between parties prior to contract of sale—Whether evidence admissible—Income Tax Act 1952, ss 177, 447(1)(a). **Inland Revenue Comrs v Church Comrs for England** [1974] 3 529, ChD.

Foreign possessions—

Instalments of capital of estate—Will of testatrix domiciled in the United States—Beneficiary in England entitled to annual instalments of capital of estate—Capital payments according to state law of the United States—Character in the hands of the beneficiary determined by English law—Income in beneficiary's hands by English law—Income Tax Act 1952, s 122, Sch D, s 123(1). **Baron Inchyra v Jennings (Inspector of Taxes)** [1965] 2 714, ChD.

Government grant—

Ploughing grant made by government for ploughing up pasture land—Agricultural Development Act 1939—Agriculture (Miscellaneous War Provisions) Act 1940. **Higgs v Wrightson (Inspector of Taxes)** [1944] 1 488, KBD.

Income from foreign possessions. *See* Foreign possession—Income arising from possessions out of United Kingdom—Capital or income, *post*.

Insurance—

Payment under policy—Lump sum received by employer in respect of death of employee—Whether capital or trade receipt—Income Tax Act 1918, Sch D, Case I. **Murphy v Thomas E Gray & Co Ltd** [1940] 3 214, KBD.

Payment under policy—Purchase of capital assets—Insurance against late delivery—Ship-building contract—Insurances against late delivery of ships to be built—Whether payments under policies revenue or capital receipts—Income Tax Act 1952, Sch D. **Crabb (Inspector of Taxes) v Blue Star Line Ltd** [1961] 2 424, ChD.

Premiums—Return of excess premiums—Mutual insurance company—Sole income premiums from members—Members trading companies—Liquidation of insurance company—Rules requiring surplus assets to be distributed to members in proportion to premiums paid—Whether returned premiums capital or taxable as trading receipts—Companies Act 1948, ss 20, 302—Income Tax Act 1952, Sch D, Case I. **Stafford Coal and Iron Co Ltd v Brogan (Inspector of Taxes), Stafford Coal and Iron Co v Inland Revenue Comrs** [1963] 3 277, HL.

Proceeds of policy. *See* Capital or income receipts—Proceeds of insurance policy, *post*.

Know-how—

Consideration for imparting technical knowledge—Shares issued in return—Company manufacturing tools—Substantial Indian trade—Setting up of new Indian controlled company—Indian government pressure—Transfer of Indian business and techniques to new company—Consideration in form of shares in new company—Income or capital nature. **Wolf Electric Tools Ltd v Wilson (Inspector of Taxes)** [1969] 2 724, ChD.

Lump sum—Payment of lump sum for imparting of secret processes and for furnishing plans, etc, for erecting factory—Whether income or capital receipt—Income Tax Act 1952, Sch D, Case I. **Moriarty (Inspector of Taxes) v Evans Medical Supplies Ltd, Evans Medical Supplies Ltd v Moriarty (Inspector of Taxes)** [1957] 3 718, HL.

INCOME TAX (cont)

Capital or income receipts (cont)—

Know-how (cont)—

Lump sum—Payment of lump sum for imparting technical knowledge—Whether income or capital receipt—Income Tax Act 1952, Sch D, Case I. **Rolls-Royce Ltd v Jeffrey (Inspector of Taxes)** [1962] 1 801, HL.

Licence—

Consideration—Lump sum payment for grant of exclusive licence—Licence to use patent—Lump sum payable in instalments and further sum payable each year during continuance of licence—Whether capital receipt or royalty payment from which tax deductible—Income Tax Act 1918, All Schedules Rules, r 21. **British Samson Aero Engines Ltd v Inland Revenue Comrs** [1938] 3 283, CA.

Patent—Payment in advance for licence to use patent—Lump sum payable in instalments—Whether capital payment or royalty payment from which tax deductible. **Desoutter Bros Ltd v J E Hanger & Co Ltd, and Artificial Limb Makers Ltd** [1936] 1 535, KBD.

Proceeds of insurance policy—

Insurance of member of company—Insurance for benefit of company—Whether proceeds of policy capital or income receipt. **Williams v Inland Revenue Comrs** [1944] 1 381, HL.

Professional sportsman—

Payment for relinquishing amateur status—Football player—Signing-on fee—Lump sum payment—Whether capital or income—Income Tax Act 1952, s 156, Sch E. **Jarrod (Inspector of Taxes) v Boustead, McInnes (Inspector of Taxes) v Large, McInnes (Inspector of Taxes) v Simms** [1964] 3 76, CA.

Signing-on fee—Footballer—Fee paid in consideration of footballer agreeing to serve—Proportionate part recoverable if footballer unable to play—No mention of relinquishment of amateur status—Whether fee taxable as an income profit from the employment—Income Tax Act 1952, s 156, Sch E, r 1, as amended by Finance Act 1956, s 44(9), Sch 5, Pt 1. **Riley (Inspector of Taxes) v Cogan** [1968] 1 314, ChD.

Profit on investment—

Once and for all profit—Absence of possibility of recurrence—Subscription to mining venture—Allotment of shares in development company—Difference between subscription and nominal value of shares allotted—Whether a trading or capital profit. **Lowry (Inspector of Taxes) v Field, Same v Williams, Titcomb v Clancy (Inspector of Taxes), De Burgh Whyte v Same** [1936] 2 735, KBD.

Restrictive covenant—

Lump sum consideration—Licence—Covenant by licensor—Licences for manufacture of Terylene in foreign countries—Covenants of licensor not to manufacture or licence manufacture there—Lump sum payments for covenants—Whether capital or income—Income Tax Act 1952, Sch D, Case II. **Murray (Inspector of Taxes) v Imperial Chemicals Industries Ltd** [1967] 2 980, CA.

Royalties—

Commutation for lump sum—Authoress entitled to royalties under agreement—Grant of licence to publish in return for lump sum—Whether income or capital receipt—Whether profit from profession or vocation—Income Tax Act 1918, Sch D, Case II. **Glasson (Inspector of Taxes) v Rougier** [1944] 1 535, KBD.

Sale of property—

Land—Building contractors—Receipts from sale of land—Land bought in order to enable builders to acquire adjoining house—House alone required for conversion to flats—House constituting stock-in-trade—Land not used or let—Whether profit from land on subsequent sale taxable as income. **Snell (Inspector of Taxes) v Rosser, Thomas & Co Ltd** [1968] 1 600, ChD.

Land—Turf—Sale of turf from land—Agreement that purchaser should remove turves from specified area of land—Whether taxpayer making partial realisation of freehold—Whether profits or gains arising from payment for right to use land—Finance Act 1963, ss 15(1)(c), 28(3), Sch D, Case VIII. **Lowe (Inspector of Taxes) v J W Ashmore Ltd** [1971] 1 1057, ChD.

Price payable in instalments—Instalments calculated as percentage of profits derived from property—Railway siding—Construction of private siding by railway company—Purchase of siding by taxpayer and resale to railway company—Consideration on resale paid in annual instalments out of railway company's share of freight—Whether instalments capital payments. **Legge v Flettons Ltd** [1939] 3 220, KBD.

Racehorse—Acquisition of right to send mares to stallion free of charge—No trading—Sale of right—Whether receipt in nature of income—Income Tax 1918, Sch D, Case VI. **Leader v Counsell (Inspector of Taxes), Benson v Same** [1942] 1 435, KBD.

Surrender of lease—

Lump sum payment to lessee—Payment in respect of future rents—Whether payment to be treated as capital or income. **Greyhound Racing Assn (Liverpool) Ltd v Cooper** [1936] 2 742, KBD.

Transfer of capital assets—

Cash payments of fixed amounts over fixed period as consideration for transfer—Rentcharges—Sale of land—Sale of reversions on long leaseholds to lessee—Consideration for sale rentcharges payable annually for a period of ten years—Amount of rentcharges calculated to maintain income equivalent to previous rental income of vendor during ten year period and to accumulate fund to maintain income after ten year period—Whether rentcharge payments partly of a capital nature—Income Tax Act 1952, s 177. **Inland Revenue Comrs v Church Comrs for England** [1976] 2 1037, HL.

Transfer of capital asset—

Purchase price—Instalments including interest element. *See* Annual payment—Capital or income—Purchase price—Interest element, *ante*.

Capital or revenue expenditure. *See* Deduction in computing profits—Capital or revenue expenditure, *post*.

Carry-forward of losses. *See* Loss relief—Carry-forward of losses, *post*.

INCOME TAX (cont)

Case stated—

Decision of commissioners—

Further evidence—Affidavit—Admissibility—Affidavit supplementing or contradicting decision as expressed in case stated. **Cannon Industries Ltd v Edwards (Inspector of Taxes)** [1966] 1 456, ChD.

Determination of appeal by commissioners—

Declaration of dissatisfaction—Declaration immediately after determination—Immediately—Crown declaring dissatisfaction and requiring case to be stated for opinion of the High Court—Commissioners' determination communicated by post—Delay of 13 days before Crown declaring dissatisfaction—Alternative assessments—Commissioners upholding one assessment and discharging alternative assessment at Crown's invitation—Taxpayer expressing dissatisfaction and requiring case to be stated in respect of first assessment—Whether Crown precluded by reason of invitation from expressing dissatisfaction with discharge of alternative assessment—Whether dissatisfaction declared immediately—Whether failure to declare dissatisfaction immediately precluding commissioners from stating case—Income Tax Act 1952, s 64(1)(2). **R v HM Inspector of Taxes, ex parte Clarke** [1972] 1 545, CA.

Declaration of dissatisfaction—Dissatisfaction expressed by taxpayer with decision against him—Taxpayer successful on one only of two points—No dissatisfaction expressed by Crown—Whether Crown entitled, after notice, to raise on appeal contention on which taxpayer had succeeded—Income Tax Act 1952, s 64C(1). **Muir v Inland Revenue Comrs** [1966] 3 38, CA.

Request for case stated—Time limit—Supplemental case—Original case remitted to commissioners—Issue raised in court involving new facts—Appeal dismissed—Case remitted to commissioners to determine new issue raised—Order remitting case intended to mean, and so understood by parties, that either side might ask for special Case Stated if point of law emerged—Decision of commissioners adverse to taxpayer—Decision communicated by post—Taxpayer requiring commissioners to state special Case after lapse of ten months—Commissioners complying with request—Whether supplemental case part of original Case Stated and request to state supplemental case covered by original request made within time limit prescribed—Income Tax Act 1918, s 149—Finance Act 1927, s 42(7)—Finance Act 1938, s 38. **Burston v Inland Revenue Comrs (No 1)** [1945] 2 61, KBD.

Order for rehearing—

Competence—Order by High Court for rehearing—Order in respect of assessments not in case stated—Assessments dealt with by commissioners but not appealed—Income Tax Act 1952, s 64(6). **Rose v Humbles (Inspector of Taxes)** [1972] 1 314, CA.

Procedure—

Separate cases—One appeal only in each case. **Rushden Heel Co Ltd v Keene (Inspector of Taxes)** [1946] 2 141, KBD.

Reference back—

Doubt as to commissioners' findings—Matters not found with sufficient clarity—Statutory power to refer cases back to commissioners where clear doubt as to what finding means. **Nield v Inland Revenue Comrs** [1947] 1 480, CA.

Relief in respect of error or mistake—

Point of law—Decision of Special Commissioners—Decision on appeal from Board of Inland Revenue—Right to require case to be stated by Special Commissioners—Point of law arising in connection with computation of profits or income—Returns—Income from hereditament taxable under sched A included in return under sched D, Case I—Application for relief—Case stated by commissioners for the opinion of the court—Whether 'point of law arising in connection with the computation of profits or income'—Limitation of jurisdiction of court—Income Tax Act 1918, s 149—Finance Act 1923, s 24(3)(5). **Carrimore Six Wheelers Ltd v Inland Revenue Comrs** [1944] 2 503, CA.

Remission to commissioners—

Findings—Further findings—Circumstances in which case will be remitted for further findings. **Collins v Fraser (Inspector of Taxes)** [1969] 3 524, ChD.

Further evidence—Failure to call evidence—Inference made by judge on evidence available—Whether assumptions made by judge justified—Whether case should have been remitted for further evidence. **Pyrah (Inspector of Taxes) v Annis & Co Ltd** [1957] 1 196, CA.

Validity—

Signature of commissioners—Omission of signature—Appeal against assessment heard by two Special Commissioners—Case stated signed by one commissioner only owing to death of the other—Whether appeal competent. **Norman v Golder (Inspector of Taxes)** [1945] 1 352, CA.

Casual profit. *See* Profits—Profits not otherwise charged—Casual profit, *post*.

Cessation of employment. *See* Emoluments from office or employment—Assessment—Cessation of office or employment, *post*.

Ceylon. *See* Ceylon (Income tax).

Charge on income—

Deduction in computing profits—

Corporation tax. *See* Income tax (Deduction in computing profits—Corporation tax—Charge on income).

Charge to tax—

Liability—

Determination of liability—procedure—Whether matter may be determined otherwise than by statutory procedure. **Re Vandervell Trusts** [1969] 3 496, CA.

Persons chargeable. *See* Persons chargeable, *post*.

INCOME TAX (cont)

Charge to tax (cont)—

Validity—

International convention—Proceeds of tax—Application of proceeds in part for purposes allegedly contrary to convention ratified by the United Kingdom government—Whether assessment to tax invalidated—Allocation of proceeds of taxes to construction of nuclear weapon—Geneva Conventions Act 1957, preamble. **Cheney v Conn (Inspector of Taxes)** [1968] 1 779, ChD.

Charity—

Charitable purposes—

Aesthetic education—Advancement of choral singing—Royal Choral Society—Whether established for 'charitable purposes'—Income Tax Act 1918, s 37(b), Sch D—Finance Act 1921, s 30, **Royal Choral Society v Inland Revenue Comrs** [1943] 2 101, CA.

Agricultural society—Society to promote interests of foxhound breeding—Income Tax Act 1918, s 37—Finance Act 1921, s 30—Finance Act 1923, s 11—Finance Act 1924, s 23—Finance Act 1927, s 24. **Peterborough Royal Foxhound Show Society v Inland Revenue Comrs** [1936] 1 813, KBD.

Artistic and dramatic work—Company incorporated to present such works as well as classical, cultural and educational dramatic works—A further object being to do all such things as might be thought conducive to the attainment of its objects—Whether entitled to exemption from income tax—Income Tax Act 1952, s 448(1)(c)(3). **Associated Artists Ltd v Inland Revenue Comrs** [1956] 2 583, ChD.

Body or trust established for charitable purposes only—Evidence as to detrimental effect of body's object—Admissibility—Anti-Vivisection Society—Whether established for charitable purposes only—Income Tax Act 1918, ss 37(b), 40. **National Anti-Vivisection Society v Inland Revenue Comrs** [1947] 2 217, HL.

Company—Objects clause—Trade carried on by charity—Statement in memorandum—Relevance of motives of formation and subsequent acts—Main and subsidiary objects—Whether company established for charitable purposes only—Finance Act 1921, s 30(1)(c) (as substituted by Finance Act 1927, s 24(3)). **Tennant Plays Ltd v Inland Revenue Comrs** [1948] 1 506, CA.

Overriding trust 'for charitable purposes'—Proviso for educational purposes not in law charitable, invalid as infringing rule against perpetuities—Whether trust established for charitable purposes only—Income applied to charity, but doubtful whether the charity was an object of the trust—Whether a ground of objection to exemption from income tax—Educational trust—Surplus income—Company directors' power to direct special application for purpose not in law charitable—Need for evidence that application of funds was for purpose in fact charitable where that depended on poverty of recipient—Income Tax Act 1952, s 447(1)(b). **Trustees of the George Draxler Ofrex Foundation v Inland Revenue Comrs** [1965] 3 529, ChD.

Protection of interests of holders in the United Kingdom of foreign bonds—Whether established for 'charitable purposes'—Income Tax Act 1918, s 37C(b), Sch D. **Corpn of Foreign Bondholders v Inland Revenue Comrs** [1944] 1 420, CA.

Recreation ground for employees of limited company—Land conveyed to trustees as recreation ground—Money expended on recreational facilities—Whether expended for charitable purposes—Income Tax Act 1918, s 37(b). **Trustees of Sir Harold A Wernher's Charitable Trust v Inland Revenue Comrs** [1937] 2 488, KBD.

Religion—Oxford Group—'Advancement of Christian religion'—Support and development of group movement 'in every way'—Whether power too wide to be regarded as charitable—Income Tax Act 1918, s 37(a)(b)—Finance Act 1921, s 30(1)(a). **Oxford Group v Inland Revenue Comrs** [1949] 2 537, CA.

Scotland—Law to be applied in Scotland—Trust not for exclusively charitable purposes according to English law—Police athletic association. **Inland Revenue Comrs v City of Glasgow Police Athletic Assn** [1953] 1 747, HL.

Social objects—Institute for Welsh people—Objects party social—Trust to maintain institute in London to give social, educational and other amenities to Welsh people or people connected with Wales—Trust property comprising houses—Direction to trustees to apply rents and profits from settled properties to carrying on institute and maintaining properties—Rents and profits so applied—Whether trust for charitable purposes—Whether moneys applied for charitable purposes only—Income Tax Act 1918, s 37(a), Sch A. **Trustees of Sir Howell Jones Williams Trusts v Inland Revenue Comrs** [1947] 1 513, HL.

Covenanted donations to charity—

Deduction in computing profits—Investment company. *See* Investment company—Actual income from all sources—Deduction, *post*.

Established in United Kingdom—

Original trustees resident in United Kingdom—One trustee still so resident. **Inland Revenue Comrs v Gull** [1937] 4 290, KBD.

Income of charity—

Income under void trust—Discretionary trust to pay income among unascertainable class—Certain members, including charities, ascertainable—Payments of income made to charities—Trust invalid but payments deemed to be authorised by settlor—Whether payments exempt as income of charity—Income Tax Act 1918, s 37(b). **Inland Revenue Comrs v Broadway Cottages Trust, Same v Sunnylands Trust** [1954] 3 120, CA.

India. *See* India (Income tax—Charity).

Overseas charity—

Charity established abroad—Activities exclusively abroad—Tax on income arising in United Kingdom—Liability—Income Tax Act 1918, s 37C(b). **Camille and Henry Dreyfus Foundation Inc v Inland Revenue Comrs** [1955] 3 97, HL.

Payments to charity—

Deduction in computing profits. *See* Deduction in computing profits—Payments to charity, *post*.

INCOME TAX (cont)

Charity (cont)—

Scheme sanctioned by court—

Estoppel against Crown—Attorney-General party to order sanctioning scheme—Whether Crown estopped from denying trusts charitable—Income Tax Act 1952, ss 447, 448. **Vernon (Trustees of the Employees Fund of William Vernon & Sons Ltd) v Inland Revenue Comrs** [1956] 3 14, ChD.

Selection of beneficiaries—

Preferential application of income for private class—Company established for charitable educational purposes—Main income from another company by way of covenanted payments—Major part of income applied towards education of children associated with covenantor company—Public benefit essential to charitable purpose—Whether income applied to charitable purposes only—Income Tax Act 1952, s 447(1)(b). **Inland Revenue Comrs v Educational Grants Association Ltd** [1967] 2 893, CA.

Void trust—

Income applied for benefit of charity—Discretionary trust including charitable institutions—Whole class of beneficiaries not ascertainable—Trust invalid—Payments made to charitable institutions—Whether payments exempt from tax—Income Tax Act 1918, s 37(b). **Inland Revenue Comrs v Broadway Cottages Trust, Same v Sunnylands Trust** [1954] 3 120, CA.

Child relief—

Child over age of 16 receiving full-time instruction—

Instruction at any university, college, school or other educational establishment—Other educational establishment—Meaning of education—Training of mind in contradistinction to training in manual skills—Taxpayer's son attending a training unit for the mentally subnormal—Training predominantly in factory work—Academic training every day or every alternate day—Whether unit educational establishment—Income and Corporation Taxes Act 1970, s 10(2). **Barry v Hughes (Inspector of Taxes)** [1973] 1 537, ChD.

Income of child—

Daughter—Marriage during year of assessment—Post-nuptial income of daughter—Income deemed for income tax purposes to be husband's income and not to be her income—Whether daughter entitled to post-nuptial income in her own right—Whether post-nuptial income to be disregarded for purposes of child relief—Income Tax Act 1952, ss 212(4)(as substituted by the Finance Act 1963, s 13), 354(1). **Murphy v Ingram (Inspector of Taxes)** [1974] 2 187, CA.

Earnings—Earnings of child—Whether earnings 'income' to which child 'entitled in his own right'—Income Tax Act 1952, s 212(4)(as substituted by the Finance Act 1963, s 13). **Murphy v Ingram (Inspector of Taxes)** [1974] 2 187, CA.

Foreign income—Earning by undergraduate abroad—No money remitted to United Kingdom—Effect on father's child allowance—Income Tax Act 1952, s 212(4). **Mapp (Inspector of Taxes) v Oram**.

Maintenance—Income to which child entitled in own right—Maintenance order in divorce proceedings against husband—Order to pay sums to wife for maintenance of children—Whether children entitled to sums in their own right—Finance Act 1920, s 21. **Stevens v Tirard** [1939] 4 186, CA.

Wages—Child living with parent earning wages—Whether wages 'income'—Finance Act 1920, s 21(1)(3)—Finance (No 2) Act 1939, s 9(3). **Williams v Doulton (Inspector of Taxes)** [1948] 1 603, KBD.

Reduction or disallowance of relief—

Income of child. *See* Child relief—Income of child, *ante*.

Children—

Settlement. *See* Settlement—Children, *post*.

Christmas gift—

Customary gift. *See* Emoluments from office or employment—Voluntary payment—Customary gift—Huntsman—Christmas gifts, *post*.

Receipt from employment. *See* Emoluments from office or employment—Receipt 'from' employment—Gift to employee—Christmas gifts, *post*.

Close company—

Apportionment of income—

Addition to income to be apportioned—Amounts of annual payments to be deducted in arriving at company's distributable income—Covenanted donations to charity—Trading company—Prohibition on apportionment in absence of shortfall assessment—Whether prohibition applying to amounts of annual payments deducted in arriving at company's distributable income—Whether covenanted donations to charity may be apportioned even though no shortfall assessment—Finance Act 1965, s 78(2)(4)(as amended by the Finance Act 1966, s 27, Sch 5, para 10(1)). **C & J Clark Ltd v Inland Revenue Comrs** [1975] 1 801, CA.

Club—

Members' club—

Mutuality principle. *See* Profits—Mutuality principle—Members' club, *post*.

Commissioners—

Case stated by commissioners. *See* Case stated, *ante*.

Direction as to undistributed income. *See* Undistributed income—Direction by commissioners, *post*.

Finality of decision. *See* Appeal—Decision of commissioners—Finality, *ante*.

General Commissioners. *See* General Commissioners, *post*.

Power to require information—

Transfer of assets abroad. *See* Avoidance—Transfer of assets abroad—Information, *ante*.

Commissioners of Inland Revenue—

Party to civil proceedings. *See* Practice (Parties—Adding persons as parties—Necessary party—Inland Revenue Commissioners).

INCOME TAX (cont)

Company—

Undistributed income. *See* Undistributed income, *post*.

Compensation—

Appropriate year of assessment. *See* Assessment—Appropriate year—Compensation, *ante*.

Emolument from office or employment. *See* Emoluments from office or employment—Compensation, *post*.

Loss of employment. *See* Pension—Compensation—Loss of employment, *post*.

Loss of office—

Deduction in computing profits. *See* Deduction in computing profits—Expenses wholly and exclusively laid out for purposes of trade—Compensation for loss of office, *post*.

Computation of profits—

Accountancy principles—

Bills of exchange—Bank discounting or purchasing discounted bills—Bills sold or held to maturity—Anticipated profits—Provision made in annual accounts including proportion of anticipated profits—Profits realised on sale or maturity—Whether proportion of profits taxable in accounting years preceding sale or maturity. *Willingale (Inspector of Taxes) v International Commercial Bank Ltd* [1976] 2 468, ChD.

Earnings or cash basis—Accountants' fees determinable after year end—Cash basis adopted for twenty years—Revenue's change to earnings basis—Reversion to cash basis four years later. *Wetton, Page & Co v Attwooll (Inspector of Taxes)* [1963] 1 166, ChD.

Evidence—Application of principles of commercial accountancy—Evidence—Evidence of experts on principles adopted in practice by commercial accountants—Evidence not conclusive of correct principles—Duty of court to determine correct principles of commercial accountancy. *Odeon Associated Theatres Ltd v Jones (Inspector of Taxes)* [1971] 2 407, ChD.

Evidence—Weight of evidence—Issue whether expenditure of a capital or revenue nature—Issue a question of law for court to determine—Weight to be given to evidence as to practice of commercial accountants—Evidence not binding on court. *Heather (Inspector of Taxes) v P-E Consulting Group Ltd* [1973] 1 8, CA.

Stock—Valuation—Last in first out method—Whether suitable for tax purposes—Excess profits tax in Canada. *Minister of National Revenue v Anaconda American Brass Ltd* [1956] 1 20, PC.

Stock—Valuation—Valuation of stock at end of year—Original cost or market value—Meaning of market value—Replacement value or retail sale value. *BSC Footwear Ltd (formerly Freeman, Hardy & Willis Ltd) v Ridgway (Inspector of Taxes)* [1971] 2 534, HL.

Work in progress—Valuation—'Direct cost' or 'oncost' method—Motor vehicle body building company. *Ostime (Inspector of Taxes) v Duple Motor Bodies, Inland Revenue Comrs v Same* [1961] 2 167, HL.

Contingent liability—

Accountancy provision for contingent liability—Provision for retirement benefits for employees—Statutory scheme—Future payments of lump sums calculated by reference to length of service and salary in closing year—Proper method of reflecting effect of scheme in accounts. *Southern Ry of Peru Ltd v Owen (Inspector of Taxes)* [1956] 2 728, HL.

Deductions. *See* Deduction in computing profits, *post*.

Disposal of stock-in-trade—

Disposal by taxpayer for own use—Notional receipt—Taxpayer owning two businesses—Transfer of stock-in-trade from one business to the other—Hatchery business and poultry farm—Transfer from hatchery of day old chicks—Whether profits based on market price or cost of production. *Watson Bros v Hornby (Inspector of Taxes)* [1942] 2 506, KBD.

Disposal by taxpayer for own use—Notional receipt—Market value or cost—Racehorse—Transfer of horses from stud farm to racing stable in same ownership—Credit figure in farm accounts—Cost of breeding or market value—Income Tax Act 1918, Sch D, Case I. *Sharkey (Inspector of Taxes) v Wernher* [1955] 3 493, HL.

Sale at undervalue—Associated companies—Transactions between associated companies—Company dealing in securities, stocks and shares—Sales to associated company at undervalue—Transactions not in the course of trade—Seller credited with market value for tax purposes—Transaction of purchase and sale eliminated from company's accounts. *Petrotim Securities Ltd (formerly Gresham Trust Ltd) v Ayres (Inspector of Taxes)* [1964] 1 269, CA.

Exchange transaction—

Assets received—Valuation—Shares received as consideration for transfer of property—Company dealing in gold mining concessions—Transfer of concessions to associate company for fully paid-up shares—Valuation of shares for purpose of computing profits—Valuation at end of accounting period in which received—Income Tax Act 1918, Sch D, Case I. *Gold Coast Selection Trust Ltd v Humphrey (Inspector of Taxes)* [1948] 2 379, HL.

Opening stock—

Valuation—Company commencing trading—Stock and other assets acquired in consideration of cash and the issue of fully-paid shares—Apportionment of price paid for stock. *Osborne v Steel Barrel Co Ltd* [1942] 1 634, CA.

Valuation—Speculative shares taken over on reconstruction of company—Investment company—Cost of shares. *Craddock v Zevo Finance Co Ltd* [1946] 1 523, HL.

Stock-in-trade—

Disposal. *See* Computation of profits—Disposal of stock-in-trade, *ante*.

Opening stock. *See* Computation of profits—Opening stock, *ante*.

INCOME TAX (cont)

Computation of profits (cont)—

Stock-in-trade (cont)—

Valuation—Base stock method—Fixed process stock on machines not in trading account—Spare process stock awaiting process at arbitrary valuation. **Patrick (Inspector of Taxes) v Broadstone Mills Ltd** [1954] 1 163, CA.

Valuation—Cost or market value—Need to value all items on same basis—Valuation of each item at lower cost or market value. **Inland Revenue Comrs v Cock, Russell & Co Ltd** [1949] 2 889, KBD.

Trade debts—

Valuation—Speculative builder—Part of purchase price not advanced by building society advanced by builder on security—Sums agreed to be paid to builder not assessable in year of contract as profits of trade—Assessment on value of debts in that year—Income Tax Act 1918, Sch D, Cases I and II, r 3(i). **Absalom v Talbot (Inspector of Taxes)** [1944] 1 642, HL.

Contingent liability—

Computation of profits. *See* Computation of profits—Contingent liability, *ante*.

Copyright—

Assignment—

Capital or income receipts. *See* Capital or income receipts—Assignment of copyright, *ante*.

Royalties. *See* Profits—Profession or vocation—Author—Royalties—Death of author—Assignment of copyright, *post*.

Sale—

Adventure in the nature of trade. *See* Trade—Adventure in the nature of trade—Isolated transaction—Sale of copyright, *post*.

Corporation tax—

Advance corporation tax—

Transitional provisions—Rights or obligations created before 6th April 1973 expressed by reference to dividend at gross rate or of gross amount—Reference in relation to dividends payable after 6th April to take effect as reference to dividend of amount which with addition of advance corporation tax equals gross rate or amount—Calculation to be made by reference to rate of advance corporation tax ruling 'on that date'—Meaning of 'on that date'—Whether 6th April 1973 or date on which dividend payable—Finance Act 1972, Sch 23, para 18(1). **Sime Darby London Ltd v Sime Darby Holdings Ltd** [1975] 3 691, ChD.

Deduction in computing profits. *See* Deduction in computing profits—Corporation tax, *post*.

Double taxation relief. *See* Double taxation relief—Corporation tax, *post*.

Transitional provisions—

Liability for excess over standard amount—Excessive dividends in 1965—66—Treatment as paid on 6th April 1966—Certificate of exemption—Whether a main purpose to avoid or reduce tax liability—Directors' knowledge of effect of provisions—Finance Act 1965, s 83(1), (11). **Bromilow & Edwards Ltd v Inland Revenue Comrs** [1970] 1 174, CA.

Transitional relief—Company with overseas trading income—Foreign company becoming United Kingdom resident in 1965—United Kingdom resident company not liable for 1965—66 corporation tax—Transitional relief not available—Finance Act 1965, s 84 and Sch 20, paras 1, 2. **Shell Petroleum Co Ltd v Carr (Inspector of Taxes)** [1971] 3 350, CA.

Covenant—

Seven year covenant to pay annual sums. *See* Disposition of income for short period, *post*.

Covenanted payments to charity. *See* Annual payment—Covenanted payments to charity, *ante*.

Crown—

Exemption. *See* Exemption—Crown, *post*.

Damages—

Breach of contract—

Wrongful dismissal. *See* Contract (Damages for breach—Wrongful dismissal—Income tax).

Capital or income. *See* Income tax (Capital or income receipts—Damages).

Interest. *See* Interest—Damages, *post*.

Loss of capital asset or profit—

Agency agreement—Wrongful determination—Settlement of action—Claim for arrears of commission abandoned—Whether sum assessable as profits or gains of trade—Income Tax Act 1918, Sch D, para 1(a)(iii). **Wiseburgh v Domville (Inspector of Taxes)** [1956] 1 754, CA.

Loss of earnings—

Tax rebate. *See* Damages (Personal injury—Loss of earnings—Income tax).

Loss of future earnings—

Allowance for deduction of tax. *See* Damages (Personal injury—Loss of future earnings—Income tax).

Wrongful dismissal—

Contract. *See* Contract (Damages for breach—Wrongful dismissal—Income tax).

Dealing in securities—

Trading receipts. *See* Profits—Trading receipts—Dealing in securities, *post*.

Death of taxpayer—

Profession or vocation. *See* Profits—Profession or vocation—Death of taxpayer, *post*.

Deduction in computing profits—

Annual value of land—

Abolition of Sch A—Repeal of provision permitting deduction—Repeal applicable to 1963—64—Income for 1963—64 based on profits for 1962—63—Deductibility of annual value for Sch A from 1962—63 profits used as basis of Sch D assessment for 1963—64—Income Tax Act 1952, s 136(1), (3)—Finance Act 1963, s 29(1), Sch 13, Part 1, proviso. **Provan (Inspector of Taxes) v Scott** [1965] 3 326, ChD.

INCOME TAX (cont)**Deduction in computing profits (cont)—****Annual value of land (cont)—**

Amount of deductions—Exception for mills, factories or similar premises—Cold stores owned by company carrying on cold storage business—Whether 'mills, factories, or other similar premises'—Income Tax Act 1918, Sch D, Cases I and II, r 5(2). *Ellerker v Union Cold Storage Co Ltd* [1939] 1 23, KBD.

Appropriate year—

Attribution of outgoings to period of account—Secretarial service charge—Charge by service company wholly owned by taxpayer firm—Arrangement that service company should make only nominal profit—Debit of large charge in excess of normal rate in first year of partnership business—Arrangement for adjustment in future years—Charge in first year affecting firm's liability for three years—Whether part of charge in excess of normal rate allowable as deduction in computing profits of firm. *Stephenson (Inspector of Taxes) v Payne Stone Fraser & Co (a firm)* [1968] 1 524, ChD.

Capital or revenue expenditure—

Accountancy principles—Application of principles of commercial accountancy—Evidence—Trust to enable employees to purchase shares in company—Agreement between taxpayer company and trustees that taxpayer company should make annual payment out of profits to trustees—Trust funds to be used to purchase shares in company holding issued shares of taxpayer company—Employees entitled to acquire shares from trustees on payment of fair value—Expert evidence that cost of securing and retaining services of employees usually treated by accountants as revenue expenditure—Impossibility of evaluating employee goodwill—Whether payments to trustees of a capital nature for tax purposes. *Heather (Inspector of Taxes) v P-E Consulting Group Ltd* [1972] 2 107, ChD.

Acquisition of capital asset—Acquisition by taxpayer of means of supplying himself with stock-in-trade—Timber merchant—Purchase of standing timber. *Hood Barrs v Inland Revenue Comrs* [1957] 1 832, HL.

Acquisition of capital asset—Advantage of enduring nature properly treated as capital—Expenditure for price-maintenance—Trade association—Expenditure to secure acquisition of business for its winding-up to prevent it being acquired by persons outside association—Expenditure to secure acquisition of business that it would become an active member of the association. *Collins (Inspector of Taxes) v Joseph Adamson & Co, Joseph Adamson & Co v Collins (Inspector of Taxes)* [1937] 4 236, KBD.

Acquisition of capital asset—Cost of acquiring right to excavate deposits of sand and gravel—Gravel merchants—Rights a capital asset providing merchants with means of obtaining stock-in-trade—Income Tax Act 1918, Sch D, Case I. *Stow Bardolph Gravel Co Ltd v Poole (Inspector of Taxes)* [1954] 3 637, CA.

Acquisition of capital asset—Exclusive right to custom—Petrol supply—Tied filling station—Lump sum and other payments to retailers—Whether allowable as deduction from assessable income—Income Tax and Social Services Contribution Assessment Act 1936—1953, s 187. *BP Australia Ltd v Commission of Taxation of the Commonwealth of Australia* [1965] 3 209, PC, *Mobil Oil Australia Ltd v Commissioner of Taxation of the Commonwealth of Australia* [1965] 3 225, PC.

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Acquisition of capital asset—Expenditure for purposes of taxpayer's trade—Acquisition of new asset in place of asset disposed of—Access to taxpayer's premises for heavy lorries—Access via residential road—Complaints by residents of disturbance—Taxpayer entering agreement with local authority—Taxpayer disposing of narrow strip of land between premises and residential road so as to shut off access—Authority licensing taxpayer to construct new road over authority's land—Taxpayer acquiring permanent easement of way over land—Whether expenditure by taxpayer on constructing new road of capital or revenue nature. *Pitt (Inspector of Taxes) v Castle Hill Warehousing Co Ltd* [1974] 3 146, ChD.

Acquisition of capital asset—Fruit crop—Purchase of freehold land and cherry orchard including year's fruit crop—Admissibility of deduction of apportioned cost of cherries—Income Tax Act 1918, Sch D, Cases I and II, r 3(f). *Saunders (Inspector of Taxes) v Pilcher* [1949] 2 1097, CA.

Acquisition of capital asset—Rent—Acquisition by payment of rent—Company holding 88 year lease of premises—Scheme to acquire freehold—Subsidiary becoming freeholder—Freeholder becoming lessee for 22 years—Company becoming sublessee—Company's higher rent for shorter period—No deduction of increase of rent—Payment for acquisition of capital asset (freehold)—Income Tax Act 1952, s 137(a), (f). *Littlewoods Mail Order Stores Ltd v McGregor (Inspector of Taxes)* [1969] 3 855, CA.

Acquisition of capital asset—Road haulage licence—Taxpayers haulage contractors—Expenditure on abortive application for variation in road haulage licence—Income Tax Act 1952, Sch D, Case I. *Pyrah (Inspector of Taxes) v Annis & Co Ltd* [1957] 1 196, CA.

Acquisition of stock-in-trade rather than capital asset—Raw materials for business—Cigarette manufacturers—Contract giving manufacturers right to go on land to collect and remove leaves from forests—Right given in consideration of sum payable in instalments—Indian Income Tax Act 1922, s 10(2), para xii. *Mohanlal Hargovind of Jubbulpore v Comr of Income Tax, Central Provinces and Berar, Nagpur* [1949] 2 652, PC.

INCOME TAX (cont)

Deduction in computing profits (cont)—

Capital or revenue expenditure (cont)—

Alteration to asset—Expenditure for purpose of making a permanent alteration to asset owned by taxpayer—Alteration permanently enhancing value of asset for purpose of taxpayer's trade—Land—Planning permission—Quarry—Taxpayer engaged in business of operating quarries—Taxpayer applying for planning permission to quarry on land which it owned—Application unsuccessful—Expenses incurred in pursuing application—Whether expenses of a capital or revenue nature. *ECC Quarries Ltd v Watkis (Inspector of Taxes)* [1975] 3 843, ChD.

Brewers—New licences—Expense of obtaining—Premises compulsorily acquired in redevelopment—Scheme for holding licences in 'bank'—Delayed transfer to new premises—Brewers' anticipated ultimate reduction in premises—Maintenance of barrelage—Expenditure in obtaining replacement licences capital—Income Tax Act 1952, s 137(f). *Pendleton (Inspector of Taxes) v Mitchells & Butlers Ltd* [1969] 2 928, ChD.

Capital asset or stock-in-trade—Cost of maintaining kennel of greyhounds—Kennel maintained by company operating racing track—Greyhounds purchased only to make up requisite numbers of entries at race meetings—Company not trading in greyhounds—Cost of replacements only chargeable against income—Income Tax Act 1918, Sch D, Case I, Rules Applicable to Cases I and II, r 3(f). *Abbott (Inspector of Taxes) v Albion Greyhounds (Salford) Ltd* [1945] 1 308, KBD.

Compensation paid to another company of group for abandoning production for one year—Compensation paid by company to maintain own level of production during year. *Commissioner of Taxes v Nchanga Consolidated Copper Mines Ltd* [1964] 1 208, PC.

Covenants in restraint of trade—Payments in consideration of covenants—Company directors retiring from office—Covenants by directors in restraint of trade—Payments made by company to retiring directors in consideration of covenants—payments not deductible from company's trading profits as revenue expenditure—Income Tax Act 1918, Sch D, Case I. *Associated Portland Cement Manufacturers Ltd v Inland Revenue Comrs, Same v Kerr (Inspector of Taxes)* [1946] 1 68, CA.

Expenditure for purpose of earning profits rather than seeming advantage of enduring benefit—Brewery company—Procuring Sunday opening of licensed premises—Local option in Wales and Monmouthshire—Whether company's contribution to cost of stimulating interest in polls in favour of Sunday opening—Capital or revenue expenditure. *Cooper (Inspector of Taxes) v Rhymney Breweries Ltd* [1965] 3 416, ChD.

Improvements—Statutory appropriations towards installations at racecourses—Whether capital expenditure. *Racecourse Betting Control Board v Young (Inspector of Taxes)* [1959] 3 215, HL.

Initiation or extension of business—Expenditure for purpose of initiating or extending a business—Expenditure abortive—Taxpayer a farmer—Visit to Australia with a view to buying a farm and emigrating—Taxpayer deciding not to emigrate—Expenses of visit—Whether capital or revenue in nature. *Sargent (Inspector of Taxes) v Eayrs* [1973] 1 277, ChD.

Licence to use buildings—Annual payment for licence—Part applied constituting instalments of capital value of cost of construction—Whether whole payment of revenue nature. *Racecourse Betting Control Board v Wild* [1938] 4 487, KBD.

Licensed premises—Monopoly value—Licensee lessee of premises—Payment of monopoly value to landlord by instalments—Whether amount of instalments deductible—Licensing (Consolidation) Act 1910, s 14. *Henriksen (Inspector of Taxes) v Grafton Hotels Ltd* [1942] 1 678, CA.

Licensed premises—Monopoly value—Sum paid as monopoly value—Whether capital expenditure—Licensing (Consolidation) Act 1910, s 14. *Kneeshaw v Abertolli* [1940] 3 500, KBD.

Maintenance of existing trading structure—Payment to maintain structure—Payment for release of option—Payment for purpose of retaining important customer—Customer limited company—Taxpayer owning shares in customer—Managing director of customer having option to purchase taxpayer's shares—Taxpayer paying substantial sum to managing director for release of option—Payment made for purpose of retaining trading relationship with customer—Whether payment capital or revenue expenditure—Income Tax Act 1952, s 137(f). *Walker (Inspector of Taxes) v Cater Securities Ltd* [1974] 3 63, ChD.

Release from statutory obligation—Coal mine—Statutory obligation to remedy damage to district drainage system resulting from subsidence—Contribution to scheme releasing mine owner from statutory obligation—Contribution payable by instalments—Whether capital or revenue expense. *Doncaster Amalgamated Collieries Ltd v Bean (Inspector of Taxes)* [1946] 1 642, HL.

Repairs—Deferred repairs—Acquisition of cinema in poor repair—Cinema fully capable of commercial use—Vendor's failure to repair before acquisition—Vendor precluded by war time restrictions from carrying out repairs—No diminution in price in respect of disrepair—Deferred repairs begun two years after acquisition—Repairs spread over several years—No indication of extra cost over and above cost of ordinary repairs—Expenditure on deferred repairs charged to revenue account as separate item from expenditure on current repairs—Expert evidence on accountancy practice—Finding that charging to revenue according with accountancy practice—No conflict with statute—Conclusiveness of finding—Whether expenditure deferred repairs capital or revenue expenditure for income purposes—Whether deductible in computing profits—Income Tax Act 1952, s 137. *Odeon Associated Theatres Ltd v Jones (Inspector of Taxes)* [1972] 1 681, CA.

INCOME TAX (cont)**Deduction in computing profits (cont)—****Capital or revenue expenditure (cont)—**

Repairs—Expenditure on accumulated repairs to hereditament—Lease of old premises in disrepair—Lessees' covenant to reinstate—Compensating rent reduction in earlier years—Whether expenditure by lessees on repairs deductible—*Income Tax Act 1952, Sch D. Jackson (Inspector of Taxes) v Laskers Home Furnishers Ltd* [1956] 3 891, ChD.

Repairs—Increased cost—Increased cost attributable to need to preserve trade—Premises kept open for business during rehabilitation work—Work extended and cost increased in consequence—Whether extra cost deductible. *Mann, Crossman and Paulin Ltd v Compton (Inspector of Taxes), Same v Inland Revenue Comrs* [1947] 1 742, KBD.

Trust to enable employees to purchase shares in taxpayer company—Payments to trust fund—Taxpayer company's business dependent on highly qualified staff promoting business free from outside control—Annual payments to trust fund related to taxpayer company's profits—Aggregate amount of payments unpredictable—Object of scheme to enable employees to acquire stake in taxpayer company and to remove possibility of outside interference in business—Whether payments to trust fund capital or revenue expenditure. *Heather (Inspector of Taxes) v P-E Consulting Group Ltd* [1973] 1 8, CA.

Ceylon. *See Ceylon* (Income tax—Deduction in computing profits).

Corporation tax—

Charge on income—Annuities—Liability incurred for valuable and sufficient consideration—Disposition for more than six years—Seven year covenant—Bank's overseas branches—Education of European staff's children—Difficulty in obtaining education abroad—Scheme to meet costs of education in United Kingdom—Bank making monthly payments to trustees—Benefit accruing to bank from scheme—Bank able to retain and recruit European staff—Whether liability to make payments incurred for 'valuable and sufficient consideration'—*Finance Act 1965, s 52(4)(b). Ball (Inspector of Taxes) v National and Grindlays Bank Ltd* [1971] 3 485, CA.

Charge on income—Charge on income not being a distribution of the company—Meaning of distribution—Close company—Interest paid to person who is an associate of a director who is not a whole-time service director—Director a participator in company—Meaning of associate—Person interested in shares or obligations of company in which participator interested—Meaning of interested in—Executors of unadministered estate—Estate owning shares in company registered in deceased's name—Company indebted to estate—One of executors a director of and participator in company—Interest paid by company to executors—Executors 'interested in' deceased's shares—Executors 'associates' of director in his capacity of participator—Payment of interest a 'distribution' of company—Company not entitled to deduct interest payment as a 'charge on income' in computing profits—*Finance Act 1965, s 52(1), (2), (3)(a), Sch 11, para 9(1), Sch 18, para 5(c). Willingale (Inspector of Taxes) v Islington Green Investment Co*

Debt—

Subsequent release—Estimate of probable loss—Debt—No entry made in accounts in respect of debt—Greater part of debt subsequently released—Accounts re-opened—Whether debt to be entered at the figure remaining payable after release or at the estimate of probable loss which would have been made at the time of preparation of the accounts which were being reopened. *Simpson v Jones (Inspector of Taxes)* [1968] 2 929, ChD.

Subsequent release—Indebtedness set off against profits and subsequently released—Construction of enactment—*Finance Act 1960, s 36. Simpson v Jones (Inspector of Taxes)* [1968] 2 929, ChD.

Deficiency in rent—

Computation—Brewery company—Tied houses—Premises held under long leases—Premises sub-let at rents lower than those obtainable without tie—Deduction of rent forgone—*Income Tax Act 1918, Sch D, Cases I and II, r 3(a)—Finance Act 1940, s 17(2). Nash (Inspector of Taxes) v Tamplin & Sons Brewery Brighton Ltd* [1951] 2 869, HL.

Computation—Brewery company—Leasehold premises let to tied tenant—Premium paid by brewers on grant of purchase of lease—Sum expended by brewers on alterations under covenant—Amount of debt forgone on assignment of lease to brewers in satisfaction of debt—*Rackrent. Collyer (Inspector of Taxes) v Hoare & Co Ltd* [1937] 3 491, KBD.

Depreciation allowance—

Lessee—Entitlement to allowance—Burden falling on lessee—Depreciation of buildings—Full repairing covenant by lessee—Whether 'whole of the burden of any depreciation' falls on lessee—*Finance Act 1937, s 15(1), (5). Boarland v Pirie Appleton & Co Ltd* [1940] 3 306, CA.

Domestic or private expenses—

Farming—Farmhouse used for purpose of managing farming operations for one hour each day—Taxpayer living in farmhouse—Whether rates, repairs, maintenance and insurance of farmhouse deductible—Whether all expenses incurred in running farmhouse deductible—'Farmhouse'—*Income Tax Act 1952, ss 137(b), 526(1). Inland Revenue Comrs v Korner* [1969] 1 679, HL.

Expenditure incurred solely for purpose of making or earning profits or gains—

Agreement to pay half net profits to another company in consideration of operation and control of that company's business—Whether payments deductible—*Indian Income Tax Act 1922 (No 11 of 1922), s 12(2). Indian Radio and Cable Communications Co Ltd v Income Tax Comrs, Bombay Presidency and Aden* [1937] 3 709, PC.

Annual payment made as part of consideration of purchase of business—Whether deductible—*Indian Income Tax Act 1922, s 10(2). Tata Hydro-Electric Agencies Ltd (Bombay) v Income Tax Comr, Bombay Presidency and Aden* [1937] 2 291, PC.

Expense or disbursement—

Notional expense—Issue of shares to employees at nominal value—Loss of premium obtainable by sale on open market—Whether notional loss an expense or disbursement. *Lowry v Consolidated African Selection Trust Ltd* [1940] 2 545, HL.

INCOME TAX (cont)

Deduction in computing profits (cont)—

Expenses wholly and exclusively laid out for purposes of trade—

Accrued expenses—Expenses accruing prior to carrying on trade—Meaning of 'accrued'.

Odeon Associated Theatres Ltd v Jones (Inspector of Taxes) [1972] 1 681, CA.

Broadcasting corporation—Subscription to news agency—Necessary to maintain news service—Keeping agency in existence—Income Tax Act 1952, s 137(a). **British Broadcasting Corp v Johns (Inspector of Taxes)** [1964] 1 923, CA.

Compensation for loss of office—Directors—Agreement between directors in personal negotiations—Subsequent adoption in company's resolution—Commissioners' finding right to deduction not established—Sufficiency of evidence to support—Income Tax Act 1952, s 137(a). **George J Smith & Co Ltd v Furlong (Inspector of Taxes)** [1969] 2 760, ChD.

Conference expenses—Accountant—Expenses of attending accountancy conference—Sole reason for trip to New York—Income Tax Act 1952, s 137(a). **Edwards (Inspector of Taxes) v Warmley Henshall & Co** [1968] 1 1089, ChD.

Conference expenses—Solicitor—Expenses of attending law conferences—Trip combining holiday—Income Tax Act 1952, s 137(a), (b). **Bowden (Inspector of Taxes) v Russell and Russell** [1965] 2 258, ChD.

Cost of acquiring stock-in-trade—Computation of cost—Price or value at date of acquisition—Hotel bought by property developer—Negotiated price £72,000—Value at time £150,000—Conveyance direct to own company at £72,000—Finding of commercial acquisition by company—Not a gift by developer to company—Price not value deductible—Income Tax Act 1952, s 137. **Jacgilden (Weston Hall) Ltd v Castle (Inspector of Taxes)** [1969] 3 1110, ChD.

Employee's tax—Failure to deduct—Taxpayer paying employee's tax to revenue authorities under PAYE regulations—Taxpayer failing to deduct sum paid from employee's salary—Whether payment of tax wholly and exclusively for purposes of taxpayer's trade—Income Tax Act 1952, s 137(e). **Bamford (Inspector of Taxes) v ATA Advertising Ltd** [1972] 3 535, ChD.

Entertaining expenses—Expenses incurred in provision by person of anything in his trade to provide—Newspaper printers and publishers—Provision of hospitality to informants and contributors—Finance Act 1965, s 15(9). **Associated Newspapers Group Ltd v Fleming (Inspector of Taxes)** [1972] 2 574, HL.

Entertaining expenses—Sole object of expenditure promotion of business—Solicitors entertaining clients to lunch—Whether cost of lunch deductible—Income Tax Act 1918, Sch D, Cases I and II, r 3(a). **Bentleys, Stokes and Lowless v Beeson (Inspector of Taxes)** [1952] 2 82, CA.

Guarantee—Payment under guarantee—Solicitors temporarily guaranteeing client's overdraft—Ordinary activity of practice of solicitors to give such guarantees—Income Tax Act 1952, ss 137(a), 123, Sch D, Case II. **Jennings (Inspector of Taxes) v Barfield & Barfield** [1962] 2 957, ChD.

Legal costs. *See* Deduction in computing profits—Legal costs, *post*.

Meals—Taxpayer working away from home—Cost of lunch when working away from home exceeding cost of lunch at home—Whether difference in cost deductible as money wholly and exclusively expended for purposes of taxpayer's trade—Income and Corporation Taxes Act 1970, s 130(a). **Caillebotte (Inspector of Taxes) v Quinn** [1975] 2 412, ChD.

Medical expenses—Cost of operation—Draftsman—Part-time guitarist—Played guitar partly as hobby and partly professionally—Whether expense not exclusively expended for purposes of profession—Income Tax Act 1952, s 137(a) (b). **Prince v Mapp (Inspector of Taxes)** [1970] 1 519, ChD.

Medical expenses—Illness due to poor working conditions—Professional shorthand writer—Medical expenses incurred due to illness caused by working in unfavourable conditions—Expenses not laid out for the purpose of profession—Income Tax Act 1918, Sch D, Cases I and II, r 3(a), (b). **Norman v Golder (Inspector of Taxes)** [1945] 1 352, CA.

Medical expenses—Nursing home charges—Expenses not being money wholly and exclusively expended for the purpose of the profession—Trade mark agent—Charges for treatment in private nursing home—Need of office facilities to maintain business—Charges not exclusively expended for purposes of profession—Income Tax Act 1952, s 137(a), (b). **Murgatroyd (Inspector of Taxes) v Evans-Jackson** [1967] 1 881, ChD.

Prevention of seizure of business by state—Anti-nationalisation campaign—Expenditure on campaign against proposal to nationalise industry—Income Tax Act 1918, Sch D, Cases I and II, r 3(a). **Morgan (Inspector of Taxes) v Tate & Lyle Ltd** [1954] 2 413, HL.

Purpose of expenditure—Dual purpose—Expenditure incurred in part for non-trading purposes—Expenditure incurred by company for purpose of acquiring right to develop land—Expenditure greatly in excess of commercial value of development rights—Expenditure also incurred for purpose of facilitating tax avoidance scheme devised by and for benefit of controlling shareholder—Whether expenditure incurred wholly and exclusively for purposes of company's trade—Income Tax Act 1952, s 137(a). **Ransom (Inspector of Taxes) v Higgs** [1974] 3 949, HL.

Purpose of expenditure—Political objects—Publication of pamphlet attacking government—Pamphlet containing company chairman's 'supplementary remarks' at annual meeting—Whether expenditure on publication deductible—Income Tax Act 1918, Sch D, Rules Applicable to Cases I and II, r 3(a). **Boarland (Inspector of Taxes) v Kramat Pulai Ltd** [1953] 2 1122, ChD.

Purpose of expenditure—Subsidiary company—Trading account between principal and subsidiary company—Loss of subsidiary company written off trading account—Whether money laid out for trade of principal company—Income Tax Act 1918, Sch D, Cases I and II, r 3(a) (e) (f) (i). **Odhams Press Ltd v Cook (Inspector of Taxes)** [1940] 3 15, HL.

INCOME TAX (cont)

Deduction in computing profits (cont)—

Expenses wholly and exclusively laid out for purposes of trade (cont)—

Purpose of expenditure—Surrender of lease—Consideration for surrender—Lease of land on which warehouse erected—Lessees finding they had sufficient storage elsewhere agreeing to surrender lease for £6,000—Whether sum expenditure for purpose of trade or for purpose protanto of putting an end to trade—Income Tax Act 1918, Sch D, Cases I and II, r 3. **Union Cold Storage Co Ltd v Ellerker** [1938] 4 692, KBD.

Rent—Difference between rent paid for buildings and rent received from sub-tenants—Control of buildings essential to trade—Printers of newspaper—Distribution of newspapers—Income Tax Act 1918, Sch D, Cases I and II, r 3(a). **Allied Newspapers Ltd v Hindsley (Inspector of Taxes)** [1937] 4 677, CA.

Rent—Difference between rent paid for shop premises and rent received from sub-tenant—Shop one of number of chain stores closed owing to loss of profits—Business carried on at remaining stores—Income Tax Act 1918, Sch D, Cases I and II, r 3(a). **Hyett v Lennard** [1940] 3 133, KBD.

Statutory body—Distribution pursuant to statute from funds after deduction of working expenses—Distribution benefiting body's trading activity—Whether deductible as expense for income tax purposes—Racecourse Betting Act 1928, s 3(6)—Income Tax Act 1952, s 137(a). **Racecourse Betting Control Board v Young (Inspector of Taxes)** [1959] 3 215, HL.

Subscriptions to charity on behalf on employees—Subscriptions to pension fund of charity—Employees thereby obtaining right to vote in election of pensioners and becoming eligible for pension or other benefit—Whether subscriptions expenditure wholly and exclusively for purpose of employers' trade—Income Tax Act 1918, Sch D, Cases I and II, r 3(a). **Hutchinson & Co Ltd v Turner** [1950] 2 633, ChD.

Technical and financial knowledge and advice—Company agreeing to pay percentage of net profits to another company in consideration of giving benefit of experience. **British Sugar Manufacturers Ltd v Harris (Inspector of Taxes)** [1938] 1 149, CA.

Travelling expenses. *See* Deduction in computing profits—Travelling expenses, *post*.

Trust fund for employees—Payments to trust fund—Trust to enable employees to purchase shares in taxpayer company—Taxpayer company's business dependent on highly qualified staff promoting business free from outside control—Object of scheme to enable employees to acquire stake in taxpayer company and to remove possibility of outside interference in business—Whether payments to trust fund wholly and exclusively for purposes of trade—Income Tax Act 1952, s 137(a). **Heather (Inspector of Taxes) v P-E Consulting Group Ltd** [1973] 1 8, CA.

Investment company. *See* Investment company—Actual income from all sources—Deduction, *post*.

Legal costs—

Appeal against assessment to excess profits tax—Appeal vital to retain services of valuable employee—Income Tax Act 1918, Sch D, Cases I and II, r 3(a)—Finance Act 1940, s 32—Finance Act 1941, s 34. **Smith's Potato Estates Ltd v Bolland (Inspector of Taxes)** [1948] 2 367, HL.

Appeal in respect of incidence of excess profits tax—Income Tax Act 1918, Sch D, Rules Applicable to Cases I and II, r 3(a)—Finance (No 2) Act 1939, s 18(1). **Rushden Heel Co Ltd v Keene (Inspector of Taxes)** [1948] 2 378, HL.

Compromise of action—Payments made under compromise and costs of settling deed—Income Tax Act 1918, Sch D Cases 1 and 11 r 3. **G Scammell and Nephew Ltd v Rowles (Inspector of Taxes)** [1939] 1 337, CA.

Criminal proceedings—Partnership—Chartered accountants—Legal costs incurred in connection with criminal proceedings against one of the partners—Not moneys wholly and exclusively laid out or expended for the purposes of the profession—Income Tax Act 1918, Sch D, Case II, r 3(a). **Spofforth and Prince v Golder (Inspector of Taxes)** [1945] 1 363, KBD.

Damages awarded in litigation. *See* Deduction in computing profits—Loss connected with or arising out of trade—Litigation, *post*.

Defending action relating to business transaction—Defence necessary for protection of business interest as creditor. **Income Tax Comr, Bihar and Orissa v Singh** [1942] 1 362, PC.

Defending title to property—Expenditure incurred in litigation concerning validity of title to property—Expense of maintaining company's property. **Southern v Borax Consolidated Ltd** [1940] 4 412, KBD.

Payment to avoid costs of defending action—Sum paid to settle action for fraud in conduct of trade—Fraud not proved or admitted—Income Tax Act 1918, Sch D, Cases I and II, r 3(a). **Golder (Inspector of Taxes) v Great Boulder Proprietary Gold Mines Ltd** [1952] 1 360, ChD.

Local authority—

Interest on loans on security of general rate fund—Deduction of tax suffered on profits of trading concern—Electricity undertaking—Loan to electricity undertaking of corporation—Electricity undertaking separate entity—Loan used by undertaking for financing sale of electrical appliances and installations—Proportion of loan, recovered by consumers, repaid by undertaking to corporation—Annual profits of undertaking assessable to income tax—Annual profits available in aid of local rate—Amount so applied limited to 'one and a half per cent of the outstanding debt of the undertaking'—Whether difference between original amount of loan and sums already recovered 'outstanding debt of the undertaking' at end of financial year—Electric Lighting (Clauses) Act 1899, s 7—Income Tax Act 1918, Sch D, Miscellaneous Rules, r 6—Electricity (Supply) Act 1926, Sch V. **Boucher (Treasurer of Wallasey County Borough) v Hood (Inspector of Taxes)** [1945] 1 691, KBD.

INCOME TAX (cont)

Deduction in computing profits (cont)—

Loss connected with or arising out of trade—

Fraudulent appropriation of funds—Company director—Appropriation of substantial sum out of company's funds—Director authorised to draw cheques on company's account—Misappropriation of funds unknown to other directors—Whether a loss arising out of or in connection with company's trade—Income Tax Act 1952, s 137(e). **Bamford (Inspector of Taxes) v ATA Advertising Ltd** [1972] 3 535, ChD.

Litigation—Libel action—Libel by sugar broker against chairman of rival company—Damages and costs awarded against sugar broker—Whether a loss 'connected with or arising out of' his trade—Income Tax Act 1918, Sch D, Cases I and II, r 3(a) (e). **J L Fairrie v J M Hall (Inspector of Taxes)** [1947] 2 141, KBD.

Transaction outside normal business—Loss on transaction—Property dealing and development company—of all shares in property company—Aim to develop parent company's leasehold land—property in fact developed by parent company—Winding-up of property company—Payments in liquidation to development company and parent company—Difference between price of shares and liquidation payments—Deductibility of difference in computing development company's profits—Income Tax Act 1952, Sch D, Case I. **Fundarms Developments Ltd (in liquidation) v Parsons (Inspector of Taxes)** [1969] 3 1161, ChD.

New Zealand. *See* New Zealand (Income tax—Assessable income—Deductions in computing income).

Payments to charity—

Understanding but no written agreement—Taxpayers publishing journals on behalf of charity—Profits from journals paid to charity—Publication undertaken on 'distinct understanding' that profits were to be paid to charity—Whether forming part of taxpayer's profits—Whether deductible in computing profits. **Hutchinson & Co (Publishers) Ltd v Turner (Inspector of Taxes)** [1950] 2 633, ChD.

Reimbursement of profits tax—

Amount deductible—Subsidiary company's reimbursement of profits tax paid by principal—Principal company's notice that subsidiary's profits be treated as principal's—Whether amount payable 'by virtue of the notice' was whole profits tax paid by principal—Finance Act 1947, s 38(3). **Chloride Batteries Ltd v Gahan (Inspector of Taxes)** [1956] 1 828, HL.

Subvention payments—

Payments to meet deficits of associated company—Associated company no longer trading—Whether trading expenses of payor company—Finance Act 1953, s 20(1) (9) (10). **Davies (Inspector of Taxes) v Davies Jenkins & Co Ltd** [1967] 1 913, HL.

Technical education payments—

Education of particular individuals—Fees paid by taxpayer farmer for employees to attend agricultural college—Employees sons of taxpayer—Whether fees payments 'to be used for purposes of technical education'—Income Tax Act 1952, s 140(1). **Wickwar (Inspector of Taxes) v Berry** [1963] 2 1058, CA.

Travelling expenses—

Medical practitioner—Emergency cases—General medical practitioner practising at his residence and also holding part-time appointments at hospital 15 miles away—Hospital work as obstetrician and anaesthetist—Expenses of travel by car to and from hospital for emergency cases—Whether expenses deductible—Income Tax Act 1952, s 156, Sch E, Case I, (as substituted by Finance Act 1956, s 10(1)), Sch 9, r 7. **Pook (Inspector of Taxes) v Owen** sub nom. **Owen v Pook (Inspector of Taxes)** [1969] 2 1, HL.

Sub-contracting bricklayer—Working for main contractor on different building sites—Home base for carrying on business—Contracts made, tools and books kept there—Expenditure on travelling between home and building sites—Expenditure wholly and exclusively for purposes of his trade—Income Tax Act 1952, s 137(a). **Horton v Young (Inspector of Taxes)** [1971] 3 412, CA.

Travel between home and place of work—Barrister travelling between chambers and home where he did part of his professional work—Income Tax Act 1918, Sch D, Rules Applicable to Cases I and II, r 3(a). **Newsom v Robertson (Inspector of Taxes)** [1952] 2 728, CA.

Wear and tear of machinery or plant—

Carry forward of allowances—Amalgamation of companies—Right of new company to accrued deductions of constituent companies—Income Tax Act 1918, Sch D, Cases I and II, rr 6, 11—Finance Act 1926, ss 32, 33. **United Steel Companies Ltd v Cullington (Inspector of Taxes)** [1940] 2 170, HL.

Items—Separate consideration—Each item of plant and machinery to be considered separately—Surplus on one item not to be set off against deficiency on another item—Income Tax Act 1918, Sch D, Cases I and II, rr 6, 7. **Charente Steamship Co Ltd v Wilmot** [1942] 1 85, CA.

Lessor and lessee—Repairing covenant by lessee—Full repairing covenant—Lessee bearing expenses of renewals of revenue nature—Whether machinery and plant declared to belong to lessee for tax purposes—Whether lessee entitled to wear and tear allowance—Income Tax Act 1918, Sch D Cases 1 and 11 r 6(2)(6). **Union Cold Storage Co Ltd v Simpson** [1939] 2 94, CA.

Sale by person having control over buyer—Sale at market price—Restriction of wear and tear allowances by reference to 'limit of re-charge'—Application of restriction to sale taking place before Income Tax Act 1945, received Royal Assent—Income Tax Act 1945, s 59(3) (b). **Prior (Inspector of Taxes) v George Martin (Fulham) Ltd** [1953] 1 16, ChD.

Sale by person having control over buyer—Sale at open market price—Application of limit of recharge—Income Tax Act 1945, ss 59(2) (3)(b). **Inland Revenue Comrs v Wilsons (Dunblane) Ltd** [1954] 1 301, HL.

Deduction of tax—

Annual payment. *See* Annual payment—Deduction of tax, *ante*.

Dividends. *See* Dividends—Deduction of tax, *post*.

INCOME TAX (cont)

Deduction of tax (cont)—

Earned income relief—

Income taxed by deduction. *See* Earned income relief—Income taxed by deduction, *post*.

Interest. *See* Interest—Deduction of tax by payer, *post*.

Pay as you earn. *See* Pay as you earn system—Deduction of tax by employer, *post*.

Royalties. *See* Royalties—Deduction of tax, *post*.

Under-deduction. *See* Under-deduction of tax, *post*.

Discontinuance of trade—

Company—

Sale of business to partnership—Partnership consisting of individuals—Resale of business by individuals to same company and one individual—First sale before 6th April 1966—Second sale after that date—No permanent discontinuance of trade after first sale—Statutory provision saving 'subsequent change' from effect of permanent discontinuance ceasing to have effect as respects any relevant change occurring before 6th April 1966—Whether permanent discontinuance of trade after second sale—Finance Act 1954, s 17(1)(2)—Finance Act 1965, s 61(9). **Crisp Malting Ltd v Bourne (Inspector of Taxes)** [1972] 1 700, ChD.

Transfer of business by company to subsidiary company—Liquidation—Effect—Transfer of business by company in liquidation—Ownership of share capital of subsidiary company—Beneficial ownership—Creditors and contributories—Business belonging to person as trustee to be treated as belonging to persons for time being entitled to income of trust—Business belonging to company to be regarded as belonging to owners of ordinary share capital—Whether before transfer transferor company trustee of business for benefit of creditors and contributories as persons entitled to income under trust—Whether after transfer creditors and contributories beneficial owners of ordinary share capital of subsidiary company—Finance Act 1954, s 17(4)(5). **Ayerst (Inspector of Taxes) v C & K (Construction) Ltd** [1975] 1 165, CA.

Transfer of business by company to subsidiary company—Parent company's previous contract to sell subsidiary company's shares—Contract subject to condition precedent—Condition precluding parent company's appropriation of benefit of ownership—Waiver of condition by purchaser after transfer of trade to subsidiary—Date of passing of beneficial ownership to purchaser—Passing before transfer of trade to subsidiary (ie while contract remained conditional)—Requirements for carry forward of parent company's losses not satisfied—Income Tax Act 1952, s 342—Finance Act 1954, s 17. **Wood Preservation Ltd v Prior (Inspector of Taxes)** [1969] 1 364, CA.

Transfer of business by company to subsidiary company—Subsidiary company—Ownership of ordinary share capital—Beneficial ownership—Company treated as subsidiary only when share capital in 'beneficial ownership' of holding company—Transferor company legal and beneficial owner of share capital of transferee company—Order made for winding-up of transferor company—Transfer of business after winding-up order—Whether winding-up order having effect of divesting transferor company of beneficial ownership of shares in transferee company—Finance Act 1954, s 17(6)(a). **Ayerst (Inspector of Taxes) v C & K (Construction) Ltd** [1975] 2 537, HL.

Deemed discontinuance—

Merger of trades—Deemed discontinuance of old and commencement of new trade—Building societies uniting—United society not separately incorporated—Constituent societies remaining in existence—Businesses found not to have been permanently discontinued—Carrying on as united society—Funds and assets vested in united society—Directors and staff transferred—New society a separate entity—Finance Act 1953, s 19(1)—Building Societies Act 1962, ss 18(1), 20(5). **Northern Rock Building Society v Davies (Inspector of Taxes)** [1969] 3 1310, ChD.

Partnership—

Change in partnership. *See* Partnership—Change in partnership, *post*.

Permanent discontinuance—

Receiver appointed for old company—Receiver completing some of company's contracts—New company, whose shares had been acquired by old company, completing and carrying out contracts of old company which receiver unwilling to complete or carry out—New company having same directors and shareholders as old company, operating from same premises with substantially same staff and doing same sort of work as old company—Goodwill of old company purchased by new company—Whether trade of old company permanently discontinued—Finance Act 1954, s 17, Sch 3. **Wadsworth Morton Ltd v Jenkinson (Inspector of Taxes)** [1966] 3 702, ChD.

Taxpayer company manufacturing pharmaceutical products—Parent company's policy to change from rubber to plastic components—Parent company's discovery of suitable plastic—Discontinuance of taxpayer company's operations—Manufacture of same products by parent company's subsidiary—Marketing by parent company—Sale in taxpayer company's name to its customers—Parent company's sale of taxpayer company's shares and business—Restoration of taxpayer company's operations after nine months—No continuous trade of selling products—No temporary suspension of trade and resumption—Income Tax Act 1952, ss 127, 128, 342. **Ingram (J G) & Son Ltd v Callaghan (Inspector of Taxes)** [1969] 1 433, CA.

Sale and replacement of stock-in-trade—

Shipping company—Acquisition of subsidiary's two tramp ships—Ships managed before and after acquisition by same management company—Subsequent sale of the two ships by shipping company—Whether permanent discontinuance of trade—Finance Act 1954, s 17(3). **Aviation and Shipping Co Ltd v Murray (Inspector of Taxes)** [1961] 2 805, CA.

Succession to trade. *See* Succession to trade, *post*.

INCOME TAX (cont)

Discontinuance of trade (cont)—

Trading stock—

Valuation—Trading stock belonging to the trade at the discontinuance thereof—Value taken to be amount realised on sale or value of consideration given for the transfer—Taxpayer company builder and estate developer—Principal assets two blocks of flats—Market value of flats £95,000—Contract by X company to sell flats to third party for £95,000—X company purchasing shares of taxpayer company for £87,250—New directors of taxpayer company appointed—New directors at once passing resolution to discontinue trading activities forthwith—Contract signed on same day for sale of flats by taxpayer company to X company for £27,686—No further trading operations by taxpayer company—Whether flats trading stock of taxpayer company's trade 'at the discontinuance thereof'—Whether taxpayer to bring into account sale price or market value—Income Tax Act 1952, s 143(1). **Moore (Inspector of Taxes) v R J MacKenzie & Sons Ltd** [1972]

Transfer of trade—

Trade belonging to same persons before and after transfer—Winding-up of company—Transfer of contracts to new company—Original company's and liquidator's ownership of new company's shares—Persons entitled to profits after transfer not entitled thereto before—Finance Act 1954, s 17, Sch 3. **Pritchard (Inspector of Taxes) v M H Builders (Wilmslow) Ltd** [1969] 2 670, ChD.

Discounts—

Refunding of debt—

Commercial transaction—Notes issued at a discount and redeemable at a premium—Whether discount and premium taxable—Distinction between capital appreciation and interest—Income Tax Act 1918, Sch D, Case III. **Lomax (Inspector of Taxes) v Peter Dixon & Co Ltd** [1943] 2 255, CA.

Discovery—

Additional assessment. *See* Additional assessment—Discovery, *ante*.

Disposition of income for short period—

Capital or income payment—

Covenant to pay annual sums over seven year period—Pre-existing obligation to pay a sum equal to total amount of annual sums—Whether a disposition of 'income'—Finance Act 1922, s 20(1)(b). **Inland Revenue Comrs v Personal Representatives of Sir Harry Mallaby-Deeley (Bart)** [1938] 4 818, CA.

Period exceeding six years—

Constant element in payments—Covenant to pay specific amount for first year and three-quarters of actual income for each of eight subsequent years—Necessary elements in annual payments—Whether annual payment diminishing income—Income Tax Act 1918, s 27(1)(b)—Finance Act 1922, s 20(1)(b). **D'Ambrumenil v Inland Revenue Comrs** [1940] 2 71, KBD.

Share transaction—Covenant with company—Taxpayer principal shareholder in company—Finance Act 1922, s 20(1)(b). **Inland Revenue Comrs v Morgan-Grenville-Gavin** [1936] 1 895, KBD.

Period which cannot exceed six years—

Any income—Income for tax purposes—Person resident abroad—Disposition for daughter resident in England—Inapplicability of provision—Income Tax Act 1952, s 392. **Becker (Inspector of Taxes) v Wright** [1966] 1 565, ChD.

Dividends—Preference shares—Right to dividend—Dividend of 50 per cent for five years—5 per cent thereafter—Settlement of shares—Payment of dividend in excess of 50 per cent—Whether to be treated as income of settler—Finance Act 1922, s 20(1)(b). **Inland Revenue Comrs v Prince-Smith** [1943] 1 434, KBD.

Payment made in less than six years—Covenant to pay difference between annual letting value of and income actually received from certain properties—Sums due in fact paid within 2 years—Finance Act 1922, s 20(1)(b). **Inland Revenue Comrs v R W Black** [1940] 4 445, CA.

Distribution—

Undistributed income. *See* Undistributed income—Distribution, *post*.

Dividends—

Advance corporation tax. *See* Corporation tax—Advance corporation tax, *ante*.

Annual payment distinguished. *See* Annual payment—Meaning—Dividend distinguished, *ante*.

Appropriate year of assessment. *See* Assessment—Appropriate year—Dividends, *ante*.

Capital or income receipts. *See* Capital or income receipts—Dividends, *ante*.

Deduction of tax—

Annual payment. *See* Annual payment—Payment out of profits etc already taxed—Deduction of tax—Deduction by person through whom payments made—Dividends, *ante*.

Appropriate rate—Standard rate when dividend declared—Cumulative dividend—Underpayment—Distribution of aggregate sum in respect of underpayment—Rate of tax deductible. **Godfrey Phillips Ltd v Investment Trust Corp Ltd** [1953] 1 7, ChD.

Net dividend—Declaration of dividend of net amount on footing that the dividend was subject to deduction of income tax—Net amount exhausting whole available profits of company—Shareholder's loss repayment claim—No profits from which tax deduction possible—Claim unobtainable—Income Tax Act 1952, ss 184(1)(2), 186(1). **Johns (Inspector of Taxes) v Wirsal Securities Ltd** [1966] 1 865, ChD.

Net dividend—Declaration of dividend of net amount of footing that the dividend was subject to deduction of income tax—Net amount exhausting whole available profits of company—Shareholder's loss repayment claim—No profits from which tax deduction possible—Claim unobtainable—Income Tax Act 1952, ss 184(1)(2), 186(1). **Johns (Inspector of Taxes) v Wirsal Securities Ltd** [1966] 1 865, ChD.

Tax avoidance transactions—No profit available on adjustment of tax avoidance transaction—Dividend paid on preference shares consequently not subject to deduction of tax. **Ridge Securities Ltd v Inland Revenue Comrs** [1964] 1 275, ChD.

INCOME TAX (cont)**Dividends (cont)—****Loss relief—**

Repayment claim. *See* Loss relief—Claim—Repayment claim—Tax deduction from dividends on shares, *post*.

Relief from surtax—

Income attributable to period exceeding a year—Dividends—Exclusion of relief—Exclusion in respect of dividends treated as income of year 1965–66—Deduction of tax from dividends—Deduction of tax from full amount of profits or gains of company—Dividend forming part of income for year by reference to which standard rate tax deductible—Year in which amount payable 'became due'—Interim dividends declared in March 1965 and payable in May 1965—Whether dividends 'became due' when declared or when paid—Income Tax Act 1952, ss 184(1), 238—Finance Act 1966, s 24. *Potel v Inland Revenue Comrs* [1971] 2 504, ChD.

Total income. *See* Total income—Dividends, *post*.

Trading receipts—

Dividends subject to deduction of tax. *See* Profits—Trading receipts—Dividends subject to deduction of tax, *post*.

Domicile—**Acquisition of domicile of choice in England—**

Intention to make permanent home in England—Intention to return to domicile of origin on happening of future uncertain event—Taxpayer having a Canadian domicile of origin—Taxpayer joining Royal Air Force—Taxpayer intending to return to Canada on completion of service—Taxpayer marrying an Englishwoman—Wife unwilling to live in Canada—Taxpayer and wife establishing permanent matrimonial home in England—Taxpayer intending to return to Canada in the event of his wife's predeceasing him—Taxpayer retaining his Canadian citizenship—Taxpayer's declaration in his will that his domicile was Nova Scotia—Whether taxpayer had acquired domicile of choice in England. *Inland Revenue Comrs v Bullock* [1976] 3 353, CA.

Change of domicile—

Onus of proof—Taxpayer having South African domicile of origin—Taxpayer coming to United Kingdom and obtaining employment—Statement by taxpayer in answer to Revenue questionnaire that he intended to remain permanently in United Kingdom—Whether sufficient to establish taxpayer's acquisition of English domicile of choice—Income Tax Act 1952, s 132(2)(a). *Buswell v Inland Revenue Commissioners* [1974] 2 520, CA.

Double taxation relief—**Conflict between taxing Act and agreement for relief—**

Ceylon and United Kingdom. *See* Ceylon (Income tax—Double taxation relief—Agreement with United Kingdom for relief—Subsequent Act taxing non-resident companies—Conflict between Act and agreement).

Corporation tax—

Transitional provisions—Dividends paid by company resident in United Kingdom to shareholder resident abroad—Introduction of corporation tax for United Kingdom companies—Transitional provisions relating to double taxation relief—Amount of income tax chargeable in respect of dividends subject to such limitation as would apply under relevant agreement in the converse case—Shareholder resident in South Africa—Shareholder not liable to South African tax on dividends—United Kingdom shareholders liable to tax on dividends from South African companies—Shareholder would be liable to United Kingdom tax 'in the converse case'—Shareholder entitled to relief in respect of income tax under transitional provisions—Whether 'income tax' including surtax—Whether shareholder entitled to relief in respect of surtax—Finance Act 1966, s 31(2). *Hewitt v Inland Revenue Comrs* [1972] 2 453, ChD.

Credit of foreign tax against income tax—

Allowance of overseas tax as credit against United Kingdom tax payable 'in respect of' overseas income—New Zealand income—Change in basis of assessment of overseas tax—Alteration in New Zealand from previous year's to current year's basis—Tax in New Zealand not chargeable on income for last year of old basis—Assessment to United Kingdom tax based on previous year's income being the income of the year on which tax not chargeable in New Zealand—Allowance 'in respect of' income referring to income of year of assessment and not to income of year used as measure of liability—Income Tax Act 1952, s 347, Sch 16, para 2(1)(2)—Double Taxation Relief (Taxes on Income)(New Zealand) Order 1947 (SR & O 1947 No 1776), art XIV(1). *Duckering (Inspector of Taxes) v Gollan* [1965] 2 115, HL.

Computation—Tax borne by the body corporate—Attributable to proportion of 'relevant profits' represented by dividends—Meaning of relevant profits—Profits in accounts of foreign body corporate or as assessed for foreign tax purposes—Income Tax Act 1952, s 347, Sch 16, para 9. *Bowater Paper Corp Ltd v Murgatroyd (Inspector of Taxes)* [1969] 3 111, HL.

Dividends and interest paid by United States corporation to United Kingdom resident—

Recipient a United States citizen and a citizen of the United Kingdom and Colonies—Double taxation convention with United States—No relief granted to 'citizen of that other Contracting Party'—Meaning—Whether limited to citizen of United States—Whether including citizen of the United Kingdom and Colonies—Double Taxation Relief (Taxes on Income)(USA) Order 1946 (SR & O 1946 No 1327), Sch, art XV (as substituted by Double Taxation Relief (Taxes on Income)(USA) Order 1966 (SI 1966 No 1188), art 11). *Avery Jones v Inland Revenue Comrs* [1976] 2 898, ChD.

Dividends paid to British shareholders—

Deduction of tax—Shares in British companies held by Canadian company—Dividends of British companies suffering tax—Dividends of Canadian company paid to British shareholders less tax by company's London agents—Relief claimed by Canadian company in respect of tax so deducted—Income Tax Act 1918, s 147, Sch D, Case V—Miscellaneous Rules, r 7, All Schedules Rules, r 20. *Canadian Eagle Oil Co Ltd v R, Selection Trust Ltd v Devitt (Inspector of Taxes)* [1945] 2 499, HL.

INCOME TAX (cont)

Double taxation relief (cont)—

Dominion tax—

Allowances and deductions—Tax on debenture interest paid by company but recoverable from debenture holders—Finance Act 1920, s 27—Finance Act 1927, s 46, Sch V, Part II, para 2(1). **National Mortgage and Agency Co of New Zealand Ltd v Inland Revenue Comrs** [1938] 2 88, HL.

Double super-tax—

Payment of income tax and super-tax in both United Kingdom and Irish Free State—Admissibility of claim for relief in respect of double super-tax—Finance Act 1920, s 27—Relief in respect of Double Taxation (Irish Free State) Declaration 1923. **McCalmont v Inland Revenue Comrs** [1938] 3 174, CA.

Effect on dividends—

Ceiling on repayment—Tax deducted from dividends—Dividends subject to double taxation relief—Calculation of repayment—Based on tax paid or rate of tax paid by dividend-paying company—Income Tax Act 1952, s 350(1). **Jones (Inspector of Taxes) v Shell Petroleum Co Ltd** [1971] 2 569, HL.

Foreign shareholders—

Shares in English company held by Indian company—Dividends of English company suffering tax—Relief to preference shareholder in Indian company. **Barnes (Inspector of Taxes) v Hely Hutchinson** [1939] 3 803, HL.

Foreign wife—

Dividends and interest paid by American corporations to taxpayer's wife—Taxpayer a citizen of and resident in United Kingdom—Taxpayer's wife American citizen resident in United Kingdom—Double taxation convention with United States—Whether taxpayer's wife a resident of the United Kingdom within meaning of convention—Whether taxpayer entitled to relief in respect of wife's American income—Double Taxation Relief (Taxes on Income) (USA) Order 1946 (SR & O 1946 No 1327), Schedule, arts II(1)(g), (3), XV, as amended by the Double Taxation Relief (Taxes on Income)(USA) Order 1966. **Lord Strathalmond v Inland Revenue Comrs** [1972] 3 715, ChD.

Mutual life assurance society—

Resident abroad—Australian company with branch office in the United Kingdom—Assessments to income tax on income of society's life assurance fund—Whether assessments competent—Income Tax Act 1918, Sch 1, Sch D, Rules applicable to Case III, r 3—Finance (No 2) Act 1945, s 51(1)—Income Tax Act 1952, ss 347(1), 430, 437(1)—Double Taxation Relief (Taxes on Income)(Australia) Order 1947 (SR & O 1947 No 806), Schedule, art II(1)(i), art II(2), (3). **Ostime (Inspector of Taxes) v Australian Mutual Provident Society** [1959] 3 245, HL.

Nationality—

Remuneration and pensions payable out of public funds of one of contracting parties—Taxpayer required to be national of both contracting parties to qualify for relief—Federal Republic of Germany—Taxpayer British subject and German national by birth—Taxpayer a Jew—Taxpayer having emigrated to England before second world war—Taxpayer deprived of German nationality by German government decree during war—Basic Law of Federal Republic enacted on basis that wartime decree void—Basic Law requiring person deprived of nationality by wartime decree to apply for renaturalisation—Taxpayer not having applied—Whether taxpayer a German national for purpose of tax relief under double taxation convention—Double Taxation Relief (Taxes on Income)(Federal Republic of Germany) Order 1967 (SI 1967 No 25) Schedule, art IX(2). **Oppenheimer v Cattermole (Inspector of Taxes)** [1975] 1 538, HL.

Profits of trade—

Foreign company carrying on business in United Kingdom—Reinsurance business—Profits from underwriting—Dutch company resident in Netherlands carrying on business of reinsurance—Permanent branch in London—Accumulation by company of surplus sums from underwriting—Separate London portfolio of investments including dollar investments—Dollar investments vested in American trustees and earmarked for American claims—Whether realised profits on London portfolio and dividends and interest from dollar investments should be included in company's profits under Sch D, Case I—Whether excluded from computation by reason of double taxation agreement with Netherlands—Income Tax Act 1952, s 123 (Sch D, Case I)—Double Taxation Relief (Taxes on Income) (Netherlands) Order 1950 (SI 1950 No 1195), art III, para (3). **General Reinsurance Co Ltd v Tomlinson (Inspector of Taxes)** [1970] 2 436, ChD.

Rate of exchange—

Alteration—Effect—USA tax allowable against UK tax—Alteration in rate of exchange between initial payment and refund of USA tax—Effect on UK tax liability—Income Tax Act 1952, s 347, Sch XVI, para 2(1)—Double Taxation Relief (Taxes on Income)(USA) Order 1946 (SR & O 1946 No 1327), Sch, art XIII(2). **Greig (Inspector of Taxes) v Ashton** [1956] 3 123, ChD.

Removal of exemption by statute—

Person entitled to exemption under any enactment—Resident of Republic of Ireland—Whether exempt under enactment or under double taxation agreement—Removal of exemption—A person entitled under any enactment to an exemption—Application to resident in the Republic of Ireland—Dividend stripping—Finance (No 2) Act 1955, s 4(2). **Collico Dealings Ltd v Inland Revenue Comrs** [1961] 1 762, HL.

Shares in foreign company—

British company holding shares in American company which held shares in five British companies—Dividends received by American company from British companies and by British company from American company suffering tax—Relief claimed by British company—Income Tax Act 1918, Sch D, Case I. **Canadian Eagle Oil Co Ltd v R, Selection Trust Ltd v Devitt (Inspector of Taxes)** [1945] 2 499, HL.

INCOME TAX (cont)

Double taxation relief (cont)—

Shares in foreign company (cont)—

Company acquiring foreign shares—Shares constituting new source or addition to source of income—Case V assessment of dividends—Based on initial year's income in that and ensuing year—Claim for allowance of foreign tax in initial year against both assessments—Income Tax Act 1952, s 347, Sch 16, para 13—Double Taxation Relief (Taxes on Income) (Australia) Order 1947 (SR & O 1947 No 806), Schedule, art XII(1). **Imperial Chemical Industries Ltd v Caro (Inspector of Taxes)** [1961] 1 658, CA.

Duties performed abroad. *See* Foreign employment—Duties performed abroad, *post*.

Earned income relief—

Computation of earned income—

Deduction from actual earned income of charges allowable against income—Deduction of payments of mortgage and building society and bank loan interest from income earned—Finance Act 1925, s 15(1), as amended by Finance Act 1948, s 27(2)—Income Tax Act 1918, s 17. **Lewin v Aller (Inspector of Taxes)** [1954] 2 703, CA.

Dissolution of partnership—

Payments under dissolution agreement—Retiring partner in firm of solicitors agreeing to give advice and render assistance to continuing partner—Covenanted payments to retiring partner not solely referable to obligation to give advice and render assistance—Consideration not apportionable to that obligation. **Hale v Shea (Inspector of Taxes)** [1965] 1 155, ChD.

Earned income—

Income from shares of company—Shares settled on taxpayer as inducement to remain a director of company—Taxpayer entitled to income so long as he should be engaged in the management of the company—Whether dividends from the shares were earned income—Income Tax Act 1952, s 525(1)(a). **White (Inspector of Taxes) v Franklin** [1965] 1 692, CA.

Income immediately derived from carrying on or exercise of trade, profession or vocation—Immediately derived—Interest—Solicitor—Clients' deposit account—Account opened by solicitor in course of exercising profession—Solicitor placing money held on behalf of clients in deposit account in accordance with rules of profession—Solicitor entitled to retain portion of interest—Whether interest retained 'immediately derived' from carrying on of profession—Income Tax Act 1952, s 525(1)(c). **Northend (Inspector of Taxes) v White & Leonard and Corbin Greener (a firm)** [1975] 2 481, ChD.

Income immediately derived from carrying on or exercise of trade, profession or vocation—Immediately derived—Partnership—Accountants—Retirement of partner—Agreement with continuing partners—Payment of 'retirement allowance'—Allowance computed as a percentage of the profits of the firm—Whether the allowance 'immediately derived' by retired partner from carrying on of his profession as a partner—Income Tax Act 1952, s 525(1)(c). **Agler v Abell (Inspector of Taxes)** [1973] 1 53, ChD.

Income taxed by deduction—Partnership—Partner's share of investment income taxed by deduction—Firm of merchant bankers—Taxpayer a partner—Loss on firm's trading—Greater sum received by firm by way of income taxed by deduction—Credit balance divisible between partners—Whether taxpayer's share of interest charged under Case III and of interest and dividends charged under Case IV or V of Sch D 'earned income' of taxpayer—Apportionment between partners of income qualifying for earned income relief (if any)—Income Tax Act 1952, s 525(1). **Bucks v Bowers (Inspector of Taxes)** [1970] 2 202, ChD.

Interest—

Property of taxpayer—Solicitor—Interest on clients' money—Money in hands of Scottish advocate placed in firm name with words 'for clients' added on deposit receipt—Interest treated by him as professional income in accordance with opinion of Council of Law Society of Scotland—Clients' money loaned by him to other clients—Difference in interest charged to borrowing clients and that allowed to lender clients similarly treated as professional income—Claim by advocate to earned income relief in respect of interest—Whether interest property of the solicitor—Income Tax Act 1952, s 211. **Brown v Inland Revenue Comrs** [1964] 3 119, HL.

Remuneration in respect of office of profit—

Trustee—Annuity payable to trustee conditional on his acting as such—Whether investment or earned income. **Dale v Inland Revenue Comrs** [1953] 2 671, HL.

East Africa. *See* East Africa (Income tax).

Education—

Child allowance—

Child over age of 16 receiving full-time instruction. *See* Child relief—Child over age of 16 receiving full-time instruction, *ante*.

Technical education payments—

Deduction in computing profits. *See* Deduction in computing profits—Technical education payments, *ante*.

Emoluments from office or employment—

Advantage convertible into money—

Allotment of shares to employees—Allotment of bonus shares at par value to senior company officials—Shares saleable only with permission of directors—Whether difference between market value and par price paid a profit or gain arising from office—Value of shares—Income Tax Act 1918, Sch E, r 1. **Ede (Inspector of Taxes) v Wilson and Cornwall** [1945] 1 367, KBD.

Assessment—

Cessation of office or employment—Additional assessment—Deputy town clerk becoming town clerk of another borough during year of assessment—Additional assessment in respect of increased remuneration—Whether a cessation of employment—Finance Act 1927, s 45(5). **Hathaway v Turner** [1942] 1 16, KBD.

INCOME TAX (cont)

Emoluments from office or employment (cont)—

Basis of assessment—

Perquisite—Value of perquisite—Litigation expenses—Company incurring expense on defence of director on criminal charge—Payment made primarily for company's benefit—Payment in excess of what director would have paid if defending out of his own resources—Whether whole expense to be treated as taxable perquisite—Income Tax Act 1952, ss 160(1), 161(1). **Rendell v Went (Inspector of Taxes)** [1964] 2 464, HL.

Perquisite—Value of perquisite—Employer's gift of suit of clothes—Computation of value—Cost to employer or second-hand value to taxpayer—Income Tax Act 1952, Sch 9, r 1 (Rules applicable to Sch E). **Wilkins (Inspector of Taxes) v Rogerson** [1961] 1 358, CA.

Benefits in kind—

Car loan scheme—Employees participating in scheme receiving lower wages—Whether gross wages affected by acceptance of lower wages and use of car. **Heaton (Inspector of Taxes) v Bell** [1969] 2 70, HL.

Expense incurred by body corporate—Accommodation—Accommodation and benefits provided to directors and others—Expenses incurred by body corporate—Treatment as income of directors etc—Director renting house from company—Company paying all current expenses—Director entertaining company's customers—Need for apportionment of total sum—Reflection of use for business purposes—Absence of severance of accommodation—Income Tax Act 1952, ss 161(1)(6), 162(1), Sch 9, para 7. **Westcott (Inspector of Taxes) v Bryan** [1969] 3 564, CA.

Expense incurred by body corporate—Accommodation—Service occupation—Service house of mill manager—Company's payments for coal, electricity and garden—Emoluments of manager—Income Tax Act 1952, s 161(1)(3). **Butter (Inspector of Taxes) v Bennett** [1962] 3 204, CA.

Expense incurred by body corporate—Accommodation—Provision of accommodation for directors or other employees—Director renting house from company—Genuine transaction at arm's length—Company paying sums for owner's rates, insurance to fabric, landlord's repairs and renewals—Expenses on house exceeded rent—Whether excess of such expenses over rent chargeable as notional expense of director refunded to him by company and thus as his income—Income Tax Act 1952, ss 160(1), 161(1), 162(4). **Luke v Inland Revenue Comrs** [1963] 1 655, HL.

Expense incurred by body corporate—Accommodation—Company providing accommodation for employee—Employee charged only part of rent—Whether difference income of employee—Income Tax Act 1952, s 161(1). **McKie (Inspector of Taxes) v Warner** [1961] 3 348, ChD.

Expense incurred by body corporate—Provision of benefits for directors or other employees—Christmas gifts to employees—£10 vouchers—Assessability to tax—Income Tax Act 1952, s 161. **Laidler v Perry (Inspector of Taxes)** [1965] 2 121, HL.

Premises available to occupier by reason of holding an office or employment—Beneficial or representative occupation—Obligation to occupy as condition of employment—Occupation enabling taxpayer to perform duties of employment more effectively—Taxpayer a police officer—Taxpayer required to live in accommodation approved by chief constable—Police authority providing rent-free houses for police officers—Houses allocated by order—Taxpayer having no right to choose house in which to live—Whether taxpayer's occupation in beneficial or representative capacity—Whether value of premises part of emoluments of taxpayer—Finance Act 1963, s 47(1). **Langley v Appleby (Inspector of Taxes)** [1976] 3 391, ChD.

Capital or income receipt. *See* Capital or income receipts—Emoluments from office or employment, *ante*.

Causal nexus between employment and benefit received—

Preferential right to apply for shares—Parent company offering shares for sale—Shares tendered to public—Highest applications for purchase above minimum price accepted—Ten per cent of shares reserved at minimum price for group employees—Taxpayer employed by subsidiary company—Taxpayer buying 5,000 shares at minimum price of £1—Shares valued on acceptance date at £1.15 or £1.20—Whether taxpayer's profit derived from his employment—Whether benefit an emolument from employment—Finance Act 1956, Sch 2, para 1(1). **Tyrer v Smart (Inspector of Taxes)** [1976] 3 537, ChD.

Compensation—

Loss of office—Abrogation of service agreement—Separate agreement for payment of compensation—Payment not under service contract—Whether a profit from employment—Income Tax Act 1918, Sch E, r 1. **Henley v Murray (Inspector of Taxes)** [1950] 1 908, CA.

Loss of office—Payment in consideration or in consequence of termination of office—Payment not otherwise chargeable to tax—Registrarship of limited company—Registrarship held by firm of advocates incidentally to their business—Firm ceasing to be registrars—Terminal payment—Whether payment chargeable to tax as trading receipt of firm—Income Tax Act 1952, Sch E—Finance Act 1960, ss 37(1), (2), 38(3). **Inland Revenue Comrs v Brander & Cruickshank** [1971] 1 36, HL.

Loss of office—Payment of lump sum—Accountant—Auditor to group of companies—Fees taxed under Sch E—Payment on relinquishing office—Office as an asset of accountant's business and a subject of taxation under Sch D—Inconsistency of findings of Special Commissioners with view that the auditorships were such an asset—No ground for holding findings unreasonable—No factual basis in findings for establishing that auditorships were such an asset—Finance Act 1960, s 38(3). **Ellis (Inspector of Taxes) v Lucas** [1966] 2 935, ChD.

Loss of office—Payment of lump sum—Solatium—Accountants—Auditors to group of companies—Fees taxed under Sch E—Payment on relinquishing office—Payment made to persons carrying on profession—Persons assessable under Sch D—Whether payment emolument from office or receipt of trade or business. **Walker (Inspector of Taxes) v Carnaby, Harrower, Barham & Pykett** [1970] 1 502, ChD.

INCOME TAX (cont)**Emoluments from office or employment (cont)—****Compensation (cont)—**

Loss of office—Term in service agreement for payment on termination of service agreement—Whether compensation arising from employment—Income Tax Act 1918, Sch E, r 1. **Dale v De Soissons** [1950] 2 460, CA.

Reduction of salary—Company director—Payment of lump sum in consideration of acceptance of reduced salary—Whether profit arising from office. **Wilson (Inspector of Taxes) v Nicholson Sons & Daniels Ltd** [1943] 2 732, KBD.

Reduction of salary—Company director—Payment of lump sum to company director in consideration of acceptance of reduced salary and alteration of director's tenure of office—Compensation not in nature of a capital receipt—Income Tax Act 1918, Sch E. **Leeland v Boardland (Inspector of Taxes)** [1946] 1 13, KBD.

Relinquishment of rights under service agreement—Lump sum—Compensation for loss of pension rights and reduced salary—Whether whole or part of lump sum taxable as emoluments—Income Tax Act 1918, sch E. **Tilly v Wales (Inspector of Taxes)** [1943] 1 280, HL.

Relinquishment of rights under service agreement—Lump sum—Taxpayer refuse collector in employment of local authority—Taxpayer originally entitled under salvage agreement to sell salvage and retain proceeds of sale—Termination of salvage agreement by local authority—Acceptance by taxpayer of £450 in place of former rights as to salvage—Whether payment emolument from employment—Income Tax Act 1952, s 156, as amended by Finance Act 1956, s 10. **Holland (Inspector of Taxes) v Geoghegan** [1972] 3 333, ChD.

Restrictive covenant—Payment of lump sum in consideration of acceptance of covenant—Company director—Whether profit arising from office—Income Tax Act 1918, Sch E, r 1. **Beak (Inspector of Taxes) v Robson** [1943] 1 46, HL.

Deduction of tax—

Agreement to pay remuneration without deduction of tax—Effect of agreement—Income Tax Act 1918, All Schedules Rules, r 23(2). **Jaworski v Institution of Polish Engineers in Great Britain Ltd** [1950] 2 1191, CA.

Emoluments received in United Kingdom—

Sums derived from emoluments paid overseas—Loans—Emoluments paid to taxpayer overseas—Emoluments invested by subscribing for shares in overseas company controlled by taxpayer—Interest free loans by company to second company not controlled by taxpayer—Second company granting taxpayer similar loans in United Kingdom—Whether loans received by taxpayer emoluments—Income Tax Act 1952, s 156 (as amended by the Finance Act 1956, s 10(1)(Sch E, para 1, Case III). **Harmel v Wright (Inspector of Taxes)** [1974] 1 945, ChD.

Employment—

Contract of employment—What amounts to contract of employment—Payment of lump sum for cancellation of contract—Contract for exclusive services—Operative for twelve to sixteen consecutive weeks of each of three successive years—Option to acquire film rights in novels—Not a contract of employment—Income Tax Act 1918, Sch E, r 1, Sch D, Case II. **Household v Grimshaw (Inspector of Taxes)** [1953] 2 12, ChD.

Contract of service—Contract an incident in carrying on of profession—Professional dancer—Dancer entering into engagements in the carrying on of his profession—Engagement with theatrical company under standard form contract—Contract amounting to contract of service—Whether earnings from contract constituting emoluments from 'employment'—Income and Corporation Taxes Act 1970, s 181(1)(Sch E). **Fall (Inspector of Taxes) v Hitchen** [1973] 1 368, ChD.

Expenses allowances—

Body corporate—Sums paid in respect of expenses by body corporate to director or employee—Director—Expenses in respect of activity outside normal duties—Director given special assignment—Director paid travelling expenses—Expenses relating only to special assignment and not to directorship—Whether expenses chargeable as emoluments from office of director—Income Tax Act 1952, ss 156(Sch E), 160(1). **Taylor v Provan (Inspector of Taxes)** [1974] 1 1201, HL.

Expenses payments. *See* Emoluments from office + employment—Perquisites or profits—Expenses payments, *post*.

Expenses wholly, exclusively and necessarily incurred—

Army officer—Annual mess subscription—Income Tax Act 1918, Rules Applicable to Sch E, r 9. **Griffiths (Inspector of Taxes) v Mockler** [1953] 2 805, ChD.

Conference expenses—County surveyor—Attendance at conference—By-pass scheme proposed by county council—Surveyor attending international conference abroad in hope of obtaining first class opinion on merits of scheme—Attendance during period of annual leave and without obtaining authority of county council—Whether expense of attending conference necessarily incurred in performance of his duties—Income Tax Act 1952, Sch 9, r 7. **Owen v Burden (Inspector of Taxes)** [1972] 1 356, CA.

Employment agency—Fee paid to agency—Employment obtained through employment agency on payment of fee—Fee calculated on a percentage of one year's earnings—Whether fee so paid 'money wholly, exclusively, and necessarily' expended in the performance of the employment—Income Tax Act 1918, Sch E, r 9. **Henderson Shortt v McIlgorm (Inspector of Taxes)** [1945] 1 391, KBD.

Examination fees—Solicitor's articled clerk—Fee for Law Society's examination—Income Tax Act 1952, Sch 9, r 7. **Lupton (Inspector of Taxes) v Potts** [1969] 1 1083, ChD.

Meals—Allowance for meals—Local government officer required to attend evening council meeting—Allowance paid to officer for meals in connection with evening work—Excess cost of meals not deductible—Income Tax Act 1952, Sch IX, Rules Applicable to Sch E, r 7. **Durbidge v Sanderson (Inspector of Taxes)** [1955] 3 154, ChD.

Parsonage house—Rector required to live in house—House held by rector as corporation sole—Expenses incurred by rector in opposing Bill in Parliament for compulsory acquisition of parsonage house. **Mitchell (Inspector of Taxes) v Child** [1942] 2 504, KBD.

INCOME TAX (cont)

Emoluments from office or employment (cont)—

Expenses wholly, exclusively and necessarily incurred (cont)—

Residence provided by employers to employee—Employee required to live in flat and to entertain customers—Part of rent paid by employers—Whether sum paid by employers deduction from employee's emoluments as notionally increased by that sum—Income Tax Act 1952, Sch 9, Rules applicable to Sch E, r 7. **McKie (Inspector of Taxes) v Warner** [1961] 3 348, ChD.

Subscription—Club—Bank manager—Membership of club practically requisite for employment as manager—Income Tax Act 1952, Rules applicable to Sch E, Sch 9, r 7. **Brown v Bullock (Inspector of Taxes)** [1961] 3 129, CA.

Subscription—Territorial Army officer—Mess subscription and expenses, camp expenses, cost of necessary attendance at dances—Excess cost over allowance for hotel expenses at conferences and exercises—Income Tax Act 1918, Rules Applicable to Sch E, r 9. **Lomax (Inspector of Taxes) v Newton** [1953] 2 80, ChD.

Travelling expenses—Attendance at evening classes condition of employment—Expenses so incurred not in performance of duties of office—Income Tax Act 1918, Sch E, r 9. **Blackwell (Inspector of Taxes) v Mills** [1945] 2 655, KBD.

Travelling expenses—Evidence that expenses necessarily incurred—Company directors—Man and wife sole shareholders and directors—Visit to Australia in connection with company's business—No evidence as to functions wife to perform in Australia—Income Tax Act 1952, ss 161(1), 162(1), Sch IX, r 7. **Maclean (Inspector of Taxes) v Trembath** [1956] 2 113, ChD.

Travelling expenses—Taxpayer resident abroad—Taxpayer director of English company—Sole function to expand company by mergers etc—Arrangement with company contemplating duties would be performed mainly outside United Kingdom—Taxpayer flying to United Kingdom periodically in connection with duties—Taxpayer reimbursed by company for money expended on air fares—Sums reimbursed constituting emoluments of office—Whether cost of air fares necessarily incurred by taxpayer in performance of duties of his office of director—Income Tax Act 1952, s 156(Sch E), Sch 9, para 7. **Taylor v Provan (Inspector of Taxes)** [1974] 1 1201, HL.

Travelling expenses—Travelling expenses which office holder is 'necessarily obliged to incur'—Employee's use of own car—Use encouraged but not a condition of employment—Mileage allowance made—Claim to deduct balance of cost involved—Income Tax Act 1952, Sch 9, r 7. **Marsden v Inland Revenue Comrs** [1965] 2 364, ChD.

Travelling expenses—War work—Weekly wage earner—Change to place of work through circumstances connected with war—Additional travelling expenses—Housewife directed to work in factory—Whether claim for deduction admissible—Income Tax Act 1918, sched E, r 9—Finance Act 1941, s 23. **Phillips (Inspector of Taxes) v Emery** [1946] 1 144, KBD.

Foreign employment. *See* Foreign employment, *post*.

Future employment—

Undertaking by taxpayer to serve company—Transfer of shares in company to taxpayer in consideration of undertaking—Tripartite agreement between taxpayer, company and controlling shareholder in company—Taxpayer to take up employment with company not later than specified date six months after agreement—Shares to be transferred to taxpayer by controlling shareholder—Transfer of shares taking place before taxpayer starting work for the company—Whether transferred shares taxable emoluments of taxpayer from office or employment—Income Tax Act 1952, s 156(Sch E), as amended by Finance Act 1956, s 10(1). **Pritchard (Inspector of Taxes) v Arundale** [1971] 3 1011, ChD.

Gifts distinguished from emoluments—

Personal gifts. *See* Emoluments from office or employment—Personal gifts distinguished from emoluments, *post*.

Voluntary payment. *See* Emoluments from office or employment—Voluntary payment, *post*.

Moneys improperly obtained—

Liability to account—Moneys alleged to have been improperly paid to taxpayer out of undisclosed profits of company of which taxpayer director—Additional assessment under Sch E on taxpayer—Whether, if moneys improperly paid, taxpayer held moneys as trustee for company—Whether taxpayer could in law have received moneys as emoluments. **Rose v Humbles (Inspector of Taxes)** [1970] 2 519, ChD.

Office—

Part time appointment—Profits from office and from profession—Deduction of expenses—Exclusivity of schedules—Expenses of office not deductible from profits of profession—Medical specialist—Part-time consultant at national health service hospital—Income Tax Act 1952, ss 122 (Sch D, para 1, proviso), 156 (Sch E, para 2). **Mitchell (Inspector of Taxes) v Ross** [1961] 3 49, HL.

Pay as you earn. *See* Pay as you earn system, *post*.

Payable out of the public revenue. *See* Office or employment under the Crown—Emoluments payable out of the public revenue of the United Kingdom, *post*.

Payment for retaining office—

Continuance in office in consideration for payment—Company director—Agreement to continue in office in return for payment of lump sum—Whether a profit from office—Income Tax Act 1918, Sch E, r 1. **Cameron v Prendergast (Inspector of Taxes)** [1940] 2 35, HL.

Perquisites or profits—

Basis of assessment—Perquisite. *See* Emoluments from office or employment—Basis of assessment—Perquisite, *ante*.

Benefits in kind. *See* Emoluments from office or employment—Benefits in kind, *ante*.

Car loan scheme for employees—Adjustment of employee's wage to meet costs—Scheme terminable by 14 days' notice—Whether car loan a taxable perquisite of employment—Income Tax Act 1952, s 156 (Sch E), as se 156 (Sch amended)—Finance Act 1956, s 10, Sch 2, para 1. **Heaton (Inspector of Taxes) v Bell** [1969] 2 70, HL.

INCOME TAX (cont)**Emoluments from office or employment (cont)—****Perquisites or profits (cont)—**

Expenses payments—Body corporate—Payments to director or employee. *See* Emoluments from office or employment—Expenses allowances, *ante*.

Expenses payments—Travelling expenses—Medical practitioner practising at residence and also holding part-time appointments at hospital 15 miles away as obstetrician and anaesthetist—Emergency cases—Payment of allowance for travel by car to hospital—Payment irrespective of the method of travel—Whether emoluments from office—Finance Act 1956, Sch 2, para 1(1). **Owen v Pook (Inspector of Taxes)** [1969] 2 1, HL.

Occupation of house—Rates and property tax paid by employers—Minister of religion—Manse—Minister required to live in house—Occupation representative and not beneficial—Whether amount of rates and property tax emoluments from office. **Reed v Cattermole (Inspector of Taxes)** [1937] 1 541, CA.

Value of perquisite. *See* Emoluments from office or employment—Basis of assessment—Perquisite, *ante*.

Personal gifts distinguished from emoluments—

Bonuses—Bonuses paid to employees after 25 years' service—Whether gifts or remuneration—Income Tax Act 1918, Sch E, r 1. **Weston v Hearn (Inspector of Taxes)** [1943] 2 421, KBD.

Christmas gifts. *See* Emoluments from office or employment—Receipts 'from' employment—Gift to employee—Christmas gifts, *post*.

Place of performance of duties—

Duties treated as performed in United Kingdom—Duties of office or employment under the Crown of a public nature—Emoluments payable out of public revenue—Taxpayer permanent civil servant employed outside United Kingdom—Taxpayer without professional or technical qualifications—Implementing instructions handed down by superior officers—Subordinate position with limited duties—Whether employment 'of a public nature'—Finance Act 1956, para Sch 2, para 6. **Graham v White (Inspector of Taxes)** [1972] 1 1159, ChD.

Public office in United Kingdom—

Director of English company—Director of private company permanently resident abroad—Remuneration fixed by company's articles—Remuneration subject to income tax—Income Tax Act 1918, Sch E, rr 1, 6. **McMillan v Guest** [1942] 1 606, HL.

Receipt 'from' employment—

Gift to employee—Christmas gifts—£10 vouchers—Whether perquisites or profits of employment—Income Tax Act 1952, Sch E (s 156)—Finance Act 1956, s 10(1) Sch 2 para 1(1). **Leidler v Perry (Inspector of Taxes)** **Morgan v Perry (Inspector of Taxes)** [1965] 2 121, HL.

Payment for services—Indemnity scheme for employees—Indemnity against loss on house purchase—Employers' housing assistance scheme—Reimbursement of loss on transfer to new place of employment—Whether indemnity a payment for services—Income Tax Act 1952, Sch 9, Rules applicable to Sch E, r 1. **Hochstrasser (Inspector of Taxes) v Mayes** [1959] 3 817, HL.

Payment made in return for acting as or being an employee and for no other reason—Profit-sharing scheme for employees of company—Termination of scheme—Division of trust fund between employees—Trustees holding shares in company to provide income for division between employees—Scheme terminated on merger of company with another company—Proceeds of realisation of trust fund divided between employees in accordance with trust deed—Whether sum received by employee an emolument from employment—Income and Corporation Taxes Act 1970, ss 181(1) (Sch E), 183(1). **Brumby (Inspector of Taxes) v Milner** [1976] 3 636, HL.

Testimonial—Payment by way of testimonial to mark exceptional achievement in performance of services—Professional footballers—Outstanding performance in World Cup championships—Special payment of bonus by football association—Whether sum taxable as emolument—Income Tax Act 1952, s 156 (Sch E), as amended by Finance Act 1956, s 10(1). **Moore v Griffiths (Inspector of Taxes)** [1972] 3 399, ChD.

Reward for services—

Loan scheme for course of training—Employee granted loan by employer to undergo course of training—Employment ceasing whilst employee on course—Loan ceasing to be repayable if employee resuming employment for period of 18 months from end of course—Loan equivalent to amount of salary employee would have received during period of course—Employee duly fulfilling conditions of loan—Loan turned into absolute payment—Payment taxable as reward for past services—Income Tax Act 1952, s 156 (Sch E)—Finance Act 1956, Sch 2. **Clayton (Inspector of Taxes) v Gothorp** [1971] 2 1311, ChD.

Voluntary payment—

Bonus. *See* Emoluments from office or employment—Personal gifts distinguished from emoluments—Bonuses, *ante*.

Customary gift—Huntsman—Christmas gifts—Huntsman engaged by master and under his orders—Custom for gifts to be given to huntsman at Christmas—Income Tax Act 1952, s 156, Sch E, para 1, para 2, Sch 9, Rules applicable to Sch E, r 1. **Wright v Boyce (Inspector of Taxes)** [1958] 2 703, CA.

Gift of shares in company—Recognition of work of directors—Covenant to transfer shares—Consideration expressed as undertaking by directors to continue engagements with company—Whether personal gifts or remuneration for services—Income Tax Act 1952, Sch IX, Rules applicable to Sch E, r 1. **Bridges (Inspector of Taxes) v Hewitt**, Same v **Bearsley** [1957] 2 281, CA.

Payment arising in ordinary course of taxpayer's employment—Professional cricketer—Collections made for meritorious performances—Occasions for collection arising repeatedly—Income Tax Act 1918, Rules applicable to Sch E, r 1. **Moorhouse (Inspector of Taxes) v Dooland** [1955] 1 93, CA.

INCOME TAX (cont)

Emoluments from office or employment (cont)—

Voluntary payment (cont)—

Payment arising in ordinary course of taxpayer's employment—Professional football players—Proceeds of benefit matches or payments in lieu thereof. **Corbett v Duff, Dale v Same, Feebery v Abbott** [1941] 1 512, KBD.

Payment arising in ordinary course of taxpayers employment—Taxi-cab driver—Tips—Whether tips paid to driver taxable as profits arising from employment—Income Tax Act 1918, Sch E, r 1. **Calvert (Inspector of Taxes) v Wainwright** [1947] 1 282, KBD.

Personal gifts distinguished from emoluments. *See* Emoluments from office or employment—Personal gifts distinguished from emoluments, *ante*.

Year of assessment—

Option to purchase shares—Grant of option to purchase shares—Exercise of option—Option to purchase its shares sold to company's employee—Subsequent exercise of right of purchase—Increase in value of shares since date of option—Whether increase taxable at date of exercise of option—Income Tax Act 1952, s 156, Sch E, Case I, r 1. **Abbott v Philbin (Inspector of Taxes)** [1960] 2 763, HL.

Employment—

Foreign employment. *See* Foreign employment, *post*.

Enemy property—

Liability of custodian for income tax. *See* Trading with the enemy (Custody of enemy property—Vesting of property in custodian of enemy property—Liability of custodian for income tax on proceeds of property vested in him).

Entertaining expenses—

Deduction in computing profits. *See* Deduction in computing profits—Expenses wholly and exclusively laid out for purposes of trade—Entertaining expenses, *ante*.

Error or mistake—

Relief—

Case stated. *See* Case stated—Relief in respect of error or mistake, *ante*.

Evidence—

Nature of transaction for purpose of ascertaining tax liability—

Extrinsic evidence—Whether extrinsic evidence admissible for purpose of determining nature of transaction—Whether court restricted to considering terms of transaction. **Inland Revenue Comrs v Church Comrs for England** [1976] 2 1037, HL.

Excess rent. *See* Profits—Excess rent, *post*.

Exchange transaction—

Computation of profits. *See* Computation of profits—Exchange transaction, *ante*.

Executor—

Liability. *See* Persons chargeable—Executors, *post*.

Exemption—

Co-operative society—

Sums representing discount, rebate, dividend or bonus to members—Member—Division or return in proportion to purchase—Trader member receiving sum as 'division or return' on purchases—Whether trader exempt from income tax on sum—Finance Act 1933, s 31(1), (3). **Pope v Beaumont** [1941] 3 9, KBD.

Crown—

Custodian of enemy property—Proceeds of property vested in him—Liability for tax on proceeds—Income Tax Act 1918, Sch D, Miscellaneous Rules, r 1. **Bank voor Handel en Scheepvaart N V v Administrator of Hungarian Property** [1954] 1 969, HL.

Person—Whether Crown a 'person' within income tax legislation—Income Tax Act 1918, Sch D case 111 r 1(a) All Schedules Rules r 19 r 21. **Whitworth Park Coal Co Ltd (in liquidation) v Inland Revenue Comrs** [1959] 3 703, HL.

Public corporation—Broadcasting—British Broadcasting Corporation—Whether entitled to Crown immunity from taxation. **British Broadcasting Corp'n v Johns (Inspector of Taxes)** [1964] 1 923, CA.

Gratuities etc to members of armed forces—

Bounty—Sums payable by way of bounty out of public revenue—Public revenue—Bounty paid to members of Civil Defence Corps out of local authority funds—Local authority being partly reimbursed from central government funds—Whether bounty paid out of public revenue and thus exempt from tax—Income Tax Act 1952, s 457(4). **Lush (Inspector of Taxes) v Coles** [1967] 2 58, ChD.

Newfoundland. *See* Canada (Income tax—Exemption—Newfoundland).

Non-resident trader—

Interest on Government securities—Interest on securities of foreign and colonial companies—Expenses of earning profits exempt from tax—Income Tax Act 1918, s 46, Sch C, r 2(d), Sch D, Cases I and II, rr 3, 5, Miscellaneous Rules, r 7(2). **Hughes (Inspector of Taxes) v Bank of New Zealand** [1938] 1 778, HL.

Scholarship income—

Loan agreement—Loan by employer to employee to undergo course of training—Loan equivalent to salary employee would have received if continuing in employment—Loan ceasing to be repayable if employee resuming employment for period of 18 months after completion of course—Whether loan agreement a scholarship—Income Tax Act 1952, s 458. **Clayton (Inspector of Taxes) v Gothorp** [1971] 2 1311, ChD.

Statute—

Generality of words—Local Act—Exemption from payment of any taxes—Whether including income tax as well as local taxes—Ancholme Drainage Act 1767. **Ancholme Drainage and Navigation Comrs v Wedham (Inspector of Taxes)** [1936] 1 759, KBD.

Superannuation contribution—

Ordinary annual contribution—Payment of back contributions by annual instalments—Finance Act 1921, s 32(1)—Regulations dated 10th November 1921 (S R & O 1921 No 1699), reg 5. **Kneen (Inspector of Taxes) v Ashton** [1950] 1 982, ChD.

INCOME TAX (cont)

Exemption (cont)—

Trade union—

Provident benefits—Payments by way of legal assistance—Exemption under Sch C and Sch D—Sums paid out of general fund, not special fund, of union—Whether provision of legal assistance a provident benefit—Income Tax Act 1952, s 440(2). *R v Special Commissioners of Income Tax, ex parte National Union of Railwaymen* [1966] 2 759, QBD.

Expenses—

Deduction from emoluments from office or employment. *See* Emoluments from office or employment—Expenses wholly, exclusively and necessarily incurred, *ante*.

Deduction in computing profits. *See* Deduction in computing profits, *ante*.

Management expenses. *See* Management expenses, *post*.

Farming—

Annual profits or gains. *See* Profits—Annual profits or gains—Farming, *post*.

Farm—

Land wholly or mainly occupied for the purpose of husbandry—Holding comprising eighty per cent farm land—Separate assessment of farm land—Finance Act 1941, ss 10, 11. *De Poix v Chapman (Inspector of Taxes)* [1947] 2 649, KBD.

Market gardens—Garden—Watercress beds—Whether a 'garden'—Income Tax Act 1918, Sch B, rr 1, 8. *Inspector of Taxes v H S Barker, Same v C W Williamson* [1944] 2 154, KBD.

Mixed farm—

Assessment—Apportionment—Nurseries and market-gardens—Worked as a single unit—Income Tax Act 1918, Sch B, r 1, r 8. *Bomford v Osborne* [1941] 2 426, HL.

Partnership—Division of profits—Brood mare sole partnership asset—Mare kept on stud farm of which one partner tenant—Some progeny sold as yearlings—Some sold after racing—Share of profits from mare as brood mare chargeable on tenant partner under Sch B—Income Tax Act 1918, s 20(1), Sch B. *Dawson v Counsell (Inspector of Taxes)* [1938] 3 5, CA.

One trade—

All farming to be treated as one trade—Farming operations outside United Kingdom—Taxpayer farming in United Kingdom—Visit to Australia with a view to buying a farm and emigrating—Expenses of visit—Expenses attributable to taxpayer's farming activities—Whether incurred for the purpose of trade within United Kingdom—Income Tax Act 1952, ss 124(1), 152. *Sargent (Inspector of Taxes) v Eayrs* [1973] 1 277, ChD.

Separate farms—Losses brought forward—Two farms carried on by one company for three months—Sale of original farm—Allowance of losses and capital allowances for original farm brought forward—Income Tax Act 1952, s 152. *Bispham (Inspector of Taxes) v Eardiston Farming Co (1919) Ltd* [1962] 2 376, ChD.

Trading receipts. *See* Profits—Trading receipts—Farming, *post*.

Foreign company—

Agents of foreign company—

Liability of agents—British company using French company's ship in business during war—Purporting to act as agents of French company—Acts ratified by French company after war—Whether British company taxable—Income Tax Act 1918, Sch D, para 1(Sa/iii), *All Schedules Rules*, r 5, r 6, r 10. *Boston Deep Sea Fishing & Ice Co Ltd v Farnham (Inspector of Taxes)* [1957] 3 204, ChD.

Branch in United Kingdom—

Head office abroad—Profits—Income from investments of life assurance fund—Inclusion of income from investments exempted from United Kingdom tax—Income Tax Act 1918, Sch D, Case III, r 3(1). *Inland Revenue Comrs v Australian Mutual Provident Society* [1947] 1 600, HL.

Shares—

Double taxation relief. *See* Double taxation relief—Shares in foreign company, *ante*.

Subsidiary in United Kingdom—

Contracts with foreign distributors—Subsidiary accepting and discharging orders—Whether agents of foreign company—Whether foreign company carrying on trade within United Kingdom—Income Tax Act 1918, Sch D, para 1, *All Schedules Rules*, rr 5, 10. *Firestone Tyre and Rubber Co Ltd (as agents for Firestone Tire and Rubber Co of Akron in the United States of America) v Lewellin (Inspector of Taxes)* [1957] 1 561, HL.

Foreign employment—

Duties performed abroad—

Residence in United Kingdom—Earnings arising wholly from employment abroad—Whether earnings chargeable to income tax—Income Tax Act 1918, s 1, Sch D, Case II, Sch E, r 6—Finance Act 1922, s 18. *Eaton-Turner v McKenna (Inspector of Taxes)* [1936] 3 215, HL.

Duties performed in United Kingdom—

Employers resident abroad—Contract of employment made abroad—Employee's work and residence in United Kingdom—Income Tax Act 1918, Sch D, Case V, r 2. *Bray (Inspector of Taxes) v Colenbrander, Harvey (Inspector of Taxes) v Breyfogle* [1953] 1 1090, HL.

Duties performed partly in United Kingdom—

Place of employment abroad—Residence in United Kingdom—Income Tax Act 1918, Sch D, Case V, r 2. *Bennet (Inspector of Taxes) v Marshall* [1938] 1 93, CA.

Foreign possessions—

Dominion trust—

Life tenant resident in United Kingdom—Residuary estate subject to annuity—Dominion 'securities'—Dominion 'stocks, shares and rents'—Dominion 'possessions'—Whether life tenant assessable on whole income or amount received in United Kingdom—Income Tax Act 1918, Sch D, Case IV, r 1, Case V, rr 1, 2. *Nelson v Adamson* [1941] 2 44 KBD.

INCOME TAX (cont)

Foreign possessions (cont)—

Income arising from possessions out of United Kingdom—

Capital or income—Law applicable—Will of United States testator—Beneficiary resident and domiciled in England entitled to life interest under trusts of Californian will—Trust fund—Holdings in United States companies—Bonus shares—Pennsylvania rule—Bonus shares transferred by trustee to beneficiary in the United States—Not remitted to United Kingdom—Character in hands of beneficiary determined by English law—Capital in beneficiary's hands by English law—Income Tax Act 1952, ss 122 (Sch D), 123(1). **Lawson v Rolfe (Inspector of Taxes)** [1970] 1 761, ChD.

Debts incurred in London and discharged in Ceylon—Income Tax Act 1918, Sch D, Case V, r 2. **Inland Revenue Comrs v Gordon** [1952] 1 866, HL.

Dividend paid out of capital profits of South African company—Income Tax Act 1918, Sch D, Case V. **Inland Revenue Comrs v Reid's Trustees** [1949] 1 354, HL.

Income arising from securities out of United Kingdom—Taxpayer's life interest in American estates—Income credited in New York bank account—Cheques drawn by taxpayer in dollars on account—Cheques purchased by English banks—Proceeds credited to taxpayer's English bank account—Whether sums received by taxpayer in United Kingdom—Income Tax Act 1918, Sch D, Case IV, r 2, Case V, r 2. **Thomson (Inspector of Taxes) v Moysse** [1960] 3 684, HL.

Return of foreign company's capital—Distribution of sum from share premium reserve—Income Tax Act 1952, Sch D, Case V. **Courtaulds Investments Ltd v Fleming (Inspector of Taxes)** [1969] 3 1281, ChD.

Income or capital receipts. *See* Capital or income receipts—Foreign possessions, *ante*.

New source of income—

New source in year of assessment—Shares in foreign company—Acquired prior to 1942—43—Income first received in 1942—43—Liability to tax in that year—New source of income 'in any year of assessment'—Finance Act 1926, s 30, proviso (ii). **Goodlass Wall and Lead Industries Ltd v Atkinson (Inspector of Taxes)** [1950] 2 314, HL.

Source—Will of testatrix domiciled in the United States—Daughter's rights in estate—One-fourth income, instalments of capital—Accrual subsequently of remaining three-fourths of income—Single source of income only, viz, the testatrix' estate—No new source on accrual of three-fourths of income of trust estate—Income Tax Act 1952, s 134(3). **Baron Inchyra v Jennings (Inspector of Taxes)** [1965] 2 714, ChD.

Receipt of income in United Kingdom—

Gift—Foreign trust—Income transmitted to England—Life tenant resident in England—Revocable mandate to transmit part of income to named persons in England—Income of life tenant—Income Tax Act 1918, Sch D, Case V, r 2, Miscellaneous Rules applicable to Sch D, r 1—Finance Act 1922, s 18. **Timpson's Executors v Yerbury** [1936] 1 186, CA.

Gift—Gift complete in foreign country—Purchase of banker's draft in foreign country—Draft posted to drawer in United Kingdom—Whether liable to tax—Income Tax Act 1918, Sch D, Case V, r 2, Miscellaneous Rules Applicable to Sch D, Case 1. **Carter v Sharon** [1936] 1 720, KBD.

Remittances from foreign possessions—

Method of computations—Change in method—Applicability to remittances from foreign possessions—Finance Act 1926, ss 29(1), 36(2)—Finance Act 1927, s 43, Sch VI, Part I. **Gibson v Mitchell (Inspector of Taxes)** [1942] 2 51, CA.

Residence in United Kingdom—

Acquisition of residence in year of assessment—Sums received in United Kingdom in previous year—Assessment in respect of sums received in previous year—New resident—Income from same source in previous year—Finance Act 1926, s 29(1)(b)(iv). **Carter v Sharon** [1936] 1 720, KBD.

Foreign securities—

Income arising from securities out of United Kingdom—

Income arising from—Payment by guarantor—Foreign bonds secured on foreign property—Principal debtor dissolved, assets frozen, and moratorium declared by foreign government—Guarantor dissolved and successor relieved by foreign government from succession to guarantee—Successor liable under English law—Whether payments by successor in England represented income arising from securities out of the United Kingdom—Income Tax Act 1952, ss 123, 170, Sch D, Case III. **National Bank of Greece S A v Westminster Bank Executor and Trustee Co (Channel Islands) Ltd** [1971] 1 233, HL.

Interest—Interest arising from securities—Foreign bonds—Payment of interest suspended—Issue of funding bonds in place of interest—Sale of funding bonds—Liability to tax on proceeds of sale. **Cross (Inspector of Taxes) v London and Provincial Trust Ltd** [1938] 1 428, CA.

Sale of cheques for dollars—Income credited to taxpayer's foreign account—Cheques drawn on account sold to English banks—Whether proceeds of sale income arising from securities out of United Kingdom. **Thomson (Inspector of Taxes) v Moysse** [1960] 3 684, HL.

Interest arising from securities out of United Kingdom—

Foreign bonds—Interest coupons—Coupons issued to bondholders in lieu of interest—Sale of interest coupons—Liability of proceeds to tax. **Inland Revenue Comrs v Paget, Paget v Inland Revenue Comrs** [1938] 1 392, CA.

Foreign tax—

Credit against income tax. *See* Income tax (Double taxation relief—Credit of foreign tax against income tax).

Fraud or wilful default—

Additional assessment. *See* Additional assessment—Fraud or wilful default, *ante*.

Gambling transactions. *See* Profits—Trading receipts—Gambling transactions, *post*.

General Commissioners—

Jurisdiction—

Penalty proceedings. *See* Penalty—Proceedings—Jurisdiction of General Commissioners, *post*.

INCOME TAX (cont)

General Commissioners (cont)—

Power to summon witnesses—

Subpoena duces tecum—Issue out of Crown Office—Whether issued as of course—Whether necessary to obtain leave of judge or master of Queen's Bench Division—Income Tax Act 1952, s 59(1)—RSC, Ord 37, r 30. *Soul v Inland Revenue Comrs* [1963] 1 68, CA.

Gift—

Foreign trust—

Receipt in United Kingdom. *See* Foreign possessions—Receipt of income in United Kingdom—Gift—Foreign trust, *ante*.

Personal gift to employee. *See* Emoluments from office or employment—Personal gifts distinguished from emoluments, *ante*.

Voluntary payment to employee. *See* Emoluments from office or employment—Voluntary employment, *ante*.

Government grant—

Capital or income. *See* Capital or income receipts—Government grant, *ante*.

Government subsidy—

Trading receipt. *See* Profits—Trading receipts—government subsidy, *post*.

Housekeeper—

Relief. *See* Relief—Housekeeper, *post*.

Husband and wife—

Husband's liability—

Wife's pre-nuptial income—Wife's income preceeding year of assessment acquired before marriage—Inclusion in husband's assessment—Income Tax Act 1918, Sch D, Case IV and V, All Schedules Rules, r 16. *Elmhirst v Inland Revenue Comrs* [1937] 2 349, KBD.

Income of wife deemed income of husband—

Annual payments to minors by wife under deed of covenant—Whether wife's annual payments deductible in computing husband's chargeable income—Income Tax Ordinance (Trinidad and Tobago) 1938, ss 10(1)(f), 18, 34(2). *Reynolds v Commissioner of Income Tax for Trinidad and Tobago* [1965] 3 90, PC.

Married person's allowance—

Nullity decree—Effect—Additional assessment for years before decree—Assessment on basis nullity decree retrospective and husband only entitled to single person's allowance—Whether Revenue authorities entitled to make additional assessment—Income Tax Act 1918, s 125(1). *Dodworth v Dale* [1936] 2 440, KBD.

Non-resident husband—

Place of assessment—Wife resident in United Kingdom—War loan interest and bank interest receivable by wife—Husband in United Kingdom part of each year—Wife treated as living with husband for income tax purposes—Husband liable to assessment when in United Kingdom—Income Tax Act 1918, s 102(3), Sch D, Miscellaneous Rules, r 4(5). *Duckworth v Lowe (Inspector of Taxes)* [1937] 2 418, KBD.

Relief—

Wife's entitlement to benefit of repayment claims made in respect of her income assessed to tax on her husband—Income Tax Act 1952, ss 314, 341, 354(1)(2). *Re Cameron (decd)* [1965] 3 474, ChD.

Wife's liability—

Living separate from husband—Income from property abroad—Husband on military service overseas—Income Tax Act 1918, All Schedules Rules, r 16, proviso (2). *Nugent-Head v Jacob (Inspector of Taxes)* [1948] 1 414, HL.

Income—

Capital or income receipts. *See* Capital or income receipts, *ante*.

Earned income relief. *See* Earned income relief, *ante*.

Emoluments from office or employment. *See* Emoluments from office or employment, *ante*.

Profits of trade, profession or vocation. *See* Profits, *post*.

Undistributed income. *See* Undistributed income, *post*.

Indemnity scheme for employees. *See* Emoluments from office or employment—Receipt 'from' employment—Payment for services—Indemnity scheme for employees, *ante*.

Information—

Failure to furnish information to commissioners—

Penalty. *See* Penalty—Failure to furnish information to commissioners, *post*.

Settlement. *See* Settlement—Information—Power of commissioners by notice to require information for specified purposes, *post*.

Transfer of assets abroad—

Power of commissioners to require information. *See* Avoidance—Transfer of assets abroad—Information, *ante*.

Inspector of taxes—

Discovery—

Onus on inspector. *See* Additional assessment—Discovery—Onus on inspector, *ante*.

Instalments—

Purchase price payable in instalments—

Capital or income receipts. *See* Capital or income receipts—Sale of property—Price payable in instalments, *ante*.

Insurance—

Payment under policy—

Capital or income. *See* Capital or income receipts—Insurance—Payment under policy, *ante*.

Premiums—

Capital or income. *See* Capital or income receipts—Insurance—Premiums, *ante*.

INCOME TAX (cont)

Interest—

Annual interest—

Short loan interest—Computation of total income—Income tax not deductible from payments of interest—whether any right to deduct 'short' interest in compiling total income—Income Tax Act 1952, ss 221, 524(1), (2), Sch 6, paras 1, 2, Sch 24. *Inland Revenue Comrs v Frere* [1964] 3 796, HL.

Circumstances in which payment constitutes interest—

Necessity for sum of money by reference to which interest is to be ascertained—Requirement that sum should be due to person entitled to interest—Payments made by bank towards expenditure incurred in development of land—Payments made under agreement with developer—Agreement providing that 'interest' should be paid quarterly by developer to bank when total payments exceeded certain figure—Interest to be paid at an agreed rate by reference to total sums paid by bank—Sums paid by bank not in any sense 'due' to bank—Whether payments made to bank by developer under the agreement 'interest of the agreement money'—Income and Corporation Taxes Act 1970, ss 54(1), 109(2) (Sch D, Case III). *Euro Hotel (Belgravia) Ltd, Re* [1975] 3 1075, ChD.

Damages—

Claim for account—Award including certain sums as interest—Claim against trustees—No allegation of fraud or breach of trust—Whether interest element liable to tax as interest payable under contract. *Inland Revenue Comrs v Barnato* [1936] 2 1176, CA.

Interest on damages included in total award—Award of damages in Admiralty Court—Right to deduct income tax on interest—Whether interest element in damages 'interest of money'—Income Tax Act 1952, ss 169, 170. *The Norseman* [1957] 2 660, Adm.

Deduction of tax by payer—

Adjustment between local authorities—Transfer of functions—Balance including sum called 'interest'—Whether interest or an element in calculation of capital sum. *Southport Borough Council v Lancashire County Council* [1937] 2 626, KBD.

Annual sum not having genuinely the character of interest—Payments described and undertaken as being interest on debentures—Creation of debentures at requirement of controlling company—Annual interest payment of an amount exceeding debenture capital—Payment made soon after creation of debentures—Repayment claim—Income Tax Act 1952, s 341. *Ridge Securities Ltd v Inland Revenue Comrs* [1964] 1 275, ChD.

Damages—Shipping—Collision cases. *See* Shipping (Damages in collision cases—Interest—Right to deduct income tax on interest).

Failure to deduct tax—Effect—Interest on payments in advance of calls on shares—Rate of interest fixed by articles—Payment of full rate without deduction for tax—Presumption of agreement for payment at higher rate. *Noel v Trust and Agency Co of Australasia Ltd* [1937] 2 673, ChD.

Foreign currency—Interest on debentures—Payable in foreign currency at fixed rate of exchange—Deduction of income tax—Income Tax Act 1918, All Schedules Rules, r 21—Finance Act 1924, s 33(1)—Finance Act 1927, s 26. *Rhokana Corp Ltd v Inland Revenue Comrs* [1938] 2 51, HL.

Mortgage interest—Interest on mortgage retained out of proceeds of sale—Mortgagee also solicitor acting in sale for mortgagor—Whether receipt as agent for mortgagor or as mortgagee—Person by or through whom payment made—Income Tax Act 1918, All Schedules Rules, r 21. *Howells v Inland Revenue Comrs* [1939] 3 144, KBD.

Mortgage interest—Mortgage of reversionary interest—Interest added to principal—Capitalisation of interest—Interest ultimately received as part of purchase price on sale of mortgaged property—Liability to tax. *Inland Revenue Comrs v Lawrence, Graham & Co* [1937] 2 1, CA.

Retention—Retention where interest payable wholly out of profits and gains brought into charge—Debenture stock charged to capital account under private Act—Interest—Right of railway company to retain income tax deducted from interest—Income Tax Act 1918, All Schedules Rules, rr 19, 21. *Central London Ry Co v Inland Revenue Comrs* [1936] 2 375, HL.

Retention—Retention where interest payable wholly out of profits and gains brought into charge—Losses brought forward greater than net profits for year—Whether brought into charge—Income Tax Act 1918, All Schedules Rules, r 19—Finance Act 1926, s 33. *Trinidad Petroleum Development Co Ltd v Inland Revenue Comrs* [1936] 3 801, CA.

Discounts—

Refunding of debt. *See* Discounts—Refunding of debt, *ante*.

Earned income relief. *See* Earned income relief—Income, *ante*.

Foreign securities. *See* Foreign securities—Income arising from securities out of United Kingdom—Interest, *ante*.

Interest, annuities and other annual income—

Profit income of recurring character—Compensation payments—Nationalisation of coal industry—Interim income payments in respect of compensation on nationalisation of coal industry—Payments in respect of specified periods—Whether income of those periods or of years of receipt—Income Tax Act 1918, Sch D, Case VI, r 2. *Whitworth Park Coal Co Ltd (in liquidation) v Inland Revenue Comrs* [1959] 3 703, HL.

Judgment debt—

Interest included in total sum for which judgment given—Whether amount of award for interest constituting interest of money—Income Tax Act 1918, Sch D, para 1(b), All Schedules Rules, r 21—Law Reform (Miscellaneous Provisions) Act 1934, s 3(1). *Riches v Westminster Bank Ltd* [1947] 1 469, HL.

Mortgage interest—

Capitalisation of interest—Mortgage of reversionary interest—Addition of interest to capital not amounting to payment of interest—Reversion falling into possession—Funds handed over to trustees of mortgagee—Funds available in part for payment of interest—Income tax deducted by mortgagor at date of actual payment—Income Tax Act 1918, All Schedules Rules, r 21. *Inland Revenue Comrs v Oswald* [1945] 1 641, HL.

INCOME TAX (cont)

Interest (cont)—

Mortgage interest (cont)—

Deduction of tax by payer. *See* Interest—Deduction of tax by payer—Mortgage interest, ante.

Overdue tax—

Tax recovered for purpose of making good loss of tax due to taxpayer's fault—Loss of tax—Meaning—Delay in payment—Payment ultimately secured—Delay because of taxpayer's failure to make return in reasonable time—Whether a loss of tax—*Taxes Management Act 1970*, s 88(1). *R v H M Inspector of Taxes, ex parte Frank Rind Settlement Trustees* [1975] 1 30, QBD.

Payment to debenture holders—

Interest charged to capital account under private Act—Whether 'payable wholly out of profits or gains brought into charge'—Right of company to retain income tax deducted from interest—All Schedules Rules, rr 19, 21. *Central London Ry Co v Inland Revenue Comrs* [1936] 2 375, HL.

Persons chargeable. *See* Persons chargeable—Profits and interest of money, post.

Premiums on redemption—

Premiums calculated according to annual rate—Company issuing registered convertible notes repayable with premiums at specified date—Notes not carrying interest—Premiums paid on redemption of notes—Premiums not intended to be accretion of capital—*Income Tax Act 1918*, Sch D, Case III, r 1. *Davies (Inspector of Taxes) v Premier Investment Co Ltd, Hewetson v Carlyle (Inspector of Taxes)* [1945] 2 681, KBD.

Relief—

Bank interest. *See* Relief—Bank interest, post.

Pre-1970 loans—Debt incurred on or before 15th April 1969—Incurred—Contract to advance money for purchase of shares—Contract concluded before 15th April—Shares acquired by borrower's stockbroker before 15th April—Lenders instructing their bankers to settle with borrower's stockbroker after 15th April—Whether debt incurred by borrower before 15th April—*Income and Corporation Taxes Act 1970*, s 62(1). *Law v Coburn (Inspector of Taxes)* [1972] 3 1115, ChD.

Right to deduct income tax on interest—

Damages in collision cases. *See* Shipping (Damages in collision cases—Interest—Right to deduct income tax on interest).

Tax reserve certificates—

Interest on certificates—Distribution to shareholders—Certificates surrendered in payment of tax interest being credited—Sums equal to interest earned distributed to shareholders—Whether tax payable on sums distributed—*Finance Act 1942*, s 29(1). *Hutton v Inland Revenue Comrs* [1953] 2 93, ChD.

Value payments under war damage legislation—

Interest on value payments—Whether 'interest...payable out of any public revenue by any public office or department of the Crown'—Whether chargeable under Sch C or Sch D—*Income Tax Act 1918*, Sch C and fourth r 1 Sch D r 1(b)—*Finance Act 1939*, s 14(8)—*War Damage Act 1943*, s 3. *Inland Revenue Comrs v Bew Estates Ltd* [1956] 2 210, ChD.

Yearly interest of money—

Loan repayable on demand—Interest on loan—Loan secured by mortgage of dwelling-house—Loan in nature of investment—Whether 'yearly interest of money'—*Income Tax Act 1952*, s 169. *Corinthian Securities Ltd v Cato* [1969] 3 1168, CA.

Investment company—

Actual income from all sources—

Deduction—Covenanted donation to charity—Payments under seven year covenant—If payments made by individual this would fall to be treated as income of individual for purpose of computing total income—Whether payments an allowable deduction from income liable to apportionment—*Income Tax Act 1952*, ss 262(2), proviso (a), 415(1). *Coathew Investments Ltd v Inland Revenue Comrs* [1966] 1 1032, HL.

Estate or trading income excluded—Income in part consisting of estate or trading income—Capital allowances and loss reliefs—Apportionment—Whether allowances and reliefs 'outgoings'—Whether allowances and reliefs should be allocated ratably between estate or trading income and other income—*Income Tax Act 1952*, s 262(4). *Leconfield Estate Co (now Egremont Estate Co) v Inland Revenue Comrs* [1970] 3 273, ChD.

Apportionment of income—

Appeal—Right of appeal—Member—Whole income apportioned to member—No appeal by company against either directions or apportionments—Appeal by member—Aggrieved person—Right of appeal confined to company only—*Finance Act 1922*, s 21, Sch I, paras 1, 2, 3, 10—*Finance Act 1936*, s 19(5)—*Finance Act 1939*, ss 14, 15. *Burton v Inland Revenue Comrs (No 2)* [1945] 1 687, KBD.

Apportionment according to members' interests in assets of company—Apportionment in proportion to dividend rights—Redeemable preference shares—Whether additional interest from contributions to redemption fund—*Finance Act 1922*, s 21(1), (8), Sch I, para 8. *Wigram Family Settled Estates Ltd (in liquidation) v Inland Revenue Comrs* [1958] 1 338, HL.

Apportionment according to members' interests in assets of company—Apportionment to members on register of company—Shares registered in names of trustees—Apportionment made to trustees—Assessment on beneficiaries—*Finance Act 1922*, s 21—*Finance Act 1937*, s 14(2), (3)—*Finance Act 1938*, s 38(2), (3), s 41(4)(a)(ii)—*Finance Act 1939*, s 38. *Penang and General Investment Trust Ltd v Inland Revenue Comrs* [1943] 1 514, HL.

Apportionment according to members' interests in assets of company—Interest 'corresponding to' interest in assets of company—Assets available for distribution among members in event of a winding-up—Method of apportionment of income to be adopted—*Finance Act 1937*, s 14(3). *Inland Revenue Comrs v Fred's Securities Co* [1939] 3 241, KBD.

INCOME TAX (cont)

Investment company (cont)—

Apportionment of income (cont)—

Facts on which apportionment based—Facts existing at any time during year—Apportionment to one member—All income apportioned by Special Commissioners to one member—Whether facts to be considered in apportioning income are those existing at the end of the year—Whether commissioners having jurisdiction to direct that income of company is deemed to be income of member—Finance Act 1922, s 21, Sch I, paras 4, 9—Finance Act 1936, s 20(1)—Finance Act 1939, ss 14(1), 15(2), (3). **Fendoch Investment Trust Co v Inland Revenue Comrs** [1945] 2 140, HL.

Non-member—Apportionment of whole income to non-member—Controlling interest in company held by another company of which apportionee in control—Apportionee governing director of both companies—Settlement by apportionee for benefit of wife and children—Power of apportionee to remove any trustee at will and to appoint new trustees—Whether apportionee to be treated as a member of the first company—Finance Act 1922, s 21—Finance Act 1939, ss 15(1), (6), 16. **Chamberlain v Inland Revenue Comrs** [1945] 2 351, CA.

Part of income—Apportionment of 'such part' as appears appropriate—Whether power to apportion whole income to one person—Finance Act 1922, s 21—Finance Act 1939, s 15. **Chamberlain v Inland Revenue Comrs** [1945] 2 351, CA.

Direction and apportionment—

Compellability of direction—Profits tax, if payable, exceeding actual income from all sources—Appeal against profits tax—Meaning of 'payable'—When profits tax 'falls to be computed'—Right of election relieving from profits tax—Power dependent on issue of surtax direction—Whether mandamus to commissioners to issue direction should be granted—Income Tax Act 1952, s 245, s 262(1)—Finance Act 1952, s 68(1)—Finance Act 1947, s 31(3). **Special Comrs of Income Tax v Linsleys (Established 1894) Ltd** [1958] 1 343, HL.

Discretion of commissioners—Matters to be taken into consideration—Relief—Power to give such relief as appears just—Effect of direction that taxpayer charged to surtax on income twice over—Finance Act 1922, s 21(1)—Finance Act 1927, s 34—Finance Act 1939, s 14. **Gollin v Inland Revenue Comrs** [1943] 1 346, CA.

Income available for distribution—

Loan creditor—Sums available for repayment or redemption of loan—Apportionment of income—Loan repayable by stated instalments—Option to redeem larger sum on notice—Whether commissioners entitled to apportion to loan creditors greater sum than that actually paid to redeem debt—Finance Act 1922, s 21, Sch I—Finance Act 1936, s 20. **Inland Revenue Comrs v Kered Ltd** [1939] 1 45, CA.

Income consisting mainly of investment income—

Investment income—Company carrying on business as dealer in stocks and shares—Dividend stripping operation—Whether dividends obtained from dividend stripping operation trading income or investment income—Whether company an 'investment company'—Income Tax Act 1952, s 257(2), s 525(1). **Inland Revenue Comrs v F S Securities Ltd (formerly Federated Securities Ltd)** [1964] 2 691, HL.

Investment income—Income from granting of copyright licences—Licences for representation of a fictional character by dolls, toys, etc—Whether company carrying on a trade, although having no separate office and its manager being remunerated by another company—Income Tax Act 1952, ss 257, 525, 526. **Noddy Subsidiary Rights Co Ltd v Inland Revenue Comrs** [1966] 3 459, ChD.

Test to be applied—Company incurring losses but still receiving investment income—Whether an investment company—Finance Act 1936, s 20(1). **F P H Finance Trust Ltd (in liquidation) v Inland Revenue Comrs** [1944] 1 653, HL.

Management expenses. *See* Management expenses—Investment company, *post*.

Person treated as member of company—

Power of person to secure that income applied for his benefit—Power to secure—Lawful means—Taxpayer trustee of shares in company—Consent of beneficiaries necessary before taxpayer could secure that assets or income applied for his benefit—Finance Act 1922, s 21—Finance Act 1937, s 14(2)—Finance Act 1939, ss 14, 15. **Inland Revenue Comrs v L B (Holdings) Ltd (in liquidation)** [1946] 1 598, HL.

Power of person to secure that income applied for his benefit—Trust—Taxpayer trustee—Trust fund of shares for maintenance of taxpayer's children—Trustees' discretion subject to taxpayer's approval—Taxpayer having controlling interest in company—Whether open to commissioners to find that taxpayer having power to secure that income would be applied directly or indirectly for his benefit—Finance Act 1939, ss 14(4), 15(3). **Hulme Estate Co Ltd (in liquidation) v Inland Revenue Comrs** [1946] 2 516, CA.

Trading receipts. *See* Profits—Trading receipts—Investment company, *post*.

Investment income—

Special charge. *See* Special charge—Investment income, *post*.

Irrevocable settlement—

Children. *See* Settlement—Children—Irrevocable settlement, *post*.

Isolated transaction—

Profits. *See* Profits—Isolated transaction, *post*.

Trading. *See* Trade—Adventure in the nature of trade, *post*.

Jamaica. *See* Jamaica (Income tax).

Know-how—

Consideration for imparting know-how—

Capital or income receipt. *See* Capital or income receipts—Know-how, *ante*.

Land—

Adventure in the nature of trade. *See* Trade—Adventure in the nature of trade—Land, *post*.

Annual value—

Allowances—Maintenance—Depreciation of value of lease—Premiums on insurance policy to produce sum equivalent to purchase price—Income Tax Act 1918, Sch A, No 1(1), No V, r 8(1). **Pearce v Doulton (Inspector of Taxes)** [1947] 1 378, KBD.

INCOME TAX (cont)

Land (cont)—

Annual value (cont)—

Allowances—Private road—Cost of local authority making up private road—Frontager not owning private road—Not part of maintenance and repair of frontager's dwelling-house—Income Tax Act 1952, s 101(1). **Davidson v Deeks (Inspector of Taxes)** [1956] 3 612, ChD.

Allowances—Repairs—Repair of lift—Block of offices—Assessment on landlord—One entire house or tenement—Gross annual value—Allowance made in ascertaining gross annual value although the authorised deductions for repairs granted—Income Tax Act 1918, Sch A, No V, rr 7, 8, No VII, r 8(c)—Finance Act 1936, s 22. **Pearl Assurance Co Ltd v O'Callaghan (Inspector of Taxes)** [1943] 1 624, CA.

Deduction in computing profits. *See* Deduction in computing profits—Annual value of land, *ante*.

Profits from ancillary activities—Aerodrome—Occupiers deriving profits from activities ancillary to main purpose of aerodrome—Whether covered by Sch A assessment—Income Tax Act 1918, Schs A, B, C. **Croft v Sywell Aerodrome Ltd** [1942] 1 110, CA.

Relief—Air raid protection works—Rent or other consideration for lease greater than would otherwise have been—Rent or other consideration—Air-raid shelter constructed by landlord—Tenant to pay 8 per cent of cost each year for 12 years—Whether payments constituting rent or other consideration for lease—Finance Act 1938, s 17(1)(a), proviso. **Associated London Properties Ltd v Williams (Inspector of Taxes)** [1948] 1 442, CA.

Rent—Deductions by occupier from rent—Sub-tenants paying rents to Inland Revenue—Whether landlord is an 'occupier' entitled to deduct from rent due to superior landlord—Income Tax Act 1918, Sch A, No VII, r 8, No VIII, r 9—Finance Act 1941, s 12, Sch I, Parts II, III. **Thorley v Payne** [1943] 1 354, KBD.

Rent—Insurance premium—Additional sum, being insurance premium, made payable as rent—Whether commissioners entitled to take premiums into account in assessing annual value—Income Tax Act 1918, sched A, No IV, r 10(a), (b). **House Property and Investment Trust Ltd v Kneen (Inspector of Taxes)** [1938] 2 514, KBD.

Rules for estimating value—Sand pit—Assessment—Amount of rackrent or preceding years profits—Farmer permitting various contractors to remove sand from land for payment per ton—Whether whole farm to be assessed on rackrent basis—Income Tax Act 1918, Sch A, No III, r 3. **Russell (Inspector of Taxes) v Scott** [1948] 2 1, HL.

Valuation of property—'New property'—Part of farm sold for development—Use as gravel pit—Whether separate valuation or apportioned part of farm value—Income Tax Act 1952, s 82, para 2 ss 84(3), 108. **Welford Gravels Ltd v De Voil (Inspector of Taxes)** [1963] 2 1039, HL.

Excess rent. *See* Profits—Excess rent, *post*.

Maintenance, repairs, insurance management—

Allowance for costs of maintenance etc—Loss due to dishonesty—Misappropriations by agent collecting rents—Whether a cost of management—Income Tax Act 1952, ss 101(1), 175(3). **Pyne (Inspector of Taxes) v Stallard-Penoyre (Executor of S B Stallard-Penoyre (decd))** [1965] 1 487, ChD.

Occupation of land—

Occupier—Bankruptcy of taxpayer—Trustee in bankruptcy going into possession of land—Only creditor paid off and trustee going out of possession—Whether taxpayer 'occupier' of land during bankruptcy. **Joly (Inspector of Taxes) v Pinhoe Nurseries Ltd** [1936] 1 341, KBD.

Occupier—Trustees of golf course on common—Any member of public entitled to play upon payment of fee—Whether trustees in occupation of golf course—Income Tax Act 1918, Sch B. **Mitcham Golf Course Trustees v Ereaut (Inspector of Taxes)** [1937] 3 450, KBD.

Unoccupied land—Person having use of land—Grounds of mansion house—House and grounds vacated—Owner of house entitled to use of grounds—Whether owner 'having the use of' grounds—Whether owner chargeable as occupier of grounds—Income Tax Act 1918, Sch A, No VII, rr 1, 2, 4. **Bertram v Wightman (Inspector of Taxes)** [1936] 2 487, KBD.

Widow—Widow continuing to live in husband's house after his death and before residue of estate ascertained—Whether occupation in own right or as representative of executors—Income Tax Act 1918, Sch A. **Inland Revenue Comrs v Lady Wolverton** [1940] 2 327, KBD.

Person chargeable—

Landlord—House or building let in different apartments or tenements—House containing separate flats—Landlord responsible for common staircase—Whether tenant chargeable on ground house 'divided into distinct properties'—Whether landlord chargeable on ground house a 'house or building let in different apartments or tenements'—Income Tax Act 1918, Sch A, No VII, rr 8(c), 12. **Gatehouse v Vise (Inspector of Taxes)** [1957] 2 183, CA.

Landlord—Property let for less than year—Rent including sum calculated to cover capital cost of property after 30 years—Right to terminate tenancy on giving seven days' notice—Tenant entitled to conveyance of property at expiration of 30 years—Instalments sufficient to cover capital cost of property reserved as rent—Relationship of landlord and tenant—Owner-occupier—Whether vendor chargeable as landlord—Income Tax Act 1918, Sch A, No VII, r 8(b). **Ellis & Sons Third Amalgamated Properties Ltd v Jackson** [1940] 4 409, KBD.

INCOME TAX (cont)

Land (cont)—

Rents and other receipts—

Premium—Deduction from premiums and rent received—Premium treated as rent—Deduction from excess rents received by lessee from sub-lessees—Premium payable to lessor as consideration for the variation or waiver of the terms of a lease—Lessee committing breaches of covenant—Lessee thereby forfeiting option to renew lease—Lessor agreeing to accept payment of sum by lessee as consideration for restoration of lessee's right to exercise option—Clause providing for forfeiture of option not thereby modified in respect of any future or unascertained breaches of covenant—Whether sum payable as consideration for the waiver of terms of the lease—Whether lessee entitled to deduct from rents received by him sum paid to lessor—Finance Act 1963, s 22(4), Sch 4, paras 8, 9. **Banning v Wright (Inspector of Taxes)** [1972] 2 987, HL.

Sale—

Capital or income receipt. *See* Capital or income receipts—Sale of property—Land, *ante*.
Trading receipts. *See* Profits—Trading receipts—Land, *post*.

Law reports—

Citation in revenue cases. *See* Practice (Citation of cases—Reports—Revenue cases).

Legal costs—

Deduction in computing profits. *See* Deduction in computing profits—Legal costs, *ante*.

Liability—

Generally. *See* Charge to tax, *ante*.

Statutory agent of foreign company—

Trinidad and Tobago. *See* **Trinidad and Tobago** (Income tax—Dividend paid by cancellation of credit due to company from foreign company—Liability of company to tax as statutory agent of foreign company).

Liquidation of company—

Transaction in securities—

Tax advantage in consequence of transaction. *See* Tax advantage—Transaction in securities—Tax advantage in consequence of transaction—Combined effect of transaction and liquidation of company, *post*.

Undistributed income. *See* Undistributed income—Liquidation of company, *post*.

Loan—

Repayment in kind—

Profits. *See* Profits—Profit in kind—Loan for building development—Loan repaid by conveyance of ground rents, *post*.

Scholarship—

Exemption from tax. *See* Exemption—Scholarship income—Loan agreement, *ante*.

Loan to employee—

Loan scheme for course of training. *See* Emoluments from office or employment—Reward for services—Loan scheme for course of training, *ante*.

Loss—

Deduction in computing profits. *See* Deduction in computing profits—Loss connected with or arising out of trade, *ante*.

Loss of tax—

Tax recovered for purpose of making good loss of tax—

Interest. *See* Interest—Overdue tax—Tax recovered for purpose of making good loss of tax due to taxpayer's fault, *ante*.

Loss relief—

carry-forward of losses—

Loss for initial accounting period—Profits in subsequent years—Assessment for second and third years based on same period, viz first year's trading—Part of profits of second accounting period apportioned to first year's trading period—Apportioned amount taken into account in reduction of initial loss for each of the second and third years of assessment—Scottish authority followed—Income Tax Act 1952, ss 155, 342. **Westward Television Ltd v Hart (Inspector of Taxes)** [1968] 3 91, CA.

Six following years of assessment—Meaning—Finance Act 1926, s 33(1). **Harling v Celynen Collieries Workmen's Institute** [1940] 3 446, CA.

Claim—

Enforcement—Procedure—Originating summons—Court asked to determine company's entitlement on assumption company a dealer in stocks and shares—Summons struck out—Company required to pursue claim by means prescribed by statute—Commissioners to determine initial question whether transactions in question trading transactions—Income Tax Act 1952, s 341. **Argosam Finance Co Ltd v Oxby (Inspector of Taxes)**, F A and A B Ltd v Lupton (Inspector of Taxes) [1964] 3 591, CA.

Repayment claim—Tax deducted from dividends on shares—Ownership of shares—Acquisition without receiver's authority—Ratification by successor receiver—Validity—Income Tax Act 1952, s 341. **Lawson (Inspector of Taxes) v Hosemaster Machine Co Ltd** [1966] 2 944, CA.

Repayment claim—Tax deducted from dividends on shares—Title to shares—Need to show beneficial title to shares—Absence of actual or ostensible authority to acquire the shares on taxpayer company's behalf—Receiver already appointed by debenture-holders—Purchase subsequently ratified by subsequent receiver appointed by new debenture-holders—Whether purported ratification valid—Income Tax Act 1952, s 341. **Lawson (Inspector of Taxes) v Hosemaster Machine Co Ltd** [1966] 2 944, CA.

Trade—

Share-dealing—Company dealing in shares and securities—Purchase of shares in other companies—Profit to be made by recovery of income tax on loss claims—Companies' dividends depreciating value of shares—Dividends to accrue over period of years—Not an adventure or concern in the nature of trade—Shares not to be regarded as stock-in-trade—Income Tax Act 1952, s 341. **Bishop (Inspector of Taxes) v Finsbury Securities Ltd** [1966] 3 105, HL.

INCOME TAX (cont)

Loss relief (cont)—

Trade (cont)—

Share-dealing—Company dealing in shares and securities—Taxpayer company purchased shares in F Ltd, which had a short lease of property at a low rent during the first three years—Dividends paid by F Ltd on its shares from rent received under sub-lease of property—Taxpayer company wrote down value of shares in F Ltd correspondingly—Resulting loss was basis of repayment claim—Complicated transaction which involved no profit unless tax repayment claim succeeded, and involved holding F Ltd's shares for several years—Whether purchase of shares was a transaction in the trade of dealing in shares—Income Tax Act 1952, s 341. *Cooper (Inspector of Taxes) v Sandiford Investments Ltd* [1967] 3 835, ChD.

Share-dealing—Company dealing in shares—Purchase of shares of other companies—Profit to be made by recovery of income tax on loss claim—Other company's dividend depreciating value of shares—Transaction dividend-stripping—Tax recovery device not in the nature of trade—Loss claim rejected—Income Tax Act 1952, s 341. *F A & A B Ltd v Lupton (Inspector of Taxes)* [1971] 3 948, HL.

Share-dealing—Company dealing in shares—Group's property companies' unrealised profits—Properties worth more than book values—Scheme to reduce income tax on profits as realised—Forward dividend strip—Transfer of properties to four-year life company—Sale in second year of life—Purchase of four-year company's shares by taxpayer company—Declaration of dividends by four-year company—Diminution in value of its shares—Taxpayer company dealer in shares—Loss claim on basis of diminished value—Whether transaction in course of trade or venture in nature of trade—Income Tax Act 1952, s 341. *Thomson (Inspector of Taxes) v Gurneville Securities Ltd* [1971] 3 1071, HL.

Share-dealing—Purpose of transaction to obtain loss relief—Merchant company having incurred losses changed to finance company trading in shares—Single purchase of shares in another company in year of assessment—Dividend then declared and received by finance company—Shares sold at loss after dividend declared—Dividend stripping operation—Purpose of transaction to set off losses (including losses on merchant trading) against dividend so received—Whether transaction of purchase and sale of shares 'trading'—Other financial share dealings in next year of assessment—Income Tax Act 1952, s 341. *Griffiths (Inspector of Taxes) v J P Harrison (Watford) Ltd* [1962] 1 909, HL.

Share-dealing—Trade and stock-in-trade—Company dealing in shares and securities—Purchase of shares in associated company—Receipt of dividends on shares—Writing down of value of shares correspondingly—Resultant loss founding repayment claim—Activities constituting trading—Income Tax Act 1952, s 341. *Johns (Inspector of Taxes) v Wirsal Securities Ltd* [1966] 1 865, ChD.

Share-dealing—Transactions in the course of trade—Company a dealer in shares—Transactions with subsidiary companies—Dividend stripping operations—Sale of depreciated shares at an undervalue—Device to secure repayment of tax from Inland Revenue—Whether transactions as a whole could be treated as being in the course of trade—Income Tax Act 1952, s 341. *Ridge Securities Ltd v Inland Revenue Comrs* [1964] 1 275, ChD.

Lump sum payment—

Trading receipt. *See* Profits—Trading receipts—Lump sum payment, *post*.

Machinery—

Capital allowances. *See* Capital allowances—Machinery or plant, *ante*.

Profits from letting. *See* Profits—Profits not otherwise charged—Profits from letting machinery and plant, *post*.

Machinery or plant—

Wear and tear—

Deduction in computing profits. *See* Deduction in computing profits—Wear and tear of machinery or plant, *ante*.

Maintenance—

Arrears—

Deduction of tax. *See* Annual payment—Deduction of tax—Past income—Arrears—Weekly payments under maintenance agreement between husband and wife, *ante*.

Maintenance order. *See* Annual payment—Order of court—Maintenance order, *ante*.

Malaysia. *See* Malaysia (Income tax).

Management expenses—

Expenses allowable under schedule for repairs, maintenance etc—

Investment company—Business making investments in real property—Payments to surveyors—Expenses for which relief might be claimed or allowed under Sch A No V rr 7 and 8—Whether claim for relief as management expenses permissible—Income Tax Act 1918, s 33. *London and Northern Estates Co Ltd v Harris (Inspector of Taxes)* [1937] 3 252, KBD.

Investment company—

Directors' fees—Company's surplus for year distributed among directors as fees—Finding by Special Commissioners that only a proportion of fees management expenses—Finding conclusive—Income Tax Act 1952, s 425(1)(2). *L G Berry Investments Ltd v Attwooli (Inspector of Taxes)* [1964] 2 126, ChD.

Dividends subject to double taxation relief—Income bearing tax at different rates—Amount of tax repayable—Income Tax Act 1952, s 425(1). *Jones (Inspector of Taxes) v Shell Petroleum Co Ltd* [1971] 2 569, HL.

Expenses of changing investments—Brokerage and stamp duty—Whether 'expenses of management'—Income Tax Act 1918, s 33(1). *Capital and National Trust Ltd v Golder (Inspector of Taxes)* [1949] 2 956, CA.

Expenses of raising or re-arranging loan capital—Income Tax Act 1918, s 33(1). *London County Freehold and Leasehold Properties Ltd v Sweet (Inspector of Taxes)* [1942] 2 212, KBD.

INCOME TAX (cont)

Management expenses (cont)—

Life assurance company—

Expenses of changing investments—Brokerage and stamp duties—Whether 'expenses of management'—Income Tax Act 1918, s 33(1). **Sun Life Assurance Society v Davidson (Inspector of Taxes), Phoenix Assurance Co Ltd v Logan (Inspector of Taxes)** [1957] 2 760, HL.

Married person's allowance. *See* Husband and wife—Married person's allowance, *ante*.

Married woman—

Tax advantage. *See* Tax advantage—Married woman, *post*.

Meals—

Deduction of cost of meals in computing profits. *See* Deduction in computing profits—Expenses wholly and exclusively laid out for purposes of trade—Meals, *ante*.

Deduction of expenses of meals—

Emoluments from office or employment. *See* Emoluments from office or employment—Expenses wholly, exclusively and necessarily incurred—Meals, *ante*.

Meaning of 'income tax'—

Surtax—

Partnership agreement—Covenant by partners to discharge outgoing partner's liability for 'income tax'—Whether including surtax. **Conway v Wingate** [1952] 1 782, CA.

Medical expenses—

Deduction in computing profits. *See* Deduction in computing profits—Expenses wholly and exclusively laid out for purposes of trade—Medical expenses, *ante*.

Mining rents—

Easement—

Occupied in connection with concern—Rent payable in respect of easement—Licence to extract gravel on making tonnage payments—Contractors needing gravel to construct runways at aerodrome—Agreement with landowner whereby contractors granted right to take surface gravel—Whether licence an 'easement'—Whether gravel pit a 'concern'—Whether tax deductible from payments by contractors to landowner—Income Tax Act 1918, s 237, All Schedules Rules, r 19, Sch A, No III, rr 1, 2, 3, Sch D, Case I—Finance Act 1934, s 21. **Mosley v George Wimpey & Co Ltd** [1945] 1 674, CA.

Mines—

Dumps of waste material—Minerals recovered from dumps—Whether dumps had become part of the land—Whether dumps a 'mine'—payments at a rate per ton worked—Whether rent or payment in respect of an easement—Income Tax Act 1952, ss 180(1)(2)(3), 82, Sch A, para 1(b). **Rogers (Inspector of Taxes) v Longsdon** [1966] 2 49, ChD.

Right to let down surface—

Payments in respect of right—Acreage payment as liquidated damages—Whether right an 'easement'—Whether payments 'rent'—Finance Act 1934, s 21(4)(b)(c). **Fitzwilliam's (Earl) Collieries Co v Phillips (Inspector of Taxes)** [1943] 2 346, HL.

Payments in respect of right—Minimum yearly payments—Payment for benefit over or derived from land—Not deductible in computing profits or gains—Finance Act 1934, s 21. **Inland Revenue Comrs v New Sharlston Collieries Co Ltd** [1937] 1 86, CA.

Mistake—

Additional assessment. *See* Additional assessment—Discovery—Mistake, *ante*.

Mutual life insurance company—

New Zealand. *See* **New Zealand** (Income tax—Mutual life insurance company).

Mutuality principle. *See* Profits—Mutuality principle, *post*.

Neglect—

Additional assessment. *See* Additional assessment—Neglect, *ante*.

New Zealand. *See* **New Zealand** (Income tax).

Non-resident—

Assessment in name of agent—

Exemption—Broker—General commission agent—Meaning of 'general commission agent'—Company virtually sole agent of non-resident—Lack of generality of custom—Many non-broker like activities—Income Tax Act 1952, ss 370, 373(1) proviso. **Fleming (Inspector of Taxes) v London Produce Co Ltd** [1968] 2 975, ChD.

Calculation of relief—

British subject on service abroad—Computation of proportionate allowances—Income consisting of army pay, colonial allowance, and income from New Zealand sources—Income Tax Act 1918, Sch D, Case V, r 2—Finance Act 1920, s 24. **MacKillop v Inland Revenue Comrs** [1943] 2 215, CA.

Notional expense. *See* Deduction in computing profits—Expense or disbursement—Notional expense, *ante*.

Office—

Compensation for loss of office—

Emolument from office. *See* Emoluments from office or employment—Compensation—Loss of office, *ante*.

Office or employment under the Crown—

Emoluments payable out the public revenue of the United Kingdom—

Taxpayer appointed to corps of specialists by government department—Taxpayer assigned to advise Fiji government—Taxpayer's salary paid by government department—United Kingdom government recovering contribution from Fiji government equal to Fiji rate for taxpayer's office—Whether taxpayer holding office or employment under the Crown—Whether taxpayer's salary payable out of the public revenue of the United Kingdom—Income and Corporation Taxes Act 1970, s 184(3)(a). **Caldicott v Varty (Inspector of Taxes)** [1976] 3 329, ChD.

Option—

Profit on exercise of option—

Investment company—Option to acquire shares at par. *See* Profits—Trading receipts—Investment company—Option to acquire shares at par, *post*.

INCOME TAX (cont)**Option (cont)—****Year of assessment—**

Grant of option to employee. *See* Emoluments from office or employment—Year of assessment—Option to purchase shares, *ante*.

Overdue tax—

Interest. *See* Interest—Overdue tax, *ante*.

Partnership—**Assessment in partnership name—**

Effect—Additional assessment following death of one of partners—Whether assessment effective against surviving partner—Whether effective against deceased partner's executors—Income Tax Act 1952, s 144—Finance Act 1960, s 63(3). **Harrison (Inspector of Taxes) v Willis Brothers (W H Willis and Executors of H H Willis (decd))** [1965] 3 753, CA.

Change in partnership—

Admission of new partner—Assessment of profits—'Succession'—Continuance of business—Power of commissioners to adjust assessment—Income Tax Act 1918, Sch D, Cases I and II, rr 8, 9, 10, 11—Finance Act 1926, s 32. **Comrs for the General Purposes of the Income Tax for the City of London v Gibbs** [1942] 1 415, HL.

Discontinuance of trade—Election to treat old trade as discontinued—Limits of right of continuing partner to relief in respect of losses in old trade—Finance Act 1926, ss 32(1), 33. **Batty v Schroder (Baron)** [1939] 3 299, KBD.

Pay as you earn system—**Deduction of tax by employer—**

Failure to deduct tax—Recovery—Employers' failure to deduct tax from gross salary—Tax claimed from, but not paid by, employers—Tax not recoverable by employers from employee as money paid to the use of employer or from employee as trustee for employers—Income Tax (Employments) Act 1943, ss 1(1)(2) (as extended by Income Tax (Offices and Employments) Act 1944, ss 1(1)), 2—Income Tax (Employments) Regulations 1950 (S I 1950 No 453), reg 52(2). **Bernard and Shaw Ltd v Shaw (Rubin third party)** [1951] 2 267, KBD.

Theft of tax deducted—Liability—Deduction of tax from wages—Money deducted by employer set aside and stolen—Liability of employer—Income Tax (Employments) Act 1943, s 2(1)(a)—Income Tax (Employments) Regulations 1944 (S R & O 1944 No 251), reg 27(1). **Attorney-General v Antoine** [1949] 2 1000, KBD.

Penalty—**Failure to furnish information to commissioners—**

Daily penalty—Validity—Summary award of penalty—Award of daily penalty for continuing failure thereafter—Appeals against assessments to corporation tax—Adjournment of hearing and subsequent hearings—Precept issued requiring delivery of accounts within 90 days—Penalty summarily awarded for non-compliance with precept—Further meeting of commissioners—Non-compliance with precept continuing—Imposition of penalty calculated on daily rate since date of original penalty—Whether failure to comply with precept declared by commissioners before whom 'proceedings' had been commenced so as to justify further daily penalty—Taxes Management Act 1970, ss 51(1), 53(1), 98(1), 100(1). **Script & Play Productions Ltd v Comrs for the General Purposes of the Income Tax for the Division of St George's, Hanover Square, London** [1972] 1 577, ChD.

Making documents available—Notice requiring taxpayer to 'make available' certain documents for inspection by commissioners—Meaning of 'make available'—Whether positive obligation on taxpayer to supply documents—Taxes Management Act 1970, s 51. **Campbell v Rochdale General Comrs** [1975] 2 385, ChD.

False returns—

Liability—Taxpayer entitled to same relief even if he had made true returns—Whether penalties applicable—Income Tax Act 1918, s 30. **Attorney-General v Lloyds Bank Ltd (Executor of Lillcrap, decd)** [1944] 2 157, KBD.

Fraudulent return—

Deceased taxpayer—proceedings not prosecuted until after deceased's death—Widow sole beneficiary in his estate—Widow not party to fraud—Whether widow's financial position to be taken into account in awarding penalty against deceased's estate—Finance Act 1960, s 56(5)(6)(b). **Dawes v Income Tax General Comrs** [1965] 1 258, ChD.

Incorrect return—

Amount of penalty—Treble the tax which he ought to be charged—Whether treble the total amount of tax payable for year of assessment or only treble amount of tax evaded—Income Tax Act 1952, s 25(3)(a). **Inland Revenue Comrs v Hinchy** [1960] 1 505, HL.

Executors—Death of person liable to pay penalty—Liability of estate—Income Tax Act 1918, s 30(1). **Attorney-General v Canter** [1939] 1 13, CA.

Proceedings—

Jurisdiction of General Commissioners—Proceedings relating to trade—Appropriate division—Place where trade is carried on—Place where taxpayer ordinarily resident—Taxpayer carrying on trade at place outside division in which ordinarily resident—Taxpayer submitting incorrect accounts in respect of trade for particular years of assessment—Penalty summons on ground taxpayer fraudulent or negligent in submitting accounts—Taxpayer having ceased to carry on trade at date summons issued—Whether relevant years of assessment or date of summons appropriate date for determining where 'trade...is carried on'—Whether penalty summons 'proceedings relating to a trade'—Taxes Management Act 1970, Sch 3, rr 2, 6. **R v Inland Revenue Comrs, ex parte Knight** [1973] 3 721, CA.

INCOME TAX (cont)

Penalty (cont)—

Recovery—

Time limit—Premature proceedings—Recovery in connection with tax covered by assessment—Fraud or wilful default—Commencement within three years of final determination—'Within three years' meaning not later than three years—Assessments to income tax and surtax—Proceedings commenced before surtax assessment finally determined—Whether proceedings premature—Taxes Management Act 1970, s 103(2). **R v Inland Revenue Comrs, ex parte Knight** [1973] 3 721, CA.

Summary award of penalty—

Appeal—Jurisdiction of court on appeal—Power to confirm or reverse decision or reduce or increase penalty—Contention by appellant that no proper hearing because no notice of hearing issued—Whether Court of Appeal having jurisdiction to decide that there had been no proper hearing—Taxes Management Act 1970, s 53(2). **Campbell v Rochdale General Comrs** [1975] 2 385, ChD.

Pension—

Compensation—

Loss of employment—Periodical payments by way of compensation—Local government officer—Termination of employment—Long-term compensation payable under statutory regulations—Compensation payable for loss of employment or loss or diminution of emoluments—Compensation payable until date officer qualifying for pension—Payments payable at intervals equivalent to those at which emoluments of employment previously paid—Whether payment liable to assessment as 'pension' under Sch E or as 'annual payments' under Sch D, Case III—Income Tax Act 1952, ss 122 (Sch D, para 1, proviso), 123 (Sch D, Case III), 156 (Sch E, para 2). **McMann v Shaw** [1972] 3 732, ChD.

Return of contributions—

Excessive contributions returnable on taxpayer's death—Personal representatives entitled to receive after taxpayer's death difference between amount of sums paid as pension and amount of contributions made by taxpayer—Whether taxpayer's right to pension in part a right to return of contributions and so not assessable—Income Tax Act 1918, Sch D, Case V, r 2. **Bridges (Inspector of Taxes) v Watterson** [1952] 2 910, ChD.

Perquisites or profits. *See* Emoluments from employment—Perquisites or profits, *ante*.

Persons chargeable—

Executors—

Emolument from deceased's employment—Sum payable on termination of office—Death—Assessment on executors—Income Tax Act 1918, All Schedules Rules, r 18—Finance Act 1927, s 45(5), (6). **Allen v Trehearne (Inspector of Taxes)** [1938] 2 698, CA.

Years preceding year of death—Untaxed income of deceased not returned by him—Assessment including deceased wife's income—Assessment in respect of years preceding year of death—Apportionment—Income Tax Act 1918, All Schedules Rules, rr 16, 18. **Palmer v Cattermole (Inspector of Taxes)** [1937] 2 667, KBD.

Land. *See* Land—Person chargeable, *ante*.

Life tenant—

Advancement to life tenant's son—Life tenant absolutely entitled to income—Trustees applying income under purported advancement to life tenant's son—Whether life tenant liable to surtax. **Spens v Inland Revenue Comrs** [1970] 3 295, ChD.

Profits and interest of money—

Person entitled to income chargeable—Commissions on insurance premiums—Taxpayer agent for insurers—Taxpayer entitled to deduct amount of commission from premiums paid by insured—Taxpayer re-imbursing insured amount of commissions—Whether taxpayer 'entitled to' or having 'received' commissions—Income Tax Act 1952, s 148. **Way v Underdown (Inspector of Taxes) (No 2)** [1975] 2 1064, CA.

Person receiving income chargeable—Interest of money—Agent receiving interests belonging to principal—Estate agent collecting rents on behalf of clients—Agent depositing clients' money in bank deposit account in own name—Interest arising on deposit account—Whether interest to be charged on taxpayer as interest of money received by him—Income Tax Act 1952, ss 123(1) (Sch D, Case III), 148. **Aplin v White (Inspector of Taxes)** [1973] 2 637, ChD.

Person receiving income chargeable—Interest of money—Deposit account in bank's name retained to satisfy taxpayer's liability to bank under guarantee—Interest paid into account—Guarantee discharged—Deposit and interest transferred to taxpayer—Whether taxpayer received interest on deposit when credited—Income Tax Act 1952, s 148. **Dunmore v McGowan (Inspector of Taxes)** [1976] 3 307, ChD.

Plant—

Capital allowances. *See* Capital allowances—Plant, *ante*.

Profits from letting. *See* Profits—Profits not otherwise charged—Profits from letting machinery and plant, *post*.

Wear and tear—

Deduction in computing profits. *See* Deduction in computing profits—Wear and tear of machinery or plant, *ante*.

Profession—

Profits. *See* Profits—Profession or vocation, *post*.

Profits—

Annual profits or gains—

Farming—Sale of turf from farm—Taxpayer not trading in turf or producing turf for resale—Taxpayer carrying on trade of farming—Land from which turf taken ploughed and drilled for corn after removal of turf—Turf removed by purchasers themselves over period of months—Whether receipts from sale 'annual profits'—Income Tax Act 1952, s 122. **Lowe (Inspector of Taxes) v J W Ashmore Ltd** [1971] 1 1057, ChD.

Capital or income receipts. *See* Capital or income receipts, *ante*.

INCOME TAX (cont)

Profits (cont)—

Cattle dealer—

Lands insufficient for the keep of the cattle—Meaning of 'cattle'—Inclusion of pigs—Income Tax Act 1918, Sch D, Case III, r 4. **Phillips (Inspector of Taxes) v Bourne** [1947] 1 374, KBD.

Computation. *See* Computation of profits, *ante*.

Deduction in computing profits. *See* Deduction in computing profits, *ante*.

Double taxation relief. *See* Double taxation relief—Profits of trade, *ante*.

Emoluments from office or employment. *See* Emoluments from office or employment, *ante*.

Excess rent—

Compensation for requisitioning—Requisition of hotel—Compensation deemed to be rent—Assessment of excess over Sch A valuation—Compensation (Defence) Act 1939, s 2—Finance Act 1940, s 15. **Mellows (Inspector of Taxes) v Buxton Palace Hotel Ltd, Faupel (Inspector of Taxes) v Executors of Hayward** [1944] 1 223, CA.

Licensed houses—Rent received by lessors in excess of Sch A assessment—Liability to tax under Sch D on surplus—Liability in respect of use of good will, use of trade marks and other property not being corporeal hereditaments—Income Tax Act 1918, Schs A, D. **Loughnan v Marston's Dolphin Brewery Ltd (in liquidation), Whelan v Alfred Leney & Co Ltd** [1936] 1 468, HL.

Relief in respect of losses—Set-off against profits—Excess rent of immediate lessor—Leasehold properties sub-let at rents exceeding head rents and net annual values—Other properties sub-let at rents below head rents or not sub-let—Whether excess rents 'profits' from which taxpayer entitled to deduct 'losses' on other properties—Finance Act 1927, s 27(1)—Finance Act 1940, s 15(1). **Barron (Inspector of Taxes) v Littman** [1952] 2 548, HL.

Rent including sum for right to use furniture—Furnished cinema—Rent received by lessors in excess of Sch A assessment—Apportionment of rent in respect of premises and furniture—Income Tax Act 1918, Sch A, D. **Shop Investments Ltd v Sweet** [1940] 1 533, KBD.

Rent payable under a lease—Licence to extract sand and gravel—Licence granted to lessee—Land containing sand and gravel leased by taxpayer company for annual rent—Licence to extract sand and gravel granted separately to lessee—Payment of royalties agreed per cubic yard of sand and gravel extracted—Taxpayer company having no right of re-entry for non-payment of royalties—Royalties not reserved as rent—Whether royalties 'rent payable under a lease'—Income Tax Act 1952, s 175. **T & E Homes Ltd v Robinson (Inspector of Taxes)** [1976] 3 497, ChD.

Sand pit—Rent and royalty for sand taken—Rent received by lessors in excess of Sch A assessment—Computation of excess rent—Income Tax Act 1952, s 175(1)(a), s 82, Sch A, para 2. **Trustees of Tollemache Settled Estates v Coughtrie (Inspector of Taxes)** [1961] 1 593, HL.

Isolated transaction—

Loan of money—Loan by solicitor to builder to purchase property—Sum payable to solicitor on re-sale—Income Tax Act 1918, Sch D, Case VI. **Wilson (Inspector of Taxes) v Mannooch** [1937] 3 120, KBD.

Payment for services—Reminiscences of taxpayer's life—Newspaper articles—Taxpayer providing reminiscences and documents—Newspaper's 'ghost' writer producing articles—Whether payment for services—Income Tax Act 1952, Sch D, Case VI. **Housden (Inspector of Taxes) v Marshall** [1958] 3 639, ChD.

Payment for services—Sale of copyright—Taxpayer writing reminiscences for newspaper—Contract involving sale of copyright—Whether revenue payment—Income Tax Act 1918, Sch D, Case VI. **Hobbs v Hussey (Inspector of Taxes)** [1942] 1 445, KBD.

Mutuality principle—

Members' club—Surplus—Whether club's activity a trade giving rise to a profit or mutual arrangement giving rise to a surplus—Bathing club—Ordinary members and 'hotel' members—Local hotels joining club as members and paying same subscription as ordinary members—Hotel members also paying additional sum calculated in accordance with number of guests—Hotel guests having right to use club but not themselves paying anything to club—Hotels previously having trading relationship with club—Hotel members having one vote each—Number of hotel members very small in comparison with number of ordinary members—Ordinary members having overwhelmingly greater interest in surplus than hotel members—Whether relationship of ordinary members with hotels becoming one of mutuality or remaining of trading character. **Fletcher v Income Tax Comrs** [1971] 3 1185, PC.

Mutual insurance association—Surplus funds—Surplus arising from transactions with members—Whether assessable—Finance Act 1933, s 31(1). **Inland Revenue Comrs v Ayrshire Employers Mutual Insurance Assn Ltd** [1946] 1 637, HL.

Public corporation—Broadcasting—Surplus revenue from broadcasting—Nature of surplus revenue—British Broadcasting Corporation—Receipts derived from Postmaster General—Surplus ultimately at his disposition—Whether surplus of receipts taxable as profits or gains—Income Tax Act 1952, s 122, s 123, Sch D, Case I, Case VI. **British Broadcasting Corp v Johns (Inspector of Taxes)** [1964] 1 923, CA.

Society—Sale of produce to members—No common fund to which members contributed and in which they participated—Co-operative society—Loans to society by members—Produce sold exclusively to members at market prices—Whether profits on sales taxable—Assam Agricultural Income Tax Act (No IX of 1939), s 3. **English and Scottish Joint Co-operative Wholesale Society Ltd v Assam Agricultural Income Tax Comr** [1948] 2 395, PC.

Persons chargeable. *See* Persons chargeable—Profits and interest of money, *ante*.

Profession or vocation—

Asset of profession—Loss of asset—Accountant—Office of auditor—Asset alleged to constitute whole structure of taxpayer's business—Auditorships constituting 17 per cent of taxpayer's fees as accountant—Whether payment for loss of office profit arising from profession. **Ellis (Inspector of Taxes) v Lucas** [1966] 2 935, ChD.

INCOME TAX (cont)

Profits (cont)—

Profession or vocation (cont)—

Author—Disposal of rights in unpublished book—Gift of rights in unpublished book to father—Whether author taxable on value of rights—Income Tax Act 1952, Sch D. **Mason (Inspector of Taxes) v Innes** [1967] 2 926, CA.

Author—Royalties—Death of author—Assignment of copyright—Assignment by beneficiary under will—Liability of assignee to tax—Income Tax Act 1952, Sch D. **Hume (Inspector of Taxes) v Asquith** [1969] 1 868, ChD.

Death of taxpayer—Film director/actor—Agreement to produce film—Remuneration including lump sum to be paid in instalments two and a half years after first showing of film—Death of taxpayer before payments made—Payments made to executors—Payments not liable to tax as taxpayer had ceased to carry on profession—Income Tax Act 1918, Sch I, Sch D, Cases II, III, IV. **Gospel v Purchase (Inspector of Taxes)** [1951] 2 1071, HL.

Death of taxpayer—Royalties—Deceased author—Periodical payments under deceased's contracts received by executor—Liability of payments to tax—Income Tax Act 1918, Sch 1, Sch D, Cases II, III, VI—Income Tax Act 1952, Sch D, Cases II, III, VI. **Carson (Inspector of Taxes) v Peter Cheyney's Executor** [1958] 3 573, HL.

Profits arising from profession—Payments under agreement—Medical practitioner—Payments made by Minister of Health towards maintenance of policy of assurance—Whether payments profits of profession or taxable as annual payments—Income Tax Act 1918, Sch D, para 1(a)(ii), Case II—Sch D, Rules applicable to Case III, r 1(a)—National Health Service (Superannuation) Regulations 1947 (S R & O 1947 No 1755), reg 38(3)(m). **Hawkins (Inspector of Taxes) v Leahy** [1952] 2 759, ChD.

Profits arising from profession—Winnings from bets—Professional golfer—Bets on private games—Balance of gains over losses arising from bets—Whether taxable as profit arising from profession or vocation—Income Tax Act 1918, Sch D, Case II. **Down (Inspector of Taxes) v Compston** [1937] 2 475, KBD.

Profit in kind—

Loan for building development—Loan repaid by conveyance of ground rents—Ground rents greater in value than loan—Whether difference in market value between value of ground rent and sum advanced taxable as income profit—Income Tax Act 1918, Sch D, Cases III, VI. **Ruskin Investments Ltd v Copeman (Inspector of Taxes)** [1943] 1 378, CA.

Profits not otherwise charged—

Casual profit—Estate agent—Gratuitous payment for consenting to a deal between a company and a society, the client of the estate agent—Compensation for withdrawal of any claim that the estate agent might have—No legal basis for any claim—Company taking over land under negotiation—Estate agent's intended acquisition of an interest in the land as an investment—Whether compensation taxable as a casual profit—Income Tax Act 1952, Sch D, Case VI. **Scott (Inspector of Taxes) v Ricketts** [1967] 2 1001, CA.

Profits from letting machinery and plant—Machinery and plant the value of which not taken into account for tax under Sch A—Railway wagons—Whether profits from letting wagons chargeable under Case I or Case VI of Sch D—Finance Act 1936, s 22(2). **North Central Wagon & Finance Co Ltd v Fifield (Inspector of Taxes)** [1953] 1 1009, CA.

Sums payable under contract—Lease of racehorse—Sums equivalent to one-half winnings from racehorse leased to be paid under lease to lessor—Contractual entitlement to sums—Sums not income arising from a merely recreational activity—Sums not having character of race winnings—Income Tax Act 1952, s 123 (Sch D, Case VI). **Norman (Inspector of Taxes) v Evans** [1965] 1 372, ChD.

Voluntary payment—Unenforceable contract—Payment under—Purchase of land—Taxpayer's contract with owners and prospective purchaser—Purchaser's promise of £10,000 if offer accepted—No stipulation as to services by taxpayer—Taxpayer's word to owners favouring acceptance—Absence of consideration for promise—Whether taxable as a payment for services rendered—Income Tax Act 1952, Sch D, Case VI. **Dickinson (Inspector of Taxes) v Abel** [1969] 1 484, ChD.

Profits or gains arising from land—

Rents and other receipts—Rentcharges—Consideration for transfer of capital asset—Capital or income receipt. *See* Capital or income receipts—Transfer of capital asset—Cash receipts of fixed amounts over fixed period as consideration for transfer—Rentcharges, *ante*.

Sale of property—

New Zealand. *See* New Zealand (Income tax—Profits or gains derived from sale of property).

Shareholders—

Bonus debentures—Redemption—Capitalisation of profits by company—Distribution of accumulated profits—Issue of debentures subsequently redeemed—Whether shareholders having received taxable income. **Income Tax Comr Bengal v Mercantile Bank of India Ltd** [1936] 2 857, PC.

Stock-in-trade—

Valuation—Cost of metals used during year—Closing inventory of metals—Last-in-first-out method or first-in-first-out method—Canada—Excess Profits Tax Act 1940 (SC 1940), s 3—Income War Tax Act (RSC 1927). **Minister of National Revenue v Anaconda American Brass Ltd** [1956] 1 20, PC.

Trading receipts—

Bad debts—Recovery—Part recovery of debts previously written off as bad—Amounts so received to be included in computation of profits—Amounts taxable in year of receipt—Income Tax Act 1918, Sch D, Cases I and II, r 3(1). **Bristow (Inspector of Taxes) v William Dickinson & Co Ltd** [1946] 1 448, CA.

Book debt—Profit on collection—Book debt included among assets acquired from predecessor—Purchase of debt at discount—Election to be treated as having set up new trade—Ultimate payment of debt in full—Income Tax Act 1918, Sch D, Case I. **Crompton v Reynolds and Gibson** [1952] 1 888, HL.

INCOME TAX (cont)

Profits (cont)—

Trading receipts (cont)—

Brewery—Tied houses—Premiums paid by tenant—Brewery acquiring tied houses from another company—Whether premiums payable by tenants to be taken into account—Income Tax Act 1918, Sch D, Case I. **A S Lucas (Inspector of Taxes) v Charles Hammerton & Co Ltd** [1944] 2 133, KBD.

Dealing in securities—Associated company—Business of acquiring and holding securities—Transfer of certain securities of company to associated company in consideration of shares in associated company—Whether transferor company dealing company—Whether securities trading stock of transferor company—Whether profits of associated company on realisation of securities acquired from transferor company taxable income—Income Tax Act 1952, s 143(4)(a)—Finance Act 1960, ss 25(1)(a), 43(4)(d). **General Reinsurance Co Ltd v Tomlinson (Inspector of Taxes)** [1970] 2 436, ChD.

Dividends subject to deduction of tax—Share speculations by company—Contango transactions—Dividends declared during currency of 'contango' transaction—Practice of Stock Exchange—Broker crediting dividends, less tax, to company—Actual dividends not collected—Whether dividends income already taxed at source or trading receipts of company—'Discovery'—Income Tax Act 1918, s 125(1), Sch D, Case I. **Multipar Syndicate Ltd v Devitt (Inspector of Taxes)** [1945] 1 298, KBD.

Farming—Profits or gains from carrying on trade of farming—Sale of turf from farm—Taxpayer not trading in turf or producing turf for resale—Land from which turf taken ploughed and drilled for corn after removal of turf—Turf removed by purchasers themselves over period of months—Whether turf sold as part of trade of farming—Income Tax Act 1952, ss 123(1), 124(1), Sch D, Case I. **Lowe (Inspector of Taxes) v J W Ashmore Ltd** [1971] 1 1057, ChD.

Gambling transactions—Winnings at cards—Proprietary club—Proprietor taking part in members' card games—Taxability of winnings. **Burdge v Pyne (Inspector of Taxes)** [1969] 1 467, ChD.

Government subsidy—Subsidy received by sugar manufacturers from government—Whether amount of subsidy liable to income tax—British Sugar (Subsidy) Act 1925—British Sugar Industry (Assistance) Act 1931. **Lincolnshire Sugar Co Ltd (in Liquidation) v Smart (Inspector of Taxes)** [1937] 1 413, HL.

Investment company—Option to acquire shares at par—Appreciation in value of shares—Exercise of option at enhanced value—Option part of stock-in-trade—Loan to company whose shares acquired reduced by amount subscribed for shares—Whether realisation of profit for tax purposes by exercise of option—Income Tax Act 1952, s 122 (Sch D, Case I). **British South Africa Co v Varty (Inspector of Taxes)** [1965] 2 395, HL.

Land—Profits from use of land—Apportionment—Municipal corporation—Town hall used for activities in the nature of trade—No apportionment of profits between trade and ownership of land—Income Tax Act 1918, Schs A, D, Rules applicable to Cases I and II, r 5. **Jennings (Inspector of Taxes) v Middlesbrough Corp** [1953] 2 207, ChD.

Lump sum payment—Cancellation of contract—Consideration—Contract in ordinary course of trade—Cancellation not excluding company from part of business. **Bush, Beach & Gent Ltd v Road** [1939] 3 302, KBD.

Lump sum payment—Relinquishment of contract—Consideration—Payment for relinquishing contract of services—Payment by third party—Simultaneous relinquishing of contract and of control in contracting company—Inflated sum paid in respect of contract—Sale of shares part of taxpayer's trade—Whether sum taxable—Income Tax Act 1918, Sch D, Case I. **Anglo-French Exploration Co Ltd v Clayton (Inspector of Taxes)** [1956] 1 762, CA.

Payment to make good losses—Payments made under deed of covenant—Commercial undertaking—Payments made to reimburse loss on national newsfilm operations of company—Profit not intended to be made by undertaking—Whether trade receipt by taxpayer company or payment of pure income profit by payer—Whether taxpayer company entitled to reclaim tax deducted by payer from payment—Income Tax Act 1952, s 341—Finance Act 1953, s 15(3). **British Commonwealth International Newsfilm Agency Ltd v Mahany (Inspector of Taxes)** [1963] 1 88, HL.

Profits arising from trade—Compulsory sale of foreign exchange—Sale at profit—Company having purchased foreign exchange for importing goods for purposes of trade—Company required to stop imports and to sell surplus foreign exchange to Treasury—Whether profit on sale a profit arising from trade—Income Tax Act 1918, Sch D, Case I. **Imperial Tobacco Co (of Great Britain and Ireland) Ltd v Kelly** [1943] 2 119, CA.

Transactions in course of trade—Associated companies—Transactions between associated companies—Company dealing in land—Sale to parent company at under-value—Transaction not in the course of trade. **Skinner (Inspector of Taxes) v Berry Head Lands Ltd** [1971] 1 222, ChD.

Unclaimed balances—Balances owing to clients—Partnership holding funds on behalf of clients—Unclaimed balances transferred to partners' current accounts—Whether trading receipts. **Morley (Inspector of Taxes) v Tattersall** [1938] 3 296, CA.

Unclaimed balances—Deposits on purchases—Taxpayers carrying on business as tailors—Deposits on made-to-measure garments ordered—Deposit part payment of purchase price—Deposits refunded to purchasers who declined to take garments—Garments on occasions not taken and deposits not reclaimed—Whether deposits taxable as income of year of receipt—Income Tax Act 1952, Sch D, Case I. **Elson (Inspector of Taxes) v Prices Tailors Ltd** [1963] 1 231, ChD.

Voluntary payment—Client terminating trading connection with taxpayer—Client making voluntary payment to taxpayer in recognition of past services—Services provided by way of trade—Whether payment chargeable to tax as a trading receipt—Income Tax Act 1952, ss 122, 123 (Sch D, Case I). **Simpson (Inspector of Taxes) v John Reynolds & Co (Insurances) Ltd** [1975] 2 88, CA.

INCOME TAX (cont)

Profits (cont)—

Trading receipts (cont)—

Voluntary payment—Compulsory acquisition of wool by government—Price paid on appraisal—Subsequent voluntary additional payment—Whether a trading receipt. **Australia (Commonwealth) Comr of Taxation v Squatting Investment Co Ltd** [1954] 1 349, PC.

Voluntary payment—Medical practitioner—Surrender value of life insurance policies—Policies taken out by board of voluntary hospital in recognition of professional services given voluntarily—Whether surrender value of policies assigned to medical practitioner taxable—Income Tax Act 1918, Sch D. **Temperley (Inspector of Taxes) v Smith** [1956] 3 92, ChD.

Voluntary payment—Payment made gratuitously and not under legal claim—Government grant paid as 'remuneration'—Payment made after discontinuance of trade—Whether trading payments having been finally settled—Whether government payment to be taken into account in computing profits—Income Tax Act 1918, Sch D. **Severne (Inspector of Taxes) v Dadswell Inland Revenue Comrs v Same** [1954] 3 243, ChD.

Voluntary payment—Unsolicited payment to trader—Motive of payer to acknowledge long and friendly relationship with trader and to maintain goodwill and image in industry—Trading relationship between payer and trader continuing but payment not linked to future relationship—Taxpayer holding public houses on tied tenancies from W—Termination of tied tenancies by W—Ex gratia payments by W to taxpayer in connection with loss of tenancies—Whether payments chargeable to tax as profits arising or accruing from taxpayer's trade. **Murray (Inspector of Taxes) v Goodhews** [1976] 2 296, ChD.

War damage value payments—Property dealing company—Damage to properties comprising stock-in-trade—Whether value payments part of trading receipts—War Damage Act 1943, s 66(1)—Income Tax Act 1918, Sch D, Case I—War Damage (Public Utility Undertakings, etc) Act 1949, s 28. **London Investment & Mortgage Co Ltd v Inland Revenue Comrs** [1958] 2 230, HL.

Profits tax. *See* Profits tax.

Racehorse—

Lease of horse. *See* Profits—Profits not otherwise charged—Sums payable under contract—Lease of racehorse, *ante*.

Receipts of trade. *See* Profits—Trading receipts, *ante*.

Receiver—

Company—

Liability of receiver to tax—Receiver appointed by debenture holders—Assessment in respect of income of company—Income Tax Act 1918, Sch D, Miscellaneous Rules, r 1. **Inland Revenue Comrs v Thompson (Receiver for the First and Second Debenture Holders of John A Wood Ltd)** [1936] 2 651, KBD.

Reduction of salary—

Compensation for reduction. *See* Emoluments from office or employment—Compensation—Reduction of salary, *ante*.

Relief—

Annual value of land. *See* Land—Annual value—Relief, *ante*.

Bank interest—

Interest payable in United Kingdom—Interest on bank overdraft on account kept at Guernsey—Interest paid to Guernsey branch of bank having its head office in London—Whether interest payable in United Kingdom—Income Tax Act 1918, s 36(1). **Maude v Inland Revenue Comrs** [1940] 1 464, KBD.

Payment of interest—Loan account—Interest added to loan each half-year—Whether interest 'paid'—Income Tax Act 1918, s 36, All Schedules Rules, rr 19, 21. **Paton (Fenton's Trustee) v Inland Revenue Comrs** [1938] 1 786, HL.

Capital allowances. *See* Capital allowances, *ante*.

Child. *See* Child relief, *ante*.

Dividends—

Relief from surtax. *See* Dividends—Relief from surtax, *ante*.

Double taxation. *See* Double taxation relief, *ante*.

Earned income. *See* Earned income relief, *ante*.

Housekeeper—

Non-resident housekeeper—Woman employed by taxpayer as housekeeper—Married woman attending daily—Whether taxpayer entitled to relief for non-resident housekeeper—Finance Act 1924, s 22. **Brown v Adamson (Inspector of Taxes)** [1937] 2 792, KBD.

Non-resident housekeeper—Woman employed to look after taxpayer's children during day—Whether taxpayer entitled to relief for non-resident housekeeper—Income Tax Act 1952, s 214(1). **Barentz (Inspector of Taxes) v Whiting** [1965] 1 685, CA.

Interest. *See* Interest—Relief, *ante*.

Loss relief. *See* Loss relief, *ante*.

Losses—

Excess rent. *See* Profits—Excess rent—Relief in respect of losses, *ante*.

Non-resident. *See* Non-resident, *ante*.

Special contribution. *See* Special contribution (Relief).

Undistributed income—

Apportionment. *See* Undistributed income—Relief, *post*.

Remuneration—

Office or employment. *See* Emoluments from office or employment, *ante*.

Rent—

Capital or revenue expenditure. *See* Deduction in computing profits—Capital or revenue expenditure—Acquisition of capital asset—Rent, *ante*.

Deduction in computing profits. *See* Deduction in computing profits—Expenses wholly and exclusively laid out for purposes of trade—Rent, *ante*.

INCOME TAX (cont)**Rent (cont)—****Deficiency—**

Deduction in computing profits. *See* Deduction in computing profits—Deficiency in rent, *ante*.

Excess rent.

See Profits—Excess rent, *post*.

Land—

Rents and other receipts. *See* Land—Rents and other receipts, *ante*.

Rentcharges—

Capital or income receipts. *See* Capital or income receipts—Transfer of capital asset—Cash receipts of fixed amounts over fixed period as consideration for transfer—Rentcharges, *ante*.

Repairs—

Capital or revenue expenditure. *See* Deduction in computing profits—Capital or revenue expenditure—Repairs, *ante*.

Repayment—**Increase in standard rate—**

Transfer of stock—Deficiency payment—Income derived from investments of superannuation funds—Claims for repayment of tax deducted at source—Two Finance Acts in respect of same financial year—Second Act increasing standard rate of tax imposed by first Act—Increased rate payable in respect of whole financial year—Sale of investments by trustees before increase of standard rate—Deduction made at original rate—Deficiency in tax deduction to be made up by adding to deduction due on next payment—Purchase of investments by trustees after increase of standard rate—Income received on new investments not only less tax at increased rate but also less deficiency in tax arising through transferors having suffered tax only at former standard rate—Deficiency payment to be 'accounted for and assessed in the same manner as the tax deducted from original payment'—Payments of tax in fact made by transferees—Transferors not to be treated as persons who made payments—Income Tax Act 1918, s 27—Finance Act 1921, s 32—Finance (No 2) Act 1939, s 7, Sch VI, paras 1, 2—Finance (No 2) Act 1940, s 6, Sch V, paras 1, 2. **Shadbolt (Inspector of Taxes) v Lord Pender** [1946] 1 16, KBD.

Repayment claim—

Loss relief. *See* Loss relief—Claim—Repayment claim, *ante*.

Residence—**Company—**

Dual residence—Residence in countries where sufficient part of 'superior and directing authority' is found. **Union Corp'n Ltd v Inland Revenue Comrs** [1953] 1 729, HL.

Place where management and control is exercised—Subsidiary company in East Africa—Parent company in fact exercising central management and control in London—Management by parent company contrary to articles of subsidiary company—Whether subsidiary company resident in United Kingdom—Finance Act 1953, s 20(9). **Unit Construction Co Ltd v Bullock (Inspector of Taxes)** [1959] 3 831, HL.

Foreign employment—

Residence in United Kingdom. *See* Foreign employment—Duties performed abroad—Residence in United Kingdom, *ante*.

Foreign possessions—

Residence in United Kingdom. *See* Foreign possessions—Residence in United Kingdom, *ante*.

Husband and wife—

Non-resident husband. *See* Husband and wife—Non-resident husband, *ante*.

Non-resident. See Non-resident, *ante*.**Payment of rent by employers—**

Deduction from emoluments. *See* Emoluments from office or employment—Expenses wholly, exclusively and necessarily incurred—Residence provided by employers to employee, *ante*.

Persons working abroad—

Place of abode in United Kingdom to be disregarded—Duties of office or employment in substance performed outside United Kingdom—Duties performed in United Kingdom 'merely incidental to' other duties performed outside United Kingdom—Taxpayer a pilot with Dutch airline—Taxpayer's home in England—Taxpayer commuting between home and Amsterdam—Duties always commencing in Amsterdam—On certain services taxpayer landing in and taking off from United Kingdom as part of scheduled flight—Taxpayer's duties in substance performed abroad—Whether landings and take-offs from United Kingdom 'merely incidental to' duties performed abroad—Finance Act 1956, s 11. **Robson v Dixon (Inspector of Taxes)** [1972] 3 671, ChD.

Six month's residence—

Month—Meaning—Calendar or lunar months—Fractions of days to be counted in hours—Income Tax Act 1918, Sch D, Miscellaneous Rules, r 2. **Wilkie v Inland Revenue Comrs** [1952] 1 92, ChD.

Return—**Currency—**

Income derived from British funded stock—Return made in Australia—Currency in which return must be expressed. **Payne v Deputy Federal Comr of Taxation** [1936] 2 793, PC.

False return—

Penalty. *See* Penalty—False return, *ante*.

False returns by taxpayer's accountant—

Additional assessment. *See* Additional assessment—Fraud or wilful default—Default committed on behalf of any person—False returns by taxpayer's accountant, *ante*.

Fraudulent return—

Penalty. *See* Penalty—Fraudulent return, *ante*.

INCOME TAX (cont)

Return (cont)—

Incorrect return—

Penalty. *See* Penalty—Incorrect return, *post*.

Liability to make return—

Notice by inspector—Notice requiring person to give return of income which is not his but in respect of which he is chargeable—Notice only requiring return of certain sources of income—Validity—Whether notice must require return of all sources of income—Taxes Management Act 1970, s 8(2). **R v H M Inspector of Taxes, ex parte Frank Rind Settlement Trustees** [1974] 1 30, QBD.

Revocable settlement. *See* Settlement—Revocable settlement, *post*.

Royalties—

Assignment of copyright. *See* Profits—Profession or vocation—Author—Royalties—Death of author—Assignment of copyright, *ante*.

Commutation for lump sum—

Capital or income. *See* Capital or income receipts—Royalties—Commutation for lump sum, *ante*.

Deceased taxpayer. *See* Profits—Profession or vocation—Death of taxpayer—Royalties, *ante*.

Deduction of tax—

Payment net of tax. *See* Annual payment—Payment out of profits etc already taxed—Inference that payment net of tax—Royalties.

Sand pit—Devise of land for fixed rent—Right to take away sand—Royalties payable on amount taken—Rent to merge in royalties payable—Tax deducted by tenant—Landowner accepting deduction under mistake of law—Estoppel—Accord and satisfaction—Later objection to deduction—Jurisdiction of court—Whether landowner entitled to recover tax deducted—Excess rent under short lease—Income Tax Act 1918, All Schedules Rules, r 22(1)(a)—Finance Act 1934, s 21(1)(a)—Finance Act 1940, s 15(1). **Gwyther v Boslymon Quarries Ltd** [1950] 1 384, KBD.

Disposal of capital asset—

Capital or income. *See* Capital or income—Disposal of capital asset—Royalty agreement, *ante*.

Under-deduction of tax. *See* Under-deduction of tax—Royalties, *post*.

Salary—

Office or employment. *See* Emoluments from office or employment, *ante*.

Sale of land—

Adventure in the nature of trade. *See* Trade—Adventure in the nature of trade—Isolated transaction—Sale of land, *post*.

Sale of property—

Capital or income receipt. *See* Capital or income receipts—Sale of property, *ante*.

Scholarship income—

Exemption from tax. *See* Exemption—Scholarship income, *ante*.

Securities—

Dealing in securities—

Trading receipts. *See* Profits—Trading receipts—Dealing in securities, *ante*.

Settlement—

Accumulation of income—

Beneficiary absolutely entitled—Beneficiary leaving fund to accumulate in hands of trustees—Liability to tax. **Executors of Hamilton-Russell v Inland Revenue Comrs** [1943] 1 474, CA.

Children—

Irrevocable settlement—Income payable to settlor in any circumstances whatsoever—Trust fund invested in companies controlled by settlor—Winding-up by settlor destroying trust fund—Terms of settlement not providing for payment to settlor—Irrelevant settlor in position to put an end to trust fund by liquidation of companies—Finance Act 1936, s 21(8). **Jenkins v Inland Revenue Comrs** [1944] 2 491, CA.

Irrevocable settlement—Settlement before specified date—Settlement not deemed to be irrevocable—Full discretionary trust to pay income for benefit of daughter or to wife or for benefit of other children or to charitable institutions—No power of revocation—Revocable settlement—Finance Act 1936, s 21. **Eastwood v Inland Revenue Comrs** [1943] 1 350, CA.

Irrevocable settlement—Settlement before specified date—Settlement not deemed to be irrevocable—Full discretionary trust to pay income to father, any wife of his, and his issue—No power of revocation—Revocable settlement—Finance Act 1936, s 21(8)(10). **Inland Revenue Comrs v Delamere (Lord)** [1939] 3 386, KBD.

Irrevocable settlement—Settlement before specified date—Irrevocable on that date—Settlement not revocable in circumstances existing at that date but possibly revocable later—Finance Act 1936, s 21(10). **Inland Revenue Comrs v Glenconner (Lord)** [1941] 3 265, KBD.

Life of child—Income payable for period less than life of child—Interest liable to be diminished by the birth of further children who shall survive the settlor or by exercise of power of appointment—Whether interest for a period less than life of child—Finance Act 1922, s 20(1)(c). **Mauray v Inland Revenue Comrs** [1944] 1 472, CA.

Life of child—Income payable for period less than life of child—Trusts to determine if child ceased to be British subject—Whether disposition 'for some period less than the life of the child'—Finance Act 1922, s 20(1)(c). **Whigham v Inland Revenue Comrs** [1941] 2 524, KBD.

Payment of income for benefit of child of settlor—Payment—Undistributed income of company—Notional distribution—Distribution on order by commissioner—Infant shareholders whose shares had been transferred to them by their father—Whether notional distribution a 'payment'—Whether sums notionally distributed to infants deemed to be father's income for tax purposes—East African Income Tax (Management) Act 1952 (No 8 of 1952), ss 22(1), 24(1). **Houry v Comr of Income Tax** [1959] 3 781, PC.

INCOME TAX (cont)

Settlement (cont)—

Discretionary power for benefit of settlor or spouse—

Adjustment to exclude power—Settlor's wife included in specified class of beneficiaries—Power of appointment in favour of one or more of specified class other than wife in settlor's lifetime—Power to appoint any person other than settlor member of specified class with written consent of settlor—Purported exercise of power of appointment in favour of members of specified class—Appointment resettling capital 'upon the like trusts' subject to the omission of wife or widow from specified class—Validity of appointment—Effect—Whether power remaining to appoint wife to specified class—Whether power remaining to pay or apply for benefit of wife any part of income or property—Finance Act 1958, s 22(1)(5). **Blausten v Inland Revenue Comrs** [1972] 1 41, CA.

Disposition of income for short period. *See* Disposition of income for short period, *ante*S.

Income arising under a settlement—

Apportioned income—Undistributed income of foreign company—Apportionment and sub-apportionment—Taxpayer controlling chain of foreign companies—Whether undistributed income from foreign companies 'actual income' and therefore liable to apportionment—Finance Act 1922, s 21—Finance Act 1938, s 41(4)(a)(i)—Finance Act 1939, s 13(3). **Lord Howard de Walden v Inland Revenue Comrs** [1948] 2 825, HL.

Income arising under settlement—

Income of property of which settlor has divested himself absolutely—Income which may become payable to him or applicable for his benefit—Resulting trust—Gift of shares to college, they granting a purchase option to trustee company—Dividends to provide funds for chair in pharmacology—Intent—Beneficial trusts of option not defined—Whether resulting trust inferred from primary facts or established in law on the evidence—Income Tax Act 1952, s 145(1)(d), (2). **Vandervell v Inland Revenue Comrs** [1967] 1 1, HL.

Information—

Power of commissioners by notice to require information for specified purposes—Power to require such information as commissioners think necessary—Burden on taxpayer of proving that no reasonable commissioner could have thought information necessary—Grounds for thinking that settlement falls within statutory provisions—Commissioners having no or insufficient particulars to determine whether settlement falls within provisions—Whether commissioners entitled to require information where no grounds for thinking settlement falls within provisions—Income and Corporation Taxes Act 1970, s 453. **Wilover Nominees Ltd v Inland Revenue Comrs** [1974] 3 496, CA.

Meaning—

Any trust—Children—Maintenance order—Husband—Maintenance order in divorce proceedings against husband—Order providing for payment of annual sum to be held in trust for children—Whether order a settlement—Whether husband settlor—Whether husband entitled to claim children's allowance in respect of sums paid—Finance Act 1936, s 21(1), (9)(b)(c). **Yates v Starkey** [1951] 1 732, CA.

Arrangement—Company exploiting taxpayer's services—Taxpayer a director—Shares issued to trustees for benefit of taxpayer's children—Taxpayer aware of but not a party to transaction—Dividend paid from company's receipts from exploitation of taxpayer's services—Whether an arrangement—Income Tax 1952, ss 397, 403. **Crossland (Inspector of Taxes) v Hawkins** [1961] 2 812, CA.

Arrangement—Formation of company—Investment of trust funds in purchase of shares in company—Alteration in capital structure of company—Funds held on trust for settlor's wife and children—Further settlements of shares on children—Sale by settlor of shares to company—Whether formation and structure of company with settlements and sale an 'arrangement'—Finance Act 1938, ss 38(2), 41(4)(b). **A G Chamberlain v Inland Revenue Comrs, W E Chamberlain v Same** [1943] 2 200, HL.

Arrangement—Investment of trusts funds in ordinary shares of company—Conversion of shares into preference shares—Variation of rights—50 per cent dividend in first five years and 5 per cent—Whether an arrangement—Finance Act 1922, s 20(1)(b). **Inland Revenue Comrs v Prince-Smith** [1943] 1 434, KBD.

Disposition—Allotment of shares in company—Taxpayer and wife owners of all shares in company—Allotment of shares by company to children—Nominal consideration for allotment—Whether allotment of shares a 'disposition'—Finance Act 1936, s 21(9)(b). **Copeman v Coleman** [1939] 3 224, KBD.

Disposition—Surrender of reversionary life interest—Surrenderor's children becoming entitled as if she were dead—Surrender a 'disposition'—Subsequent surrender of prior life interest—Income of children applicable for their benefit in consequence of surrender of reversionary life interest—Finance Act 1936, s 21(9)—Finance Act 1943, s 20, Sch 6, Part 2. **Inland Revenue Comrs v Buchanan** [1957] 2 400, CA.

Element of bounty—Bona fide commercial transaction—No element of bounty—Transfer of shares to a finance company—Design to forestall take-over bid—Option to repurchase—Treatment of income as income of settlor—Income Tax Act 1952, ss 404(2), 405(1). **Bulmer v Inland Revenue Comrs** [1966] 3 801, ChD.

Transfer of assets—Absolute gift—Deposits to child's account in Post Office Savings Bank and purchases of Defence Bonds for child—Whether gifts 'settlements'—Finance Act 1936, s 21(9)(b). **Thomas v Marshall (Inspector of Taxes)** [1953] 1 1102, HL.

Transfer of assets—Transfer of shares to daughters as an absolute gift—Dividends declared after transfer—Assessment of settlor in respect of amount of dividends—Recovery from children of amount of tax—Finance Act 1922, s 20(2)—Finance Act 1936, s 21(1)(9)(b), (c). **Hood-Barrs v Inland Revenue Comrs** [1946] 2 768, CA.

INCOME TAX (cont)

Settlement (cont)—

Revocable settlement—

Irrevocable covenant for limited period—Period of less than six years—Extension of period—Effect—Covenant to pay annual sum to son—Covenant irrevocable for period of less than six years—Extension of period of restriction on power of revocation for full six years by subsequent deed—Extension of period made while original covenant still irrevocable—Payments made under covenant irrevocable for period of less than six years to be treated as settlor's income—Income Tax Act 1918, All Schedules Rules, r 23(2)—Finance Act 1938, s 38, Sch III, Part II, para 1(c). **Taylor v Inland Revenue Comrs** [1946] 1 488, CA.

Irrevocable covenant for limited period—Period of less than six years—Settlement revocable after seven years—Cesser of liability to make annual payments—Further deed postponing operation of power of revocation for further three years—Finance Act 1938, s 38(1). **Inland Revenue Comrs v Nicholson** [1953] 2 123, ChD.

More than one settlor—Assessment on settlor who would not have been entitled to income of settled property if no settlement—Settlement by tenant for life and remainderman—Remainderman not entitled to income in absence of settlement—Whether remainderman properly assessed—Finance Act 1938, s 38(2). **Herbert v Inland Revenue Comrs** [1943] 1 336, KBD.

Power of settlor to appoint future income to himself—Construction of deed—Trust for persons who were employees of company whom settlor might appoint—Possibility that settlor might become employee—Possibility that settlor could become sole beneficiary and terminate liability for annual payments—Whether deed should be construed as impliedly excluding settlor—Finance Act 1938, s 38(1). **Inland Revenue Comrs v Dan Fitte** [1943] 2 228, CA.

Power to revoke—Release of power—Implied release. *See* **Power** (Release—Implied release)—Settlement—Power to revoke settlement).

Power to revoke or otherwise determine settlement—Determination by act of any person—Terms providing for determination—Special power of appointment—Whether appointment of whole settled fund to one beneficiary *sui juris* would be a determination of the settlement—Income Tax Act 1952, s 399(b), proviso (ii). **Inland Revenue Comrs v Jamieson** [1963] 2 1030, HL.

Power to revoke or otherwise determine settlement—Foreign settlement—Settlor and trustees resident abroad—Trust funds in United Kingdom—Trusts for settlor's issue subject to her life interest—Trustee's power to declare sums held on trust for settlor absolutely—Amounts might ultimately exhaust fund—Whether terms of settlement such that trustees might have power to determine it—Finance Act 1938, s 38(2). **Countess of Kenmare v Inland Revenue Comrs** [1957] 3 33, HL.

Power to revoke or otherwise determine settlement—Power to dispose of nearly whole capital subject to settlement—Whether power to determine settlement or any provision thereof—Finance Act 1938, s 38(1)(a), (2)(a). **Inland Revenue Comrs v Saunders** [1957] 3 43, HL.

Power to revoke or otherwise determine settlement—Terms of settlement—Power not found in terms of settlement—Settlement of dividends from shares in company controlled by settlor—Power of settlor to prevent declaration of dividend or to wind up company—Whether a revocable settlement—Finance Act 1938, s 38(1)(a). **Inland Revenue Comrs v Wolfson** [1949] 1 865, HL.

Settlor—

More than one settlor—Income of settlement originating from more than one settlor—Income from property originating from one settlor—Income provided directly or indirectly by other settlor—Taxpayer a child film actress—Incorporation of company by taxpayer's father—Settlement by father of shares in company for benefit of taxpayer—Taxpayer entering service agreement with company for small salary—Company making large profits by exploitation of taxpayer's services—Dividends declared out of profits paid to trustees of settlement—Income from shares originating from taxpayer's father—Whether income also provided directly or indirectly by taxpayer—Whether income originating from taxpayer as well as from father—Income Tax Act 1952, s 409(6). **Mills v Inland Revenue Comrs** [1972] 3 977, CA.

Person providing or undertaking to provide funds for purpose of settlement—Indirect provision of funds—Company exploiting taxpayer's services—Taxpayer a director—Shares issued to trustees for taxpayer's children—Taxpayer aware of but not a party to transaction—Dividend paid from company's receipts from exploitation of taxpayer's services—Whether taxpayer provided funds for the settlement—Income Tax Act 1952, ss 397, 403. **Crossland (Inspector of Taxes) v Hawkins** [1961] 2 812, CA.

Person providing or undertaking to provide funds for purpose of settlement—Indirect provision of funds—Bank loan to trustees to purchase shares—Nominal interest—Loan conditional on taxpayer making interest free deposit of equivalent amount with bank—Income Tax Act 1952, s 411(2). **Inland Revenue Comrs v Wachtel** [1971] 1 271, ChD.

Person providing or undertaking to provide funds for purpose of settlement—Indirect provision of funds—Provision through interposition of company—Allotment of shares to taxpayer's children—Nominal consideration—Taxpayer and wife owning all shares in company—Whether taxpayer having indirectly provided funds—Finance Act 1936, s 21(9) (c). **Copeman v Coleman** [1939] 3 224, KBD.

Person providing or undertaking to provide funds for purpose of settlement—Infant—Capacity to provide funds for purpose of settlement—Taxpayer a child film actress—Company incorporated by taxpayer's father—Settlement by father of shares in company for benefit of taxpayer—Taxpayer entering service agreement with company for small salary—Company making large profits by exploiting taxpayer's services—Dividends declared out of profits paid to trustees of settlement and not distributed—Whether taxpayer a settlor in relation to settlement—Whether taxpayer having an interest in income arising under settlement—Whether dividends paid to trustees assessable to surtax as income of taxpayer—Income Tax Act 1952, ss 405, 409(2)(6), 411(2). **Inland Revenue Comrs v Mills** [1974] 1 722, HL.

INCOME TAX (cont)

Settlement (cont)—

Settlor (cont)—

Retaining interest—Application of income for settlor's benefit—Payment direct or indirect to settlor—Bank overdraft arranged by trustees of settlement to purchase investment—Separate deposit by settlor with bank as collateral—Overdraft reduced by trust income—Settlor's deposit reduced pro tanto—Income Tax Act 1962, ss 405 411(2). **Inland Revenue Comrs v Wachtel** [1971] 1 271, ChD.

Retaining interest—Application of income for settlor's benefit—Income—Wide powers to borrow money—Trust fund in companies controlled by settlor—Loan by settlor to trustees—Loan repaid out of income under settlement—Whether money applied in discharge of loan 'income'—Whether money had become applicable for benefit of settlor—Finance Act 1938, s 38(3)(4). **Jenkins v Inland Revenue Comrs** [1944] 2 491, CA.

Retaining interest—Application of income for settlor's benefit—Settlor deemed to have an interest if any income might become applicable for his benefit—Possibility of invalidity and resulting trust—Trustees' power to capitalise income—Income could be thus applied in payment of premiums on policy under another settlement—Settlor's possible interest in policy under imaginary other settlement—Income Tax Act 1952, s 405(1)(2). **Muir v Inland Revenue Comrs** [1966] 3 38, CA.

Retaining interest—Benefit for settlor or wife—Wife—Meaning—Whether including 'widow'—Finance Act 1938, s 38(4). **Gaunt v Inland Revenue Comrs** [1941] 2 662, CA.

Retaining interest—Resulting trust—Ultimate trust for settlor—Ultimate resulting trust for settlor's estate—Whether resulting trust an 'interest' of settlor—Finance Act 1938, s 38(3)(4). **Gaunt v Inland Revenue Comrs** [1941] 2 82, KBD.

Retaining interest—Statutory power of advancement—Effect—Expression of contrary intention—Direction for accumulation—Accumulation of income during settlor's lifetime—Trusts in favour of settlor's wife and unborn children—Beneficiaries benefiting on settlor's death—Power of advancement negated by trust for accumulation—Income Tax Act 1952, s 405(1), (2)—Trustee Act 1925, ss 32(1), 69(2). **Inland Revenue Comrs v Bernstein** [1961] 1 320, CA.

Retaining interest—Undistributed income—Power of appointment—Investments to be held on such trusts as settlor and son might appoint—Trustees to accumulate income with power to transfer accumulations to son on happening of certain events—No appointment made and no event bringing accumulation to an end having occurred—Whether settlor to be deemed to have an interest in income from investments—Finance Act 1938, s 38(3)(4). **Glyn v Inland Revenue Comrs** [1948] 2 419, KBD.

Sums paid to settlor otherwise than as income—

Body corporate connected with settlement—Loans to settlor by body corporate—Amount of a loan paid direct to settlor deemed to be income paid to him by trustees of settlement—Available income—Deduction of past capital payments—Method of computation—Income Tax Act 1952, ss 408(1)(2)(7), 411(4). **Bates v Inland Revenue Comrs** [1967] 1 84, HL.

Body corporate connected with a settlement—Loans to settlor by body corporate—Payments made by company on behalf of settlor—Obligation of settlor to repay—Whether sums paid by company capital paid indirectly to settlor—Finance Act 1938, s 40(3)(5)(a). **Potts' Executors v Inland Revenue Comrs** [1951] 1 76, HL.

Capital sum—Repayment of loan—Settlor's wife making loan to trustees of settlement of whom she was one—Loan repaid out of trust fund—Amount of repayment treated as income of settlor—Settlor assessed to surtax on amount grossed up—Income Tax Act 1952, s 408(1), (7). **De Vigier v Inland Revenue Comrs** [1964] 2 907, HL.

Seven year covenant. *See* Disposition of income for short period, *post*.

Share dealing—

Trade—

Loss relief. *See* Loss relief—Trade—Share dealing, *ante*.

Short-term capital gains. *See* Capital gains tax (Short-term gains).

Small maintenance order—

Divorce. *See* Divorce (Maintenance—Income tax—Small maintenance payments).

Source of income—

Profits or income chargeable under Sch D, Case III—

Acquisition of new 'source' of income—Sum paid by taxpayer to credit of deposit account with bank—Deposit account already in existence for several years—Whether interest on sum deposited arising from 'new source'—Income Tax Act 1918, Sch D, Case III, r 2(1), as substituted by Finance Act 1922, s 17—Finance Act 1926, s 30—Finance Act 1951, s 21. **Hart (Inspector of Taxes) v Sangster** [1957] 2 208, CA.

South Africa—

Assessment on capital appreciation of mining claims in Southern Rhodesia. *See* South Africa (Income tax—Assessment—Capital Appreciation).

Special charge—

Investment income—

Investment income for 1967–68 exceeding £3,000 plus amount of surtax personal allowances—Income under a trust—Foreign trust—Relief from charge—Taxpayer not absolutely entitled as against trustees to capital of trust—Taxpayer becoming absolutely entitled as from 14th December 1967—Whether entitled to claim relief in respect of income received prior to 14th December 1967—Finance Act 1968, s 41, Sch 15, para 9(1)(b). **Franklin v Inland Revenue Comrs** [1971] 2 1411, ChD.

Investment income for 1967–68 exceeding £3,000 plus amount of surtax personal allowance—Taxpayer holding £7,000 ordinary stock in investment company—Accounts of company made up to 31st January in each year—Final dividend normally paid at the end of March or the beginning of April before end of fiscal year—Final dividend for year ended 31st January 1968 declared at annual general meeting on 3rd April 1968—Dividend resolved to be paid on 18th April 1968—Whether dividend to be included in taxpayer's aggregate investment income for 1967–68—Finance Act 1968, ss 41, 42, 50(1)(2)(b). **Inland Revenue Comrs v Greaves** [1971] 3 1271, ChD.

INCOME TAX (cont)

Special commissioners—

Appeal. *See* Appeal—Special Commissioners, *ante*.Perjury. *See* Criminal law (Perjury—Judicial proceedings—Special Commissioners of Income Tax).

Special contribution—

Assessment on executor of taxpayer. *See* Special contribution (Additional assessment—Limitation of time for making).Investment income. *See* Special contribution (Investment income).

Stock-in-trade—

Cost of acquisition—

Acquisition of capital asset distinguished. *See* Deduction in computing profits—Capital or revenue expenditure—Capital asset or stock-in-trade, *ante*.Deduction in computing profits. *See* Deduction in computing profits—Expenses wholly and exclusively laid out for purposes of trade—Cost of acquiring stock-in trade, *ante*.

Valuation—

Computation of profits. *See* Computation of profits—Stock-in-trade, *ante*.Discontinuance of trade. *See* Discontinuance of trade—Trading stock—Valuation, *ante*.

Subvention payments—

Deduction in computing profits. *See* Deduction in computing profits—Subvention payments, *ante*.

Succession to trade—

Merger—

Company and subsidiaries—Division of manufacture—One process carried on by subsidiary companies—Remaining process carried on by parent company—Sales effected by another subsidiary company—Merger of manufacturing companies but not of selling company—Whether company assessable as successor to part of trade carried on by subsidiaries—Income Tax Act 1918, Sch D, Cases I and II, r 11(2)—Finance Act 1926, s 32(2). **Briton Ferry Steel Co Ltd v Barry** [1939] 4 541, CA.

Subsidiary companies—

Wholesale trade—Wholesale manufacturing trade carried on by subsidiary company—Taken over by retail company—Whether retail company succeeding to wholesale trade—Income Tax Act 1918, Sch D, Cases I and II, r 11(2). **Laycock (Inspector of Taxes) v Freeman, Hardy and Willis Ltd** [1938] 4 609, CA.

Superannuation contribution—

Exemption. *See* Exemption—Superannuation contribution, *ante*.

Tax advantage—

Consideration representing assets available for distribution by way of dividend—

Available—Meaning—Legally available—Company's current liabilities exceeding current assets—Company in which taxpayer had controlling interest—Sale to company of taxpayer's shares in five other companies—Bank loan to pay for shares—Whether bona fide commercial transaction—Whether sum 'available for distribution by way of dividend'—Finance Act 1960, s 28(1)(2)(c), (d). **Inland Revenue Comrs v Brown** [1971] 3 502, CA.

Counteracting—

Transactions carried out before 5th April 1960—Agreements for sales of shares made in 1958—Payments in pursuance thereof extending beyond 5th April 1960—Validity of notice applying provisions—Whether agreement for sale of shares only relevant transaction—Whether transaction 'carried out' before 5th April 1960—Finance Act 1960, s 28(1), (3). **Greenberg v Inland Revenue Comrs** [1971] 3 136, HL.Transaction in securities—Transaction carried out for bona fide commercial reasons—Commercial reasons—Transactions carried out for purpose of perpetuating family control of business—Family company—Bonus issue of redeemable preference shares—Issue to provide funds for estate duty purposes and thereby avoid loss of family control of company on death of major shareholders—Redemption of shares resulting in tax advantage—Whether issue and redemption of shares 'carried out for bona fide commercial reasons'—Finance Act 1960, s 28(1). **Inland Revenue Comrs v Goodwin** [1976] 1 481, HL.Tribunal—Determination whether there is a prima facie case—Participation by members of tribunal in determination—Absence of member—Effect—Member not participating in determination owing to absence abroad—Whether determination valid—Finance Act 1960, s 28(7). **Howard v Borneman (No 2)** [1975] 2 418, HL.Tribunal—Determination whether there is a prima facie case—Procedure—Determination on documents—Whether taxpayer had right to be heard at that stage—Finance Act 1960, s 28(5). **Wiseman v Borneman** [1969] 3 275, HL.

Married woman—

Not separately assessed—Capacity to obtain tax advantage—Capitalisation of profits as redeemable preference shares—Shares issued to taxpayer—Taxpayer married woman living with husband and not separately assessed—Subsequent redemption of shares—Notice served on married woman—Whether she obtained tax advantage although not assessable to tax—Validity of notice—Finance Act 1960, ss 28(1)(2)(3), 43(4)(g). **Inland Revenue Comrs v Brook** [1967] 3 620, ChD.Not separately assessed—Liability of woman—Return of capital and capitalisation of profits—Notice served on married woman—Whether she obtained tax advantage—Whether notice valid—Finance Act 1960, ss 28(1)(3), 43(4)(g). **Inland Revenue Comrs v Hague** [1968] 2 1252, CA.

Meaning of 'tax advantage'—

Avoidance of a possible assessment—Transaction in connection with the distribution of profits—Phrase including transfer of assets of company—Accrual of receipts so as not to attract tax—Necessity of comparing like with like—Shareholder's sale of shares in one company to another—Shareholders still controlling all shares in both companies—Receipt of purchase price not comparable to gratuitous payment by way of dividend—Whether tax advantage obtained—Finance Act 1960, ss 28(1)(2)(d), 43(4)(g). **Inland Revenue Comrs v Cleary, Inland Revenue Comrs v Perren** [1967] 2 48, HL.

INCOME TAX (cont)

Tax advantage (cont)—

Transaction in securities—

Main object—Finding of commissioners as to main object—Conclusiveness—Return of capital and capitalisation of profits—Bona fide commercial transaction—One of main objects found to be tax advantages to stockholders generally—Not a finding which no reasonable man could reach—What fraction of payment to stockholder quantified to counteract tax advantage—Finance Act 1960, s 28(1)(3). *Inland Revenue Comrs v Hague* [1968] 2 1252, CA.

Main object—Intention to obtain tax advantage—Subjective question—Two methods of carrying out commercial transactions, one involving more and the other less tax liability—Not a necessary consequence of adopting latter course that main object was to obtain tax advantage—Defeating take-over bid—Company's cash resource made available by way of return of capital, not as income—Finance Act 1960, s 28. *Inland Revenue Comrs v Brebner* [1967] 1 779, HL.

Main object—Taking advantage of statutory rights—Dealer in securities—Purchase of debenture stock—Calculation of price—No distinction made between capital and interest—Right to exclude interest (tax deducted) from accounts—Resulting loss shown on transaction—Recouping through lower tax assessment—Not proof that tax advantage a main object—Finance Act 1960, s 28(2)(3). *Inland Revenue Comrs v Kleinwort Benson Ltd* [1969] 2 737, ChD.

Tax advantage in consequence of transaction—Combined effect of transaction and liquidation of company—Agreement to liquidate company—Agreement between shareholders providing for method of appropriating surplus assets between shareholders on liquidation—Taxpayer principal shareholder—Object and effect of agreement to ensure that assets of company representing undistributed profits were received by taxpayer in tax-free form—Whether liquidation agreement a 'transaction in securities'—Whether tax advantage obtained by taxpayer 'in consequence of ... the combined effect of the transaction ... and of the liquidation of a company'—Income and Corporation Taxes Act 1970, ss 460(1)(2), 467(1). *Inland Revenue Comrs v Joiner* [1975] 3 1050, HL.

Tax advantage in consequence of transaction—Company—Reduction of capital—Return of part of sums paid by subscribers—Capital increased by capitalisation of profits—Single or divisible transaction—Successive resolutions—Immateriality—Main object tax advantages to shareholders—Finance Act 1960, s 28(1)(2). *Inland Revenue Comrs v Horrocks* [1968] 3 296, ChD.

Tax advantage in consequence of transaction—Redemption of debentures—Capitalisation of profits as debentures—Subsequent redemption of debentures—Whether redemption a transaction in securities—Whether tax advantage a consequence of capitalisation or of redemption—Finance Act 1960, ss 28(1)(2)(3), 43(4)(f)(g)(i). *Inland Revenue Comrs v Parker* [1966] 1 399, HL.

Transaction carried out for bona fide commercial reasons—Commercial reasons—Meaning—Transactions carried out for purpose of perpetuating family control of business—Family company—Bonus issue of redeemable preference shares—Issue to provide funds for estate duty purposes and thereby avoid loss of family control of company on death of major shareholders—Redemption of shares resulting in tax advantage—Whether issue and redemption of shares 'carried out ... for bona fide commercial reasons'—Finance Act 1960, s 28(1). *Inland Revenue Comrs v Goodwin* [1975] 1 708, CA.

Tax avoidance—

Medical partnership—

Australia. *See Australia* (Income tax—Avoidance—Agreement or arrangement having purpose or effect of avoiding liability—Partnership of medical practitioners dissolved).

Tax reserve certificate—

Interest. *See Interest*—Tax reserve certificates, *ante*.

Technical education payments—

Deduction in computing profits. *See Deduction in computing profits*—Technical education payments.

Testimonial—

Payment to employee to mark exceptional achievement. *See Emoluments from office or employment*—Receipt 'from' employment—Testimonial, *ante*.

Time—

Duration of specified period. *See Time* (Duration of specified period—Month—Income tax).

Total income—

Computation—

Apportioned sum out of income of company—Deed assigning part of income to trustees—Income defined as income of settlor as computed for purpose of Income Tax Acts—Income of company deemed to be income of taxpayer—Whether such income subject to deed. *Inland Revenue Comrs v Payton* [1940] 4 419, CA.

Deduction of annual payments—

Annual sum payable by deed—Effective payment—Sum paid returned to payer—Sum to be held or applied for benefit of payer—Whether an effective payment under a disposition. *Russell v Inland Revenue Comrs* [1944] 2 192, CA.

Annuity—Will—Appropriation of fund by executors—Fund insufficient—Fund made up by advance charged on residue—Whether residuary legatee entitled to deduct as annual payment share of amounts borrowed to make up deficiency—Income Tax Act 1918, s 27(1)(b), All Schedules Rules, r 19. *Bowen v Inland Revenue Comrs* [1937] 1 607, CA.

Capital or income payments—Purchase money—Payment of sums on account—Partnership—Purchase of deceased's partner's share—Capital or annual payment. *Inland Revenue Comrs v Ledgard* [1937] 2 492, KBD.

Covenant—Annuity—Covenants to pay annuities for more than 6 years—Contemporaneous agreements for repayment—Smaller sums repaid—What deductions allowable. *Lee v Inland Revenue Comrs* [1943] 2 672, KBD.

INCOME TAX (cont)

Total income (cont)—

Deduction of annual payments (cont)—

Covenant for payments—When payment due—Payments to be made on 1st May in each year—Termination of covenant on expiration of eight years from 5th May 1953—Whether 'year' meant calendar year or year commencing with 5th May. **Inland Revenue Comrs v Hobhouse** [1956] 3 594, ChD.

Foreign decree—Alimony paid to former wife under foreign decree—Former wife resident abroad—Tax not deductible from payment—Payment not deductible from total income—Income Tax Act 1918, All Schedules Rules, r 19—Finance Act 1927, s 39(3). **Bingham v Inland Revenue Comrs** [1955] 3 321, ChD.

Husband and wife—Separation—Allowance by husband to wife—Voluntary allowance under oral agreement—Whether deductible in assessing total income. **Executors of H Peters (decd)** **Inland Revenue Comrs** [1941] 2 620, CA.

Maintenance of wife of unsound mind—Undertaking by husband on appointment as wife's receiver—Undertaking embodied in order of matter in lunacy—Payments to make up deficiency between patient's income and sum required for maintenance—Whether payments deductible in computing total income—Income Tax Act 1918, s 27. **Watkins v Inland Revenue Comrs** [1939] 3 165, KBD.

Dividends—

Dividend paid without deduction of tax—Nil assessment for income tax on company—Whether shareholder should be taxed on amount of dividend received or on grossed-up amount—Finance Act 1931, s 7. **Cull v Inland Revenue Comrs** [1939] 3 761, HL.

Dividend paid without deduction of tax—Payment out of profits assessed to tax—Whether dividends to be grossed up for purposes of surtax—Finance Act 1931, s 7(2). **Inland Revenue Comrs v Pearson** [1936] 2 731, KBD.

Payment out of profits—Profits or gains assessed at nil—Repayments by as company of tax deducted on assessment being overruled—Sums paid to taxpayer equalling tax recovered by company—Whether payment assessable to surtax—Income Tax Act 1918, All Schedules Rules, r 20—Finance Act 1927, s 39(1)—Finance Act 1931, s 7. **Benn v Inland Revenue Comrs** [1937] 3 852, KBD.

Income from residue under will—

Date beneficiary entitled to income—Beneficiary having no title to residue until residue ascertained in due course of administration—Sums credited to residuary life tenant during period of administration—Whether income of life tenant. **Corbett v Inland Revenue Comrs** [1937] 4 700, CA.

Income received by taxpayer on behalf of third party—

Assessment to tax at standard rate—Taxpayer assessed as person 'receiving' income—Assessment final and conclusive for purposes of tax at standard rate—Assessment also final and conclusive in estimating total income—Whether income to be included in total income of taxpayer although not belonging to taxpayer beneficially—Income Tax Act 1952, ss 148, 524(4). **Aplin v White (Inspector of Taxes)** [1973] 2 637, ChD.

Share of profits—

Partnership—Bequest of share—Widow of deceased partner entitled under his will to share of profits—Widow's share of profits in year of assessment amounting to considerable sum—Continuing partners unable to pay share of profits during year of assessment—Whether widow liable to assessment on sum representing her share—Income Tax Act 1918, Sch D, Case III, r 1(a), All Schedules Rules, r 19. **Inland Revenue Comrs v Lebus** [1946] 1 476, CA.

Trust income—

Accumulation—Infant life tenant—Vested life interest—Accumulation of income during minority—Whether income of infant and subject to tax—Trustee Act 1925, s 31(2). **Stanley v Inland Revenue Comrs** [1944] 1 230, CA.

Trade—

Adventure in nature of trade—

Casual profit on hedge against devaluation—Purchase of silver bullion—Profit on re-sale—Finding that other considerations influenced purchase unsupported by evidence—Whether adventure in the nature of trade—Income Tax Act 1952, Sch D, Case I. **Wisdom v Chamberlain (Inspector of Taxes)** [1969] 1 334, CA.

Isolated transaction—Acquisition of houses—Acquisition by timber company possessing building powers—Purchase of houses from subsidiary building company—Object to assist managing director to re-start business—Company receiving rents and not taking steps to sell houses—Following offers houses sold at profit—Whether acquisition of houses an investment or adventure in nature of trade—Income Tax Act 1952, Sch D, Case I, ss 123, 526. **Lucy & Sunderland Ltd v Hunt (Inspector of Taxes)** [1961] 3 1062, ChD.

Isolated transaction—Sale of copyright—Actor—Acquisition of film rights in book—Acquisition as an investment—Subsequent sale of film rights at a profit—Actor having carried out no other similar transaction—Whether trading profit—Income Tax Act 1952, s 123(1), Sch D, Case I. **Shiner v Lindblom (Inspector of Taxes)**, **Lindblom (Inspector of Taxes) v Shiner** [1960] 3 832, ChD.

Isolated transaction—Sale of land—Building company approached by council for acquisition of fields zoned for school site—Agreement to negotiate—Formation of associated company as investment company—Sale of fields by building company to associated company—Subsequent sale by associated company to council at large profit—Whether adventure in the nature of trade and taxable under Case 1 of Sch D—Income Tax Act 1952, ss 122, 123(1), 526(1). **Eames (Inspector of Taxes) v Stepnell Properties Ltd** [1967] 1 785, CA.

Isolated transaction—Sale of land—Husband purchasing building site and making unconditional gift of it to wife—Re-sale of site at profit by wife to husband's nominees—Transaction repeated two years later—Trading negated by commissioners—Income Tax Act 1918, s 237, Sch D, rr 1(a)(ii), 2, Cases I, VI, All Schedules Rules, r 16(1). **Williams (Inspector of Taxes) v Davies** [1945] 1 304, KBD.

INCOME TAX (cont)

Trade (cont)—

Adventure in nature of trade (cont)—

Isolated transaction—Sale of land—Contract to sell before contract to purchase—Income Tax Act 1952, s 526(1), Sch D, Case I. **Johnston (Inspector of Taxes) v Heath** [1970] 3 915, ChD.

Land—Transaction in land—Steps taken to enhance value of land for purpose of sale—Taxpayer not otherwise engaged in trade of dealing in land—Taxpayer purchasing property for possible use as a residence—Property subsequently found not to be suitable for residential purposes—Taxpayer thereafter taking steps to obtain permission to develop property—Resale of property with planning permission at substantial profit—Purchase not a trading activity—Whether activities of taxpayer subsequent to purchase constituting adventure in the nature of trade—Income Tax Act 1952, ss 123(1) (Sch D Case 1) 526(1). **Taylor v Good (Inspector of Taxes)** [1974] 1 1137, CA.

Transactions in endowment policies—Purchase of endowment policies on other people's lives—Purchase made with intention of providing ascertained annual sums—No intention to sell policies—Realisation of policies—Whether transactions represented 'adventure or concern in the nature of trade'—Income Tax Act 1918, s 237, Sch D, Case I. **Barry v Cordy (Inspector of Taxes)** [1946] 2 396, CA.

Debts—

Valuation. *See* Computation of profits—Trade debts—Valuation, *ante*.

Discontinuance. *See* Discontinuance of trade, *ante*.

Executors—

Partnership business—Dealing in land—Death of partner—Realisation of estate—Postponement of account until particular development completed—Whether executors having agreed to carry on business. **Marshall's Executors, Hood's Executors and Rogers v Joly** [1936] 1 851, KBD.

Farming. *See* Farming, *ante*.

Isolated transaction—

Adventure in the nature of trade. *See* Trade—Adventure in nature of trade—Isolated transaction, *ante*.

Profits. *See* Profits—Isolated transaction, *ante*.

Liquidator—

Sale in course of liquidation. *See* Trade—Sale in course of liquidation, *post*.

Trade carried on by liquidator—Company in liquidation—Contracts entered into by company before liquidation performed by agreement by another company—Part of profits arising from performance of contracts paid to company in liquidation—Whether trade carried on by other company on behalf of liquidator—Whether liquidator liable to be taxed on profits made. **Baker (Liquidator of First National Pathé Ltd) v Cook (Inspector of Taxes)** [1937] 3 509, KBD.

Loss relief. *See* Loss relief—Trade, *ante*.

Meaning—

Operations of commercial character involving dealings with other people—Taxpayer receiving or entitled to profits arising from trade—Profits from dealings in or developing land—Tax avoidance scheme—Taxpayer not himself dealing in or developing land—Taxpayer receiving benefit of tax saving—Taxpayer implementing scheme through medium of companies under his control—Development of land by companies—Effect of scheme to divert companies' prospective profits from development into hands of trustees of taxpayer's family settlement as a tax-free capital sum—Whether sum received by trustees a profit arising from an adventure in nature of trade carried out by taxpayer—Income Tax Act 1952, ss 122, 123(1) (Sch D, Case I), 526(1). **Ransom (Inspector of Taxes) v Higgs** [1974] 3 949, HL.

Mutuality principle. *See* Profits—Mutuality principle, *ante*.Profits of trade. *See* Profits, *ante*.

Sale in course of liquidation—

Sale of asset by liquidator—Parent rights—Agreement by company to sell parent rights—Company going into liquidation—Proceeds of sale distributed to shareholders—Whether sale carried out by liquidator in course of carrying on company's trade. **Wilson Box (Foreign Rights) Ltd (in liquidation) v Brice (Inspector of Taxes)** [1936] 3 728, CA.

Separate traders—

New trade or extension of old—Company manufacturing gas appliances and chemical plant—Commencing buying, selling and assembling electrical food mixers. **Cannon Industries Ltd v Edwards (Inspector of Taxes)** [1966] 1 456, ChD.

Succession to trade. *See* Succession to trade, *ante*.Trading receipts. *See* Profits—Trading receipts, *ante*.Woodlands. *See* Woodlands—Trading activities, *post*.

Trade receipts—

Profit—

Profit from sale of land—Capital or income—Tenants in common under gift in will—Purchase by one tenant of other tenant's share—Sale of portion of land in order to raise money for purchase of share—Profit made from sale—Whether land acquired for purpose of profit-making by sale—Whether profit from carrying out of profit-making undertaking or scheme—Whether transaction adventure in the nature of trade—Income Tax and Social Services Contribution Assessment Act 1936-1963, s 26(a). **McClelland v Commissioner of Taxation of the Commonwealth of Australia** [1971] 1 969, PC.

Trade union—

Exemption. *See* Exemption—Trade union, *ante*.

INCOME TAX (cont)

- Trading receipts. *See* Profits—Trading receipts, *ante*.
- Transaction in securities—
 - Tax advantage. *See* Tax advantage—Transaction in securities, *ante*.
- Transfer of assets—
 - Settlement. *See* Settlement—Meaning—Transfer of assets, *ante*.
- Transfer of trade—
 - Discontinuance. *See* Discontinuance of trade—Transfer of trade, *ante*.
- Travelling expenses—
 - Deduction from emoluments. *See* Emoluments from office or employment—Expenses wholly, exclusively and necessarily incurred—Travelling expenses, *ante*.
 - Deduction in computing profits. *See* Deduction in computing profits—Travelling expenses, *ante*.
- Tribunal—
 - Duty to hear parties etc. *See* Natural justice (Income tax tribunal—Duty to hear parties etc).
- Under-deduction of tax—
 - Royalties—
 - Omission to deduct tax—Recovery—Payment of royalties not brought into charge—Payment made before passage of annual Finance Act—Whether payers entitled to recover tax—Provisional Collection of Taxes Act 1913—Income Tax Act 1918, s 211(2), All Schedules Rules, r 21. *Nesta Ltd v Wyatt* [1940] 4 217, KBD.
- Undistributed income—
 - Actual income from all sources—Balancing charge—195910053
 - Actual income from all sources—
 - Balancing charge—Voluntary liquidation—Balancing charge equal to excess of sale price of plant and machinery over written down value for income tax purposes—Whether balancing charge should be included in actual income—Income Tax Act 1952, ss 245, 248(1), 255(3), 292(1)(3), 323(4). *Inland Revenue Comrs v Wood Bros (Birkenhead) Ltd (in liquidation)* [1959] 1 53, HL.
 - Adequacy of distribution—
 - Repayment of capital—Capital issued otherwise than for adequate consideration—Surplus applied by revaluation of capital by paying up in full new ordinary shares—Shares issued by way of capitalisation to holders of existing ordinary shares—Finance Act 1922, s 21(1), as amended by Finance Act 1927, s 31(1), and Finance Act 1936, s 19(4). *Inland Revenue Comrs v Thornton, Kelley & Co Ltd* [1957] 1 650, ChD.
 - Apportionment—
 - Apportionment of actual income of relevant year—Actual income meaning income actually received—Sub-apportionment of excess of apportioned sum over 'actual income from all sources' of company—Dividend received in relevant year, but appropriated in accounts of prior year to other purposes, not deductible in computing excess—Income tax Act 1952, ss 245, 254(1). *Princes Investments Ltd v Inland Revenue Comrs, Clore v Inland Revenue Comrs* [1967] 2 238, CA.
 - Exemption. *See* Undistributed income—Exemption from apportionment provisions, *post*.
 - Interests of members in actual income—Apportionment in accordance with the respective 'interests' of the members—Shareholders selling all their shares before end of accounting period to a company not subject to apportionment provisions—Whether original shareholders had any interest after end of accounting period for purposes of apportionment provisions—Whether apportionment valid—Income Tax Act 1952, s 245, s 248(1). *CHW (Huddersfield) Ltd v Inland Revenue Comrs* [1963] 2 952, HL.
 - Members who would not have received income in event of distribution—Preference shareholders entitled to surplus assets on winding-up—Direction and apportionment by commissioners—Basis of apportionment—Interests of the members—Interest in capital assets—Limitation of time for direction—Finance Act 1922, s 21(1), (7), Sch I, paras 4, 8, 9—Finance Act 1928, s 18—Finance Act 1937, s 14(3), s 31(4). *FPH Finance Trust Ltd (in liquidation) v Inland Revenue Comrs* [1945] 1 492, HL.
 - Sub-apportionments—Notice—Failure to give notice of sub-apportionments to company given surtax direction—Effect—Income Tax Act 1952, s 248(1), (2), (3), s 254(3), (4), (5). *Princes Investments Ltd v Inland Revenue Comrs* [1967] 2 238, CA.
 - Close company. *See* Close company, *ante*.
 - Company under control of not more than five persons—
 - Person—Principal and nominee—Treatment of principal and nominee as single person—Income Tax Act 1952, s 256(1)(3). *Morrisons Holdings Ltd v Inland Revenue Comrs* [1966] 1 789, ChD.
 - Computation of income for apportionment—
 - Allowances—Maintenance, repairs, insurance and management—Deduction on five years' average cost or relevant year's expenditures—Income Tax Act 1952, s 101(1), ss 245, 248, 255(3). *Cadogan Settled Estates Co (in liquidation) v Inland Revenue Comrs* [1969] 2 878, ChD.
 - Recomputation—Claim for refund of profits tax—Resulting increase of income—Power to issue further apportionment—Income Tax Act 1952, ss 245, 248(1)(2), 255(3)—Finance Act 1952, s 68(2)—Finance Act 1947, s 31(2). *Cadogan Settled Estates Co (in liquidation) v Inland Revenue Comrs* [1969] 2 878, ChD.
 - Direction by commissioners—
 - Condition precedent—Intimation by commissioners to company—Whether intimation a condition precedent to direction—Finance Act 1928, s 18(3). *Star Entertainments Ltd v Inland Revenue Comrs* [1942] 2 33, CA.

INCOME TAX (cont)

Undistributed income (cont)—

Distribution—

Reasonable time after end of accounting period—Company becoming subsidiary company towards end of accounting period—Apportionment on time basis—Shareholders ceasing to be members before end of accounting period—Dividend declared after previous decision not to declare dividend—Whether distribution within reasonable time after the accounting period—Income Tax Act 1952, s 245, s 256(4). *CHW (Huddersfield) Ltd v Inland Revenue Comrs* [1963] 2 952, HL.

What constitutes distribution—Dividend—Dividend paid by cheque on condition that sum paid be lent to payer—No genuine distribution of income. *Inland Revenue Comrs v Marbob Ltd* [1939] 3 309, KBD.

Exemption from apportionment provisions—

Company in which public substantially interested—Public—Exclusion of relatives, nominees etc of persons having control, when determining whether public substantially interested—Choice of shareholdings by Revenue—Settlements—Relatives—Whether trustees or executors as shareholders persons interested in shares—Income Tax Act 1952, s 256(1)(3) (5). *Inland Revenue Comrs v Park Investments Ltd* [1966] 2 785, CA.

Company in which public substantially interested—Public—Meaning—Members of company not in control—Controlling interest in company—Percentage of voting power—Taxpayer holding 74 per cent of voting shares—Taxpayer's brother holding almost all balance—Whether brother member of public—Income Tax Ordinance 1940 (Ordinance No 8 of 1940 of the Uganda Protectorate), s 21(2). *Comr of Income Tax v Bjordal* [1955] 1 401, PC.

Company in which public substantially interested—Quotation in official list of stock exchange—Shares held by relative of person controlling company—Shares not quoted among official quotations of stock exchange—Subject of dealings thereon and mentioned in list of business done—Whether relative a member of public—Whether shares 'quoted in the official list' of stock exchange—Finance Act 1922, s 21—Finance Act 1927, s 31—Finance Act 1936, s 19(2)(a). *Tatem Steam Navigation Co Ltd v Inland Revenue Comrs* [1941] 2 616, CA.

Company in which public substantially interested—Relatives—Exclusion from 'public'—Beneficiaries under settlements of shares—Beneficiaries including relatives and non-relatives—Whether settled shares held beneficially for the 'public'—Income Tax Act 1952, s 256(1)(5). *Morrisons Holdings Ltd v Inland Revenue Comrs* [1966] 1 789, ChD.

Subsidiary company—Control—Control by reference to beneficial ownership of shares and control not by reference thereto contrasted—Joint ownership of share with controlling voting power—Voting rights in company whose name stands first on share register—Finance Act 1922, s 21(6)—Finance Act 1936, s 19(1)—Finance Act 1937, s 14(1). *Inland Revenue Comrs v Harton Coal Co Ltd (in liquidation)* [1960] 3 48, ChD.

Subsidiary company—Subsidiary of foreign company—Whether a 'subsidiary company'—Finance Act 1922, s 21(6)—Finance Act 1927, s 31(3). *Barrowford Holdings Ltd v Inland Revenue Comrs* [1939] 4 380, CA.

Income available for distribution—

Current requirements of business—Income not applied or applicable to current requirements of company's business—Sum applied out of income in or towards payment for first business, undertaking or property acquired by company—Meaning of 'income'—Profits or gross receipts—Property dealing company—Sum expended on first acquisition of property—Property resold at a profit exceeding amount of purchase price—Whether purchase price paid 'out of the income' of the company—Income Tax Act 1952, s 246(2). *Hanstead Investments Ltd v Inland Revenue Comrs* [1975] 2 1066, CA.

Liquidation of company—

Accounts not made up—Sale of business—Voluntary liquidation—Accounts not made up until after sale—Liquidation having effect that retention of profits no longer reasonable—Finance Act 1922, s 21—Finance Act 1927, s 31. *Austins of East Ham Ltd v Inland Revenue Comrs* [1937] 4 275, KBD.

Income available for distribution—Income for broken period before winding-up resolution—Whether income necessarily income unreasonably withheld from distribution—Finance Act 1927, s 31(4)—Finance Act 1922, s 21(1), proviso. *A & J Mucklow Ltd v Inland Revenue Comrs* [1954] 2 508, CA.

Member of company—

Husband of member—Liability of husband to apportionment—Apportionment to members—Member a married woman living with her husband—Whether husband liable to apportionment—Income Tax Act 1918, All Schedules Rules, r 16, proviso (1)—Finance Act 1922, s 21(1)(2)(3)(7) (as amended by Finance Act 1927, s 31(2))—Finance Act 1927, s 42(7)—Finance Act 1936, s 19(5). *Inland Revenue Comrs v Barclays Bank Ltd* [1951] 1 1, HL.

Person having share or interest in capital or profits or income—Debenture stockholders—Whether debenture stockholders members—Income Tax Act 1952, ss 245, 255(1), (2), 256(2). *Inland Revenue Comrs v R Woolf & Co (Rubber) Ltd* [1961] 2 651, CA.

Person having share or interest in capital or profits or income—Permanent director with option to take up shares—Whether a member—Finance Act 1922, s 21(7)—Finance Act 1937, s 14(3). *Inland Revenue Comrs v Tring Investments Ltd* [1939] 2 105, CA.

Reasonable part of income not distributed—

Shares charged to bank—Covenant to pay all dividends received from shares to bank—Company having no other income—Whether directors acted unreasonable in not distributing income—Finance Act 1922, s 21(1). *Fattorini Ltd v Inland Revenue Comrs* [1942] 1 619, HL.

Relief—

Double assessment—Apportionment—Relief on subsequent distribution—Extent of relief—Direction by commissioners—Subsequent distribution exceeding profits available for distribution in relevant years—Income Tax Act 1952, ss 245, 249(5). *Inland Revenue Comrs v Hudspeth* [1959] 2 752, ChD.

INCOME TAX (cont)

- Valuation of property—
 - Additional assessment. *See* Additional assessment—Valuation of property, *ante*.
- Vehicles—
 - Capital allowances. *See* Capital allowances—Vehicles, *ante*.
- Victoria. *See* Victoria (Income tax).
- Vocation—
 - Profits of vocation. *See* Profits—Profession or vocation, *ante*.
- Voluntary payment—
 - Employee. *See* Emoluments from office or employment—Voluntary payment, *ante*.
 - Profit not otherwise charged to tax. *See* Profits—Profits not otherwise charged—Voluntary payment, *ante*.
 - Trading receipt. *See* Profits—Trading receipts—Voluntary payment, *ante*.
- Wear and tear—
 - Balancing charge. *See* Income tax (Balancing charge—Wear and tear).
- Machinery or plant—
 - Capital allowances. *See* Capital allowances—Machinery or plant—Wear and tear, *ante*.
 - Deduction in computing profits. *See* Deduction in computing profits—Wear and tear of machinery or plant, *ante*.
- Wilful default—
 - Additional assessment.
 - See* Additional assessment—Fraud or wilful default, *ante*.
- Woodlands—
 - Trading activities—
 - Sawmill—Preparation of timber for market—Respects in which work extending beyond such preparation—Taxpayer also trading as timber merchant—Whether operation assessable under Sch D—Income Tax Act 1952, Schs B, D. *Collins v Fraser (Inspector of Taxes)* [1969] 3 524, ChD.
 - Sawmill—Timber worked up before sale—Timber grown on estate and timber bought outside worked up and sold—Whether treating and sale of timber grown on estate carrying on of a trade—Income Tax Act 1918, Schs A, B and D. *Christie v Davies (Inspector of Taxes)* [1945] 1 370, KBD.
- Year—
 - Appropriate year of assessment. *See* Assessment—Appropriate year, *ante*.
 - Attribution of outgoings. *See* Deduction in computing profits—Appropriate year, *ante*.
 - Emoluments—
 - Year of assessment. *See* Emoluments from office or employment—Year of assessment, *ante*.
- Yearly interest of money. *See* Interest—Yearly interest of money, *ante*.

INCORPORATION OF TERMS

- Contract. *See* Contract (Incorporation of terms).

INCORRIGIBLE ROGUE

- See* Criminal law (Incorrigible rogue).

INCUMBENT

- See* Ecclesiastical law (Incumbent).

INCURABLES

- Home for incurables—
 - Whether hospital. *See* National Health Service (Hospital—Institution for the reception and treatment of persons—Treatment—Home for incurables).

INDECENCY

- Act outraging public decency. *See* Criminal law (Public decency—Act outraging public decency).
- Assault—
 - Indecent assault. *See* Criminal law (Indecent assault).
- Evidence of similar offences. *See* Criminal evidence (Improper conduct of accused on other occasions—Similar offences—Indecency).
- Gross indecency. *See* Criminal law (Gross indecency).
- Mental disorder—
 - Restriction order. *See* Sentence (Hospital order—Restriction order).
- Performances and exhibitions. *See* Criminal law (Disorderly house—Indecent performances and exhibitions).
- Publication. *See* Criminal law (Obscene publications—Indecent or obscene).
- Unsolicited publications describing sexual techniques. *See* Criminal law (Unsolicited publications—Publications describing or illustrating human sexual techniques).

INDECENT ASSAULT

- See* Criminal law (Indecent assault).

INDECENT BEHAVIOUR

- Church. *See* Ecclesiastical law (Church—Indecent behaviour).

INDECENT EXPOSURE

- See* Criminal law (Indecent exposure).

INDEMNITY

- Breach of statutory duty—
 - Contract—
 - Factory building contract—Indemnity against every 'claim...under any statute or at common law...arising...from any cause other than negligence'—Whether 'negligence' included breach of statutory duty. *Murfin v United Steel Companies Ltd (Power Gas Corp Ltd, third party)* [1957] 1 23, CA.

INDEMNITY (cont)**Building contract—**Negligence. *See* Negligence—Building contract, *post*.**Company—**Indemnity between former directors. *See* **Company** (Winding-up—misfeasance—Indemnity claim against one respondent by other respondents).**Contract between builders and scaffolding contractors—****Personal injuries—**Indemnity against liability—Contractors indemnifying builders against liability in respect of personal injuries arising out of execution of work by reason of any act, default or omission of contractors—Whether liability or injuries had to be causally connected with act, default or omission. **Smith v Vange Scaffolding and Engineering Co Ltd** [1970] 1 249, QBD.**Contract of carriage—**Negligence. *See* Negligence—Contract of carriage, *post*.**Contractor and sub-contractor—**Workmen's compensation. *See* **Workmen's compensation** (Indemnity—Contractor and sub-contractor).**Costs—****Minority shareholder—**Representative action. *See* **Company** (Minority shareholder—Representative action—Costs—Indemnity).**Court order for indemnity—****Appeal—**Judgment against two defendants—Order against one defendant to indemnify other defendant—Successful appeal by that defendant against judgment only—Effect on order for indemnity. **Woods v W H Rhodes & Son Ltd** [1953] 2 658, CA.**Guarantee—**Generally. *See* **Guarantee**.**Guarantee distinguished—****Hire-purchase agreement by infant in respect of motor car—**Agreement void—Document signed by third party undertaking to indemnify hire-purchase finance company against any loss arising out of hire-purchase agreement—Whether valid as a contract of indemnity or void as a guarantee of a void contract. **Yeoman Credit Ltd v Latter** [1961] 2 294, CA.**Guarantor—**Rights against debtor. *See* **Guarantee** (Surety—Rights against debtor).**Hire-purchase. *See* Hire-purchase (Indemnity).****Hire-purchase agreement. *See* Hire-purchase (Indemnity).****Hiring—****Defect in chattel hire—**Exclusion of any implied warranty. *See* **Hire** (Implied warranty of fitness—Hire of specific chattel—Express obligations of hirers to provide competent operator of, and to service chattel which was a crane—Defect aggravated and remaining undetected because of incompetent operator and hirer's failure to service crane).**Loss howsoever caused—**Loss arising out of hiring—Indemnity of crane owners against all damage injury or loss 'howsoever caused' arising directly or indirectly out of or in connexion with the hiring or use of a crane—Hirers' employee injured when wagon that he was loading was negligently moved forward by crane owners' servant—No negligence by hirers, their employee, or the crane driver—Whether crane owners entitled to indemnity from hirers. **Wright v Tyne Improvement Comrs (Osbeck & Co Ltd, Third Party)** [1968] 1 807, CA.**Implied indemnity—****Promissory note—**Act done at request of another injuring third party—Government promissory note—Renewal—No express indemnity against claims under the note exacted by the government—Implied common law indemnity—Indian Securities Act 1920, ss 12, 13, 16, 21. **Secretary of State v Bank of India Ltd** [1938] 2 797, PC.**Insurance—****Motor insurance—**Person driving with consent of insured. *See* **Motor insurance** (Compulsory insurance against third party risks—Person driving with consent of insured—Indemnity of authorised driver).**Negligence—****Building contract—**Liability to specialist contractor—Building owner negligent as well as building contractor, and both liable to specialist contractor for damage to his property on the site—Whether indemnity clause in building contract should be construed so as not to extend to building owner's liability for negligence. **AMF International Ltd v Magnet Bowling Ltd** [1968] 2 789, QBD. **Walters v Whessoe Ltd and Shell Refining Co Ltd** [1968] 2 816, CA.**Contract of carriage—**Contract between trader and carrier—Trader to keep carrier indemnified against 'all claims or demands whatsoever—Van and driver hired to trader by carrier—Trader having exclusive use of van and driver—Loss of goods belonging to trader's customer whilst in van—Loss due to driver's negligence—Customer recovering damages from carrier—Whether indemnity extending to claims which succeed on ground of carrier's negligence—Road Haulage Association Conditions of Carriage (1967 revision), cl 3(4). **Gillespie Bros & Co Ltd v Roy Bowles Transport Ltd** [1973] 1 193, CA.**Contract to discharge ship—**Agreement by shipowners to indemnify stevedores against claims for personal injury by employees—Stipulation against use of 'improper or inadequate gear'—'Gear'—Ship's gear—Use by stevedore's foreman of defective ship lampholder for unsuitable purpose—Liability of shipowners to injured employee of stevedores. **T F Maltby Ltd v Pelton Steamship Co Ltd** [1951] 2 954, KBD.

INDEMNITY (cont)

Negligence (cont)—

Licensor—

Licence to occupy railway premises—Indemnity by licensee against liability for personal injury, except when caused solely by licensor's negligence, and 'which, but for the permission hereby granted, would not have arisen'—Accident to servant of licensees—Accident due partly to negligence of licensor's servants and partly to negligence of licensee's servant—Whether licensor entitled to indemnity. **Warrellow v Chandler & Braddick (G F Lester & Co (Birmingham) Ltd, Third Party)** [1956] 3 305, Assizes.

Railway company—

Railway company granting privilege to employee of wagon repairing company to enter on railway company's property—Repairing company undertaking to indemnify railway company against damages, etc, for injury to repairing company's employees—Requisition of railways and wagons by government during war—Whether indemnity Undertaking still effective. **Henson v London & North Eastern Railway Co and Coote & Warren Ltd (Third party)** [1946] 1 653, CA.

Partner—

Indemnity of outgoing partner. *See* **Partnership** (Dissolution—Indemnity of outgoing partner).

Professional indemnity—

Insurance. *See* **Insurance** (Liability insurance—Professional indemnity insurance).

Rectification of land register—

Loss suffered by reason of rectification. *See* **Land registration** (Rectification of register—Loss suffered by reason of rectification—Indemnity).

Sale of business—

Indemnity in respect of tax on sale—

Liabilities in relation to business—Purchaser agreeing to discharge all the liabilities of the vendor 'in relation to' the business—Vendor continuing business as agent for the purchaser and entitled to be indemnified accordingly—Vendor assessable to income tax and surtax by reason of profits made on sale to purchaser, and by reason of profits while carrying on business as purchaser's agent—Whether vendor entitled to be indemnified in respect of such tax. **Re Hollebone's Agreement** [1959] 2 152, CA.

Sale of land—

Indemnification of vendor against tenant's claim. *See* **Sale of land** (Condition—Indemnification of vendor against tenant's claim).

Subrogation—

Contract of indemnity—

Right of indemnifier to be subrogated to rights of indemnified—Nature of right—Right as an incident to all contracts of indemnity—Exclusion of right—Implied exclusion—Circumstances in which right will be excluded—Contract between firm of cleaners and factory owner to clean factory—Contract containing indemnity by cleaners to indemnify owner against loss or damages caused by negligence of factory owner's servants—Cleaners' servant injured at factory by negligence of factory owner's servant—Indemnity sought by factory owner against cleaners for liability to cleaners' servant—Cleaners seeking to be subrogated to owner's right of action against his own negligent servant. **Morris v Ford Motor Co Ltd** [1973] 2 1084, CA.

Tenancy agreement—

Indemnity by tenant—

Loss arising from tenancy—Loss 'which but for the tenancy...would not have arisen'—Premises adjacent to railway—Fire caused by locomotive—Damage to goods—Applicability of indemnity clause. **John Lee & Son (Grantham) Ltd v Railway Executive** [1949] 2 581, CA.

Vicarious liability—

Indemnity of master for servant's negligence. *See* **Vicarious liability** (Master and servant—Indemnity of master for servant's negligence).

INDEMNITY CLAUSE

Lease. *See* **Landlord and tenant** (Lease—Indemnity clause).

INDEPENDENT BROADCASTING AUTHORITY

Statutory duty. *See* **Broadcasting** (Television—Authority—Statutory duty—Independent Broadcasting Authority).

INDEPENDENT CONTRACTOR

Building—

Application of building regulations. *See* **Building** (Building regulations—Application—Independent contractor).

Building contract—

Limitation of action—

Concealment of right of action by fraud—Concealment by agent. *See* **Limitation of action** (Concealment of right of action by fraud—Concealment by agent).

Occupier's liability—

Duty to independent contractor. *See* **Occupier's liability** (Duty to independent contractor).

Liability for independent contractor. *See* **Occupier's liability** (Liability for independent contractor).

Vicarious liability. *See* **Vicarious liability** (Independent contractor).

INDIA

Criminal evidence—

Admissions and confessions—

Murder—Statement made to police by accused while in custody—Admissibility in evidence—Code of Criminal Procedure, s 162(1)—Code of Criminal Procedure Amendment Act (India) 1923, s 34. **Pakala Narayana Swami v King-Emperor** [1939] 1 396, PC.

INDIA (cont)

Criminal law—

Conspiracy to murder—

Appeal to court of judicial commissioner North West Frontier Province—Appeal heard by judge sitting alone—Evidence of conspiracy—Statement by fellow-conspirator after conspiracy ended—Indian Penal Code, s 302/120B—North West Frontier Province Courts Regulation 1931, s 7—Indian Evidence Act, s 10. **Mirza Akbar v King-Emperor** [1940] 3 585, PC.

Extradition—

Surrender of prisoner to native state—

Exclusion of writ of habeas corpus—India Extradition Act 1903 (No 15 of 1903) s 7—Code of Criminal Procedure 1898 (No 5 of 1898), ss 75, 491, 561A—Government of India Act 1935, s 223—Appellate Side Rules of the Madras High Court, rr 2, 2A. **Matthen v Trivandrum District Magistrate** [1939] 3 356, PC.

Income tax—

Charity—

Object of general public utility—Policy of newspaper—Duty of commissioner—Indian Income Tax Act 1922 (No 11 of 1922), s 4(3)(i). **Tribune Press, Lahore (Trustees) v Income Tax Comr, Punjab, Lahore** [1939] 3 469, PC.

Jurisdiction—

Appeals from High Court of India—

Case involving interpretation of Government of India Act 1935, or order made thereunder—Certificate that case involves such interpretation—Question not considered by High Court—Government of India Act 1935, ss 205, 293—Government of India (Adaptation of Indian Laws) Order in Council 1937 (S R & O 1937 No 269). **Mackay v Forbes** [1939] 4 368, PC.

Case not involving interpretation of Government of India Act 1935—Whether High Court should make order withholding certificate that case does not involve such interpretation—Government of India Act 1935, s 205. **Punjab Co-operative Bank Ltd, Amritsar v Income Tax Comr, Lahore** [1940] 4 87, PC.

Mortgage by deposit of deeds—

Accompanying memorandum—

Memorandum referring to money hereby secured and containing power of sale—Whether memorandum or operative security—Registration—Transfer of Property Act 1882 (No 4 of 1882), s 59—Indian Registration Act 1908 (No 16 of 1908), ss 17(1)(b), 49(c). **Sir Hari Sankar Paul v Kedar Nath Saha** [1939] 2 737, CA.

North-West Frontier Province—

Compulsory purchase—

Resumption of possession of cantonment—Appurtenances—Compensation—Land Acquisition Act (No 1 of 1894), ss 4, 6, 9, 11, 18. **Hari Chand v Secretary of State** [1939] 3 707, PC.

Public authorities—

Acts of state—

Cession of territory—Title to land—Right of government to refuse to recognise prior title—Recourse to municipal courts. **Secretary of State v Sardar Rustam Khan** [1941] 2 606, PC.

Rangoon—

Conflict of laws—

Succession—Buddhist—Chinese Buddhist domiciled in Burma—Burma Laws Act (xiii of 1898), s 13. **Tan Ma Shwe Zin v Khoo Soo Chong** [1939] 4 43, PC.

State of emergency—

Governor-General sole judge as to state of emergency—

Ordinance setting up special criminal courts—Applicability to province left to discretion of Provincial Government—Validity of Ordinance—Ordinance intra vires the Governor-General—Government of India Act 1935, ss 102, 223, 317, Sch 9, para 72—India and Burma (Emergency Provisions) Act 1940, s 1(3)—Ordinance No 11, 1942. **King-Emperor v Benoari Lal Sarma** [1945] 1 210, PC.

INDICTABLE OFFENCE

Compensation order. *See* **Sentence** (Compensation Order—Indictable offence).

Legal aid—

Representation by counsel. *See* **Legal aid** (Criminal cases—Representation by counsel—Indictable offence).

Magistrates—

Committal for sentence. *See* **Magistrates** (Committal for sentence—Sentence for indictable offence tried summarily).

Summary trial for indictable offence. *See* **Magistrates** (Summary trial for indictable offence).

INDICTMENT

Addition of new counts—

Committal for non-existent offence—

Validity of added charges—Committal for trial on charge of shooting with intent to resist lawful arrest—Indictment containing in addition counts of shooting with intent to cause grievous bodily harm and of using firearm to resist lawful apprehension—Committal charge a nullity—Validity of conviction of added offence—Administration of Justice (Miscellaneous Provisions) Act 1933, s 2(2), proviso (i). **R v Lamb (Thomas)** [1969] 1 45, CA.

Copy to accused. *See* **Copy of indictment**—Supply to accused—Addition of counts, *post*.

INDICTMENT (cont)

Addition of new counts (cont)—

Count founded on facts or evidence before examining justices—

Co-accused committed in separate committal proceeding—Co-accused included in indictment against appellant—Separate counts against co-accused and appellant—Counts against co-accused not based on evidence disclosed in committal proceedings against appellant—Whether indictment valid—Administration of Justice (Miscellaneous Provisions) Act 1933, s 2(2)(as amended by the Criminal Appeal Act 1964, s 5, Sch 2). **R v Groom** [1976] 2 321, CA.

Similarity to committal charge—

Graver offences added—Offence charged triable summarily or on indictment—Election by accused for trial by jury—Ill-treatment of child—Charges of causing and inflicting grievous bodily harm added on indictment—Whether additional counts valid—Administration of Justice (Miscellaneous Provisions) Act 1933, s 2(2), proviso (i). **R v Roe, R v Roe** [1967] 1 492, CA.

Substitution—

Summary offence charged—Election by offender for trial by jury—Committal for trial for summary offence—Substitution in indictment of different offence—Whether substitution permissible—Summary Jurisdiction Act 1879, s 17(1)—Administration of Justice (Miscellaneous Provisions) Act 1933, s 2(2)(a)(i). **R v Phillips** [1953] 1 968, CCA.

Summary offence—

Election by accused to be tried by jury—New counts added on indictment in respect of offences not triable on indictment except by election of accused—New counts founded on evidence disclosed in examination before justices—Addition of counts permissible so long as not unfair or oppressive—Administration of Justice (Miscellaneous Provisions) Act 1933, s 2(2), proviso (i). **R v Nisbet** [1971] 3 307, CA.

Transfer of case—

Addition after transfer—Validity—Committal to quarter sessions for trial—No indictment preferred before quarter sessions—Remitted to assizes for trial—Indictment preferred at assizes containing charge not before quarter sessions—Accused lawfully indicted—Administration of Justice (Miscellaneous Provisions) Act 1933, s 2(1). **R v Wilson** [1967] 2 1088, CA.

Alternative courts—

Larceny or receiving. *See* **Criminal law** (Larceny—Indictment—Alternative courts).

Amendment—

Amendment after arraignment—

Circumstances in which permissible—Prejudice to defendant—Addition of new counts charging defendants individually with offences with which they had been charged jointly—Indictments Act 1915, s 5(1). **R v Johal, R v Ram** [1972] 2 449, CA.

Effect of amendment—New offence or correction of misdescription—Charge of obtaining money by false pretences—Evidence that cheques, not money, obtained—Amendment to one count substituting 'obtaining valuable security'—Amendment to one count substituting 'procuring delivery of valuable security' to a third party—Whether amendments correcting misdescription of original offence or charging new offence—Indictments Act 1915, s 5(1). **R v Harden** [1962] 1 286, CCA.

Amendment before arraignment—

Injustice to defendant—New count added before arraignment—No injustice—Validity. **R v Hall** [1968] 2 1009, CA.

New count charging correct offence shown by depositions—No injustice caused to prisoner—Whether amendment properly allowed—Indictments Act 1915, s 5(1). **R v Martin** [1961] 2 747, CCA.

Receiving stolen goods—Amendment of count by substituting receiving eight pictures for three pictures—Plea of guilty by accused to amended count—No injustice caused to accused—Whether amendment valid—Indictments Act 1915, s 5(1). **R v Hall** [1968] 2 1009, CA.

False pretences—

Charge of obtaining money by false pretences—Evidence that cheques, not money, obtained—Amendment to meet evidence. **R v Smith** [1950] 2 679, CCA.

Handling stolen goods. *See* **Criminal law** (Handling stolen goods—Indictment—Amendment).

Indictment not bad on its face—

Application—Duty of counsel—Amendment of matter of description—Charge of obtaining money by false pretences—Evidence that cheques, not money, obtained—Amendment to meet evidence—Responsibility of counsel for accuracy of indictment—Time to apply for amendment—Indictments Act 1915, s 5(1). **R v Smith** [1950] 2 679, CCA.

New offence—

Amendment alleging new offence—No application to quash at hearing—Appeal—Administration of Justice (Miscellaneous Provisions) Act 1933, s 2. **R v Cleghorn** [1938] 3 398, CCA.

Assisting offender. *See* **Criminal law** (Assisting offender—Indictment).

Bankruptcy offence—

Form. *See* **Bankruptcy** (Offences—Undischarged bankrupt obtaining credit—Obtaining credit to extent of 10 or upwards—Indictment—Form).

Bill of indictment. *See* **Criminal law** (Bill of indictment).Capital murder. *See* **Criminal law** (Murder—Capital murder—Indictment).Causing death by dangerous driving. *See* **Road traffic** (Dangerous driving—Causing death by dangerous driving—Indictment).

Committal supporting indictment—

Indictment quashed following committal—

Effect—Second indictment—Committal capable of supporting only one indictment—Direction of Court of Appeal or High Court judge necessary for second indictment—Leave of circuit judge insufficient—Administration of Justice (Miscellaneous Provisions) Act 1933, s 2(2)(b). **R v Thompson, R v Clein** [1975] 2 1028, CA.

INDICTMENT (cont)

- Company—
 - Fraudulent trading—
 - Duplicity. *See* Duplicity—Fraudulent trading, *post*.
 - Written order—
 - Leave to prefer against company—Necessity for written order—Duty of clerk of assize before signing bill—Duty to ensure proper order made by magistrate. **R v H Sherman Ltd** [1949] 2 207, CCA.
- Consent certificate—
 - Discharge of juror—
 - Discharge during trial—Consent certificate to be attached to indictment. **R v Browne** [1962] 2 621, CCA.
- Conspiracy—
 - Auction—
 - Illegal bidding agreement—Competency of proceedings on indictment. *See* Auction (Illegal bidding agreement—Conspiracy—Indictment).
 - Duplicity. *See* Duplicity—Conspiracy, *post*.
 - Inclusion of charge—
 - Specific offences also charge—Desirability of including conspiracy charge—Verdict—Guilty of conspiracy, but Not Guilty on specific charges—Unreasonable verdict—Criminal Appeal Act 1907, s 4. **R v Cooper and Compton** [1947] 2 701, CCA.
- Conspiracy. *See* Criminal law (Conspiracy—Indictment).
- Conviction of lesser offence—
 - Assault with intent to prevent apprehension—
 - Evidence disclosing proposed apprehension unlawful—Whether open to jury to convict of common assault—Offences against the Person Act 1861, s 38. **R v Wilson** [1955] 1 744, CCA.
- Copy of indictment—
 - Supply to accused—
 - Addition of counts—Notice—Counts based on fresh facts included in indictment after committal—Duty of police to inform accused of fresh counts as soon as it is decided to formulate them—Duty of defence to obtain copy of indictment as soon as possible from clerk of assize—Convictions quashed where accused had only six days' notice of additional counts in indictment and was unable to call alibi witness—Indictments Act 1915, Sch 1, r 13. **R v Dickson** [1969] 1 729, CA.
- Count—
 - Addition. *See* Addition of new counts, *ante*.
 - Several counts—
 - Joinder of charges. *See* Joinder of charges—Several counts, *post*. Joinder of charges—Several counts, *post*.
 - Severance of counts—
 - Shortening of trial. *See* Criminal law (Trial—Shortening of trial—Severance of counts).
- Crown Court—
 - Supervisory jurisdiction of High Court. *See* Crown Court (Supervisory jurisdiction of High Court—Trial on indictment).
- Demurrer—
 - Writing—
 - Insufficient evidence to support charge—Demurrer not in writing—Plea improperly upheld—Whether plea should continue to be used in criminal cases. **R v Deputy Chairman of Inner London Quarter Sessions, ex parte Metropolitan Police Comr** [1969] 3 1537, QBD.
- Departure from form of charge before examining justices—
 - Different offence—
 - Conspiracy—Charge of conspiring with named person and others unknown—Count of indictment omitting 'and with others unknown'—Whether departure justifying quashing count—Administration of Justice (Miscellaneous Provisions) Act 1933, s 2(2)(a). **R v McDonnell** [1966] 1 193, Assizes.
- Duplicity—
 - Causing death by dangerous driving. *See* Road traffic (Dangerous driving—Causing death by dangerous driving—Indictment—Duplicity).
 - Conjunctive form—
 - Offence expressed disjunctively—Charge in conjunctive form—Sending indecent or obscene print etc—Charge of sending indecent and obscene article—Whether indictment in proper form—Whether charge could be expressed disjunctively. **R v Stanley** [1965] 1 1035, CCA.
 - Offence expressed disjunctively—Charge in conjunctive form—Driving vehicle recklessly or in manner dangerous to public—Charge alleging driving recklessly and in dangerous manner—Whether count bad for duplicity or uncertainty. **R v Clow** [1963] 2 216, CCA.
 - Conspiracy—
 - Single or separate conspiracies—Count charging conspiracy—Allegation that conspiracy extending over several years—Evidence adduced by prosecution consistent with several conspiracies—Whether count bad for duplicity. **R v Greenfield** [1973] 3 1050, CA.
 - Found in public place about to commit offence—
 - Two places alleged—Accused with previous convictions charged in one count with being found in two separate places waiting for an opportunity to commit an offence—Whether indictment bad for duplicity—Prevention of Crimes Act 1871, s 7. **R v Johnson** [1945] 2 105, CCA.
 - Fraudulent trading—
 - Statute creating two offences—Fraudulent trading with intent and fraudulent trading for purpose of achieving certain objectives—Particulars of methods of carrying out one category of offence not rendering count bad for duplicity—Companies Act 1948, s 332(1), (3). **R v Inman** [1966] 3 41, CCA.

INDICTMENT (cont)

Duplicity (cont)—

Incitement to disaffection—

Endeavouring to seduce member of armed forces from his duty or allegiance to Crown—Count alleging defendant had endeavoured to seduce member of forces from 'duty or allegiance'—Whether count bad for duplicity—Incitement to Disaffection Act 1934, s 1—Indictment Rules 1971 (SI 1971 No 1253), r 7. **R v Arrowsmith** [1975] 1 463, CA.

Larceny—

Aggregate of sums charged in other counts—Count charging larceny of aggregated—Count bad aggregate for duplicity. **R v Williams** [1953] 1 1068, CCA.

Separate acts—

Single offence charged—Inducement to enter into agreement to invest money—Indictment charging in one count two statements and two promises as the inducement—Whether count bad for duplicity—Nature of offence—Prevention of Fraud (Investments) Act 1958, s 13(1)(a). **R v Linnell** [1969] 3 849, CA.

Separate offences in single count—

Charge of warehouse-breaking—Sections of statute creating separate offences—Breaking and entering and committing felony—Breaking and entering with intent—Count referring to both sections—Count bad for duplicity—Larceny Act 1916, s 26(1), s 27(2). **R v Nicholls** [1960] 2 449, CCA.

Embezzlement. *See* **Criminal law** (Embezzlement—Indictment—Alternative verdict).

False pretences. *See* **Criminal law** (False pretences—Indictment).

Form—

Common law offence—

Offence covered by words of modern statute—Indictment should be framed *contra formam statuti*. **R v Pollock and Divers** [1966] 2 97, CCA.

Form of indictment—

Evasion of prohibition on importation of prohibited goods. *See* **Customs** (Importation of prohibited goods—Evasion of prohibition—Indictment).

Making or possession of explosive under suspicious circumstances. *See* **Explosives** (Offence—Knowingly possessing explosive substance in circumstances giving rise to suspicion possession for unlawful object—Indictment—Form of indictment).

Fraudulent conversion. *See* **Criminal law** (Fraudulent conversion—Indictment).

Handling stolen goods. *See* **Criminal law** (Handling stolen goods—Indictment).

Joinder of accused—

Separate committals—

Indictment in respect of one committal already signed—Whether permissible to join counts founded on separate committals in one indictment. **Practice Note** [1976] 2 326, CA.

Joinder of charges—

Charges founded on same facts—

False pretences and obtaining credit by false pretences—Whether joinder justified—Direction to jury—Debtors Act 1869, s 13(1)—Larceny Act 1916, s 32(1). **R v Torr** [1966] 1 178, CCA.

Manslaughter and offences against property—A and B charged on one indictment with manslaughter—A, B, C, D and E charged in second indictment with offences against property—Bill indictment comprising all charges granted. **R v Smith** [1958] 1 475, CCC.

Practice—Charges which may be joined under rules should in general be joined—No rule of practice that count of murder should not be joined with other counts—Power of court to prevent abuse of process—Indictments Act 1915, Sch 1, r 1. **Connelly v Director of Public Prosecutions** [1964] 2 401, HL.

Sedition and effecting public mischief—Charges founded on same speech—Charges of making seditious speech and of effecting a public mischief contrary to common law in respect of same speech—Undesirability of charging both offences. **Joshua v Reginam** [1955] 1 22, PC.

Dissimilar offences—

Prejudice to accused—Dissimilar offences charged in one indictment—Whether prejudicial to accused—Whether separate trials should be ordered. **R v Muir** [1938] 2 516, CCA.

Motor vehicle offences—

Different offences—Prejudice to accused—Driving while disqualified for holding licence—Joinder with a different offence relating to a motor vehicle, or to driving it, permissible—If prejudicial, counsel to apply before arraignment for separate trials. **R v Andrews** [1967] 1 170, CA.

Murder—

Two counts of murder—Undesirability—Whether invalidating conviction. **R v Davis** [1937] 3 537, CCA.

Offences of same or similar character—

Nexus between offences—Relevance of considerations of law and fact—Attempted larceny and robbery with violence—Offences committed within short period of time in neighbouring public houses—Whether of 'similar' character—Indictments Act 1915, Sch 1, r 3. **Sub nom Ludlow v Metropolitan Police Comr** [1970] 1 567, HL.

Similar features establishing *prima facie* case that offences may be properly and conveniently tried together—Indictments Act 1915, Sch 1, r 3. **R v Kray** [1969] 3 941, CA.

Practice—

Murder or manslaughter counts may be joined with other counts—Prosecution to frame indictment as appropriate—Discretion of trial judge to direct that prisoner be tried separately on any one or more counts—Indictments Act 1915, s 5(3). **Practice Direction** [1964] 3 509, CCA.

Road traffic offences—

Dangerous driving—Causing death by dangerous driving—Drunk in charge—Road Traffic Act 1960, ss 1, 2, 6. **R v McBride** [1961] 3 6, CCA.

Motor vehicle offences. *See* Joinder of charges—Motor vehicle offences, *ante*.

INDICTMENT (cont)

Joinder of charges (cont)—

Same incident—

Undesirability of one and the same incident being made subject-matter of distinct charges. **R v Harris** [1969] 2 599, CA.

Series of offences—

Different transactions—Nexus—Fraud on insurers—Charges of arson, arson with intent to defraud insurers and attempting to obtain money from insurers by false pretences—Nexus of defrauding insurers present throughout—Indictments Act 1915, Sch 1, r 3. **R v Clayton-Wright** [1948] 2 763, CCA.

Series—Meaning—Whether two offences constitute series—Indictments Act 1915, Sch 1, r 3. **R v Kray** [1969] 3 941, CA.

Several counts—

Each count a separate indictment. **R v Plain** [1967] 1 614, CA.

Single accused—

Statutory rule governing joinder—Whether rule confined to joinder of charges against one accused—Indictments Act 1915, Sch 1, r 3. **R v Assim** [1966] 2 881, CCA.

Joinder of two or more accused—

Individual offences—

Circumstances in which joinder permissible—Circumstances in which several offenders charged with committing individual offences may be tried together. **R v Assim** [1966] 2 881, CCA.

Joint charge—

Acquittal of one accused—Effect—Joint charge of assault occasioning actual bodily harm—One accused acquitted for want of sufficient evidence—Jury told acquittal of one accused no bar to conviction of other accused—Other accused convicted—No evidence of joint action between two accused—Whether evidence of joint action necessary—Whether open to convict second accused as if charged with independent offence. **R v Rowlands** [1972] 1 306, CA.

Conviction of committing offence independently—Validity—Theft charged jointly of two garments—One accused pleaded guilty and convicted—Other accused found guilty of independent theft of one garment—Conviction quashed. **R v Parker** [1969] 2 15, CA.

Conviction of committing offence independently—Validity—Joint charge of wounding with intent—First accused pleaded guilty—Trial of second accused—Jury directed that no need to go into question of common purpose—Conviction of second accused on evidence of victim that second accused stabbed him—Whether open to jury to convict second accused of committing independently the offence which was the subject matter of the joint charge. **Director of Public Prosecutions v Merriman** [1972] 3 42, HL.

Conviction of committing offence independently—Validity—Charges of assault and malicious damage—Two persons convicted of joint offences—Offences committed by both independently—Whether convictions can stand. **R v Scaramanga** [1963] 2 852, CCA.

Need for charge of joint offence—Perjury—Counts for two several charges of perjury against different defendants cannot be joined in one indictment in the absence of a charge of a joint offence. **R v Leigh and Harrison** [1966] 1 687, Assizes.

Receiving stolen property—

Independent receipts—Property severally received stolen by same thief at same time—Whether joinder permissible—Accessories and Abettors Act 1861, s 6—Larceny Act 1916, s 40(3), s 44(5). **R v Tizard, R v Ruxton** [1962] 1 209, CCA.

Joint charge—

Separate trials. *See Criminal law* (Separate trials—Joint charge).

Joint indictment—

Offensive weapons. *See Criminal law* (Offensive weapons—Article intended for use for causing injury—Joint indictment).

Larceny. See Criminal law (Larceny—Indictment).

Motion to quash—

Time for making application—

Before plea. **R v Maywhort** [1955] 2 752, Assizes

Murder. See Criminal law (Murder—Indictment).

Particulars—

Accuracy—

Bankruptcy offence. *See Bankruptcy* (Offences—Undischarged bankrupt obtaining credit—Obtaining credit to extent of £10 or upwards—Indictment).

Conspiracy. *See Criminal law* (Conspiracy—Indictment—Particulars of offence).

Defect—

Particulars of offence not amended at trial—No embarrassment caused to accused—Applicability of proviso to Criminal Appeal Act 1907, s 4(1). **R v Yule** [1963] 2 780, CCA.

Omission—

Possession of explosives—Knowledge of accused—Knowingly omitted from particulars of offence—Arraignment of accused by reading particulars, but not statement, of offence—Knowledge admitted by accused at trial—No substantial miscarriage of justice—Whether indictment defective or bad—Explosive Substances Act 1883, s 4(1)—Indictments Act 1915, s 3, Sch 1, r 4. **R v McVitie** [1960] 2 498, CCA.

Place of trial—

Transfer to convenient court. *See Criminal law* (Trial—Place of trial—Transfer to convenient court—Indictment).

Power to quash—

Evidence disclosed by depositions—

Depositions disclosing no evidence to support conviction—Whether trial court having power to quash indictment. **R v Chairman, County of London Quarter Sessions, ex parte Downes** [1953] 2 750, QBD.

INDICTMENT (cont)

Previous conviction—

Averment of previous convictions—

Corrective training or preventive detention—Liability of accused—Need to include averment in indictment. **R v Allen** [1949] 2 808, CCA.

Quashing—

Motion to quash. *See* Motion to quash, *ante*.

Second indictment—

Pendency of earlier indictment—

Same offence—Second indictment or information not inherently bad by reason of the pendency of an earlier one for the same offence. **Poole v Regnam** [1960] 3 398, PC.

Setting of indictment—

Alterations and additions—

Notification of alterations and additions—Inspection by prosecution and accused. **Practice Note** [1956] 3 704, CCA.

Statute—

Duplicity—

Whether enactment creating one or several offences. *See* **Statute** (Offence—Duplicity—One or more offences).

Summary offence—

Addition of new counts. *See* Addition of new counts—Summary offence, *ante*.

Two indictments—

Indictments for same offence against same person—

Validity of indictments—Duty of prosecution to elect the one on which trial to proceed. **Practice Note** [1976] 2 326, CA.

Joint trial—

Indictments tried together—Nullity. **R v Olivo** [1942] 2 494, CCA.

Uncertainty or ambiguity—

Unlawful killing—

Assisting offender—Principal offender charged with murder—Possibility of conviction of manslaughter—Charge against assistant alleging principal offender guilty of 'unlawful killing'—Irregularity of no practical importance—Conviction of principal offender of murder making clear gravity of assistant's offence—No miscarriage of justice—Criminal Law Act 1967, ss 4(1)(3), 6(3). **R v Morgan** [1972] 1 348, CA.

Witnesses listed on back of indictment. *See* **Criminal law** (Trial—Prosecution—

INDIVIDUAL RIGHTS

International law—

Enforcement of rights in English courts. *See* **International law** (Municipal law—Relationship—

Right of individual under international law—Enforcement of right in English courts).

INDORSEMENT

Bill of exchange. *See* **Bill of exchange** (Indorsement).

Cheque. *See* **Bank** (Cheque—Endorsement).

Irish warrant. *See* **Magistrates** (Indorsement of Irish warrant).

Warrant of magistrates. *See* **Magistrates** (Warrant).

Writ—

Defect in indorsement. *See* **Writ** (Indorsement—Defect in indorsement).

Claim for possession—

Protected tenancy. *See* **Rent restriction** (Possession—Procedure—Indorsement on writ of summons).

Generally. *See* **Writ** (Indorsement).

INDUCEMENT

Admission or confession obtained by inducement—

Admissibility in criminal proceedings. *See* **Criminal evidence** (Admissions and confessions—Inducement).

Breach of contract—

Tort. *See* **Tort** (Inducement to commit breach of contract).

Investment of money—

Criminal liability. *See* **Criminal law** (Inducement to invest money).

INDUSTRIAL ACTION

Dismissal in connection with industrial action—

Unfair dismissal. *See* **Unfair dismissal** (Dismissal in connection with strike or other industrial action).

INDUSTRIAL AND PROVIDENT SOCIETIES

Conversion of registered society into company—

Effect on liabilities of society incurred before conversion—

Trust deeds establishing pension fund for benefit of employees of society—Whether trust deeds affected by conversion—Industrial and Provident Societies Act 1893, s 54. **Re London Housing Society Ltd's Trust Deeds** [1940] 3 665, ChD.

Determination of disputes—

Arbitration—

Arbitration in disputes between society and member—Expulsion of member—Non-compliance with rules—Member seeking declaration expulsion invalid—Whether jurisdiction of court ousted—Industrial and Provident Societies Act 1893, s 49(1). **Judson v Ellesmere Port Ex-Servicemen's Club Ltd** [1948] 1 844, CA.

Award—Extent to which member bound by award—Dispute submitted to arbitration while defendant was a member of the society—Award made in final amended form after defendant's membership had ceased—Whether term implied that member no longer bound by rule after membership ceased. **Birtley District Co-operative Society Ltd v Windy Nook & District Industrial Co-operative Society Ltd** [1959] 1 623, QBD.

INDUSTRIAL AND PROVIDENT SOCIETIES (cont)

Determination of disputes (cont)—

Arbitration (cont)—

Award—Extent to which member bound by award—Dispute submitted to arbitration while respondents a member of society—Withdrawal of respondents from membership of society after award—Whether respondents continued to be bound by award. **Bellshill & Mossend Co-operative Society Ltd v Dalziel Co-operative Society Ltd** [1960] 1 673, HL.

Rules—

Member's debts to society to be liquidated by reduction of capital—

Winding-up of society—Position of liquidator where rule ignored. **Lloyd v Francis** [1937] 4 489, CA.

Mode of application of profits of society—

Allocation of part of profits to political fund—Validity—Industrial and Provident Societies Act 1896, s 10(6). **Cahill v London Co-operative Society Ltd** [1937] 1 631, ChD.

INDUSTRIAL AND PROVIDENT SOCIETY

Trade union—

Definition. *See* **Trade Union** (Definition of trade union).**INDUSTRIAL AND PROVIDENT SOCIETIES**

Winding-up—

Compulsory winding-up—

Society carrying on speculative dealings in shares—Undertaking to register under Companies Act—Prevention of Fraud (Investments) Act 1939, s 10. **Re First Mortgage Co-operative Investment Trust Ltd** [1941] 2 529, ChD.

Winding-up under the Companies Act—

Petition by shareholders—Just and equitable ground—Petitions by members of two societies solely in order to remove obstacles in way of sale of smallholdings at inflated prices—Abuse of winding-up procedure—Petitions opposed by other members of the two societies—Societies still performing useful function—Whether just and equitable that societies should be wound up—Degree of relevance of Prevention of Fraud (Investments) Act 1958, s 10(2)—Companies Act 1948, s 222(f). **Re Surrey Garden Village Trust Ltd Re Addington Smallholders Ltd** [1964] 3 962, ChD.

INDUSTRIAL BUILDINGClasses of use. *See* **Town and country planning** (Development—Use classes—Industrial building).

Income tax—

Capital allowances. *See* **Income tax** (Capital allowances—Industrial building or structure).Town planning scheme. *See* **Town and country planning** (Town planning scheme—Industrial building).**INDUSTRIAL COURT**National Industrial Relations Court. *See* **Industrial relations** (National Industrial Relations Court).

Reference by Minister—

Failure to hear and determine reference—

Industrial Court acting as arbitral tribunal—Whether mandamus lay. **R v Industrial Court, ex parte A S S E T** [1964] 3 130, QBD.

Jurisdiction—

Reference of question of observance of Fair Wages Resolution incorporated in government supply contract. **R v Industrial Court, ex parte A S S E T** [1964] 3 130, QBD.

Trade dispute. *See* **Trade dispute** (Reference—Fair Wages Resolution).**INDUSTRIAL DERMATITIS**Damages. *See* **Damages** (Personal injury—Dermatitis—Industrial dermatitis).**INDUSTRIAL DEVELOPMENT**

Certificate of—

Whether grant assumed in assessing compensation for compulsory acquisition of land. *See* **Compulsory purchase** (Compensation—Town development—Assumption of planning permission).

INDUSTRIAL DISEASEGenerally. *See* **Workmen's compensation** (Industrial disease).**INDUSTRIAL DISPUTE***See* **Industrial relations** (Industrial dispute).Trade dispute. *See* **Trade dispute****INDUSTRIAL DISPUTES TRIBUNAL**Certiorari to quash decision. *See* **Certiorari** (Jurisdiction—Industrial Disputes Tribunal).

Costs—

Motion for prohibition—

Unnecessary parties. *See* **Costs** (Prohibition—Motion for prohibition to Industrial Disputes Tribunal—Unnecessary for both Minister and trade union to be represented).

INDUSTRIAL INJURY

Appeal to industrial injuries commissioner—

Oral hearing—

Assessor—Whether assessor should sit at hearing—Functions of assessor—Courses open to industrial injuries commissioner requiring medical assistance—National Insurance (Industrial Injuries) (Determination of Claims and Questions) Regulations 1948, (S I 1948 No 1299), regs 22(6), 26(1). **R v Deputy Industrial Injuries Comr, ex parte Jones** [1962] 2 430, QBD.

INDUSTRIAL INJURY (cont)

Appeal to industrial injuries commissioner (cont)—

Oral hearing (cont)—

Evidence—Admissibility—Medical opinions in previous cases put to expert witnesses—Incorporation of previous medical opinions in decision of industrial injuries commissioner—National Insurance (Industrial Injuries) (Determination of Claims and Questions) Regulations 1948, (S I 1948 No 1299), reg 26(1)(b). *R v Deputy Industrial Injuries Comr, ex parte Moore* [1965] 1 81, CA.

Contribution—

National insurance. *See* National insurance (Contribution).

Determination of claims—

Powers of Minister or insurance tribunal—

Power to refer to medical practitioner for examination and report—Medical appeal tribunal requesting opinion of consultant—Medical officer from Ministry transmitting papers etc to consultant—Whether essential reference made by tribunal—National Insurance (Industrial Injuries) (Determination of Claims and Questions) (No 2) Regulations 1967 (S I 1967 No 1571), reg 19(2). *R v National Insurance Commissioner, ex parte Viscusi* [1974] 2 724, CA.

Disablement benefit—

Accident arising out of and in course of employment—

Activity out of which accident arose reasonably incidental to employment—Recreational activities—Employee expected to take part in activities but under no duty to do so—Police constable injured in football match—Football match organised by Police Athletic Association—Constable representing his force in match—Match played during constable's off-duty time—Whether injury 'arising out of and in the course of his employment'—National Insurance (Industrial Injuries) Act 1965, s 5(1). *R v National Insurance Comr, ex parte Michael* [1976] 1 566, QBD.

Burden of proof—Burden of proof whether accident arose out of employment—National Insurance (Industrial Injuries) Act 1946, s 7(4). *R v National Insurance (Industrial Injuries) Comr, ex parte Richardson* [1958] 2 689, QBD.

Tea-break—Worker injured on factory premises at a time when he was overstaying the tea-break—Whether course of employment had been interrupted—National Insurance (Industrial Injuries) Act 1946, s 7(1)(4). *R v Industrial Injuries Comr, ex parte Amalgamated Engineering Union* [1966] 1 97, CA.

Assessment of degree of disability—

Greater disability than normal by reason of physical condition at date of assessment—Combination of causes—Loss of left eye due to accident and defect of vision in right eye due to disease, not to accident—Whether defect of vision in right eye was to be taken into consideration to increase assessment—National Insurance (Industrial Injuries) Act 19, Sch 4, para 1(b)—National Insurance (Industrial Injuries) (Benefit) Regulations 1964, (S I 1964 No 504), reg 2(3)(a). *R v Industrial Injuries Comr, ex parte Cable* [1968] 1 9, CA.

Injury to organ of the body—One of two similar organs, the functions of which would be interchangeable or complementary—Injury to finger—Previous injury to finger of other hand—Whether hands were two similar organs, the functions of which would be interchangeable or complementary—National Insurance (Industrial Injuries) (Benefit) Regulations 1948, (S I 1948 No 1372), reg 2(5). *R v Medical Appeal Tribunal, ex parte Burpitt* [1957] 2 704, QBD.

Injury to organ of the body—One of two similar organs, the functions of which would be interchangeable or complementary—Injury to leg—Previous injury to other leg—Whether legs were two similar organs, the functions of which would be interchangeable or complementary—National Insurance (Industrial Injuries) (Benefit) Regulations 1948, (S I 1948 No 1372), reg 2(5). *R v Medical Appeal Tribunal for South Wales District, ex parte Griffiths* [1958] 2 227, QBD.

Claim—

Medical appeal tribunal. *See* Medical appeal tribunal—Claim for disablement benefit, *post*.

Nature of proceedings—Medical appeal tribunal—Onus of proof—Discharge of assessment—Assessment made by medical board—Appeal tribunal suspicious that claimant malingering—Report of consultant before tribunal—Report suggesting claimant malingering—Whether tribunal bound to make positive finding of malingering before discharging assessment. *R v National Insurance Commissioner, ex parte Viscusi* [1974] 2 724, CA.

Entitlement—

Accident arising out of and in course of employment. *See* Disablement benefit—Accident arising out of and in course of employment, *ante*.

Special hardship allowance—

Calculation of amount—Standard of remuneration—Pre-accident and post-accident occupation—Comparison of remuneration in pre-accident and post-accident occupations—Whether comparison should take account of difference in weekly number of hours worked in each occupation—National Insurance (Industrial Injuries) Act 1965, s 14(b). *R v National Insurance Comr, Ex parte Mellors* [1971] 1 740, CA.

Incapacity to follow regular occupation or equivalent employment as result of relevant loss of faculty—Standards of comparison of probable remuneration and employments—Localities where standards to be ascertained—National Insurance (Industrial Injuries) Act 1946, s 14(1)(a),(b),(4), as amended by National Insurance (Industrial Injuries) Act 1948, s 1 and National Insurance &c, Act 1964, s 2(2), Sch 5, para 5. *R v Industrial Injuries Comr, ex parte Humphreys* [1965] 3 885, CA.

Incapacity to follow regular occupation or equivalent employment as result of relevant loss of faculty—Whether finding of medical board for purposes of disablement benefit (s 12) of claimant's state at time of examination after accident is binding on subsequent application for special hardship increase (s 14)—National Insurance (Industrial Injuries) Act 1946, ss 12, 14(1). *R v Industrial Injuries Comr, ex parte Ward* [1964] 3 907, QBD.

INDUSTRIAL INJURY (cont)

Employed person. *See* **National insurance** (Employed person—Contract of service—Employments to be treated as employment under contract of service).

Insurable employment—**Employment under contract of service—**

Trade union—Sick steward—Spare-time duties—Contract of membership of union providing for obligatory employment—Rules defining duties, payment, penalties, in considerable detail—Whether employment under a contract of service—Whether sick steward entitled to industrial injury benefit—National Insurance (Industrial Injuries) Act 1946, Sch 1, Part 1, Part 2—National Insurance (Industrial Injuries) (Insurable and Excepted Employments) Regulations 1948 (SI 1948 No 1456), Sch 2, Part 2. **Amalgamated Engineering Union v Minister of Pensions and National Insurance** [1963] 1 864, QBD.

Trapeze artists in circus—Required to carry out usherette duties and assist at moves—Whether employment under a contract of service—Whether entitled to industrial injury benefit—National Insurance (Industrial Injuries) Act 1946, Sch 1, Pt 1, para 1. **Whittaker v Minister of Pensions and National Insurance** [1966] 3 531, QBD.

Medical appeal tribunal—**Claim for disablement benefit—**

Scope of jurisdiction—Appeal by claimant against final assessment of disability as too small—Tribunal's right and duty to use their own expert knowledge—Whether tribunal had jurisdiction to set aside assessment on the ground that there was then no loss of faculty resulting from the industrial injury—National Insurance (Industrial Injuries) Act 1946, s 39(2). **R v Medical Appeal Tribunal (North Midland Region), ex parte Hubble** [1959] 3 40, CA.

Scope of jurisdiction—Previous finding by statutory authority (another medical appeal tribunal) on claim for benefit that injured workman suffered serious disablement as result of accident—Decision of statutory authority on claim 'final'—Statutory authority making provisional assessment for specific period—Medical appeal tribunal discharging assessment made in respect of subsequent period—Whether medical appeal tribunal bound to accept finding of earlier tribunal—National Insurance (Industrial Injuries) Act 1965, s 50(1). **R v National Insurance Commissioner, ex parte Viscusi** [1974] 2 724, CA.

Scope of jurisdiction—Previous finding by statutory authority (deputy commissioner) on claim for injury benefit that insured workman suffered personal injury caused by accident—Subsequent application by workman for disablement benefit—Whether Medical Appeal Tribunal bound to accept finding of statutory authority that injury was caused by accident—Whether tribunal's jurisdiction confined to question of loss of faculty as result of injury—National Insurance (Industrial Injuries) Act 1946, s 7(1), s 36 (as amended), s 49(4). **Minister of Social Security v Amalgamated Engineering Union** [1967] 1 210, HL.

Scope of jurisdiction—Previous finding by statutory authority (local appeal tribunal) in claim for injury benefit—Finding that workman suffered injuries including heart condition caused by accident—Decision of statutory authority on claim 'final'—Subsequent claim by workman for disablement benefit—Whether medical appeal tribunal bound to accept finding that heart condition caused by accident—National Insurance (Industrial Injuries) Act 1965, ss 5(1), 37, 50(1). **Jones v Secretary of State for Social Services** [1972] 1 145, HL.

Nature of proceedings. *See* Disablement benefit—Claim—Nature of proceedings—Medical appeal tribunal, *ante*.

Record and notice of decision—

Contents—Statement of reasons and findings on all questions of fact—Detail required—National Insurance (Industrial Injuries) (Determination of Claims and Questions) (No 2) Regulations 1967 (SI 1967 No 1571), reg 12(1). **R v National Insurance Commissioner, ex parte Viscusi** [1974] 2 724, CA.

Review of decision—

Fresh evidence—Medical appeal tribunal's determination setting aside an assessment of loss of faculty—Whether grounds for setting aside assessment—National Insurance (Industrial Injuries) Act 1946, s 40(1). **R v Medical Appeal Tribunal (North Midland Region), ex parte Hubble** [1959] 3 40, CA.

Medical board—**Evidence of member of board in subsequent proceedings—**

Admissibility—Evidence as to condition of claimant for disablement benefit—Evidence as to conclusions of board—National Insurance (Industrial Injuries) Act 1946, s 39(1). **Ward v Shell-Mex and BP Ltd** [1951] 2 904, KBD.

Tribunal—**Natural justice—**

Evidence. *See* **Natural justice** (Industrial injuries tribunal—Evidence).

Workmen's compensation—**Right to compensation—**

Statute abolishing right—Sawing—Exception—Prescribed disease—Right not arising before appointed day—Insurance under statute—Dermatitis—Attack before 5th July 1948—Recurrence after that date—Right of workman to workmen's compensation—National Insurance (Industrial Injuries) Act 1946, s 89(1), proviso (a). **Hales v Bolton Leathers Ltd** [1951] 1 643, HL.

INDUSTRIAL RELATIONS

Collective bargaining—

Remedial action where procedure agreement non-existent or defective—

Application to Industrial Court relating to procedural provisions—Application with respect to unit of employment—Unit of employment—Meaning—Unit of employment only where an employer and employees or workers—Worker—Person who has entered into contract for work or services—Broadcasting authority—Authors of scripts for sound broadcasting—Contracts between authors and authority giving authority right to broadcast—Contracts not requiring authors to do anything—Whether authors 'workers'—Whether broadcasting authority an employer in relation to authors—Industrial Relations Act 1971, ss 37(1)(2), 167(1). **Writers' Guild of Great Britain v British Broadcasting Corporation** [1974] 1 574, NIRC.

Sole bargaining agent—

Recognition—Application to Industrial Court—Organisation of workers seeking negotiating rights—Trade union—Refusal by employer to recognise union—Embargoes against employer organised by union—Application to court by employer—Denial by union that seeking recognition any longer—Embargoes continuing in force—Whether embargoes constituting a request for recognition—Industrial Relations Act 1971, ss 45, 46(1). **The Car Collection Co Ltd v Transport and General Workers Union** [1972] 2 97, NIRC.

Recognition—Application to Industrial Court—Organisation of workers seeking negotiating rights—Application by employer—Application for reference to Commission on Industrial Relations of question whether trade union should be recognised as sole bargaining agent—Trade union not seeking recognition—Whether court having power to refer question to commission—Industrial Relations Act 1971, ss 45, 46(1). **The Car Collection Co Ltd v Transport and General Workers Union** [1972] 2 97, NIRC.

Conciliation officers—

Communications made to conciliation officers—

Admissibility in evidence—Proceedings before Industrial Court and tribunals—Communications to conciliation officers in connection with performance of their functions—Circumstances in which communications admissible—Industrial Relations Act 1971, s 146(6). **M & W Grazebrook Ltd v Wallens** [1973] 2 868, NIRC.

Industrial action—

Emergency procedure—

Application to Industrial Court for order for ballot—Statutory conditions to be satisfied before grant of order—Irrregular industrial action short of a strike begun or likely to begin—Breach of contract—Concerted course of conduct in furtherance of an industrial dispute—Conduct involving breach of contract in one respect only—Conduct lawful in other respects—Whether necessary that concerted course of conduct in its entirety should involve a breach of contract to constitute irregular industrial action—Industrial Relations Act 1971, ss 33(4), 141(1)(a). **Secretary of State for Employment v Associated Society of Locomotive Engineers and Firemen (No 2)** [1972] 2 949, NIRC & CA.

Application to Industrial Court for order for ballot—Statutory conditions to be satisfied before grant of order—Minister's declaration that 'it appears to' him that requisites for order exist—Jurisdiction of court to interfere with Minister's decision—Jurisdiction to interfere only where bad faith or material misdirection on facts or law established—Not sufficient that Minister's application disclosing mistake on particular fact—Unnecessary for Minister to specify reasons for doubting whether workers wanting to take part in industrial action—Industrial Relations Act 1971, s 141(1)(a), (c). **Secretary of State for Employment v Associated Society of Locomotive Engineers and Firemen (No 2)** [1972] 2 949, CA.

Application to Industrial Court with view to discontinuing or deferring industrial action—Statutory conditions to be satisfied before grant of order—Condition that it appears to Secretary of State that irregular industrial action short of a strike has begun—Railway union executives instructing railway union members to 'work to rule'—Union members working to rule—Work to rule constituting irregular industrial action short of a strike—Appropriate order—Effect of order—Industrial Relations Act 1971, ss 33(4), 138, 139. **The Secretary of State for Employment v Associated Society of Locomotive Engineers and Firemen** [1972] 2 853, NIRC.

Organisation of workers—

Meaning—Principal objects including regulation of relations between workers and employers—Employers' complaint of unfair industrial practice—Picketing of complainants' premises—Picketing organised by committee of shop stewards—Function of committee to recommend and organise industrial action in docks—Committee unconnected with complainants and unrecognised as bargaining agent—Whether committee 'organisation of workers'—Industrial Relations Act 1971, s 61(1). **Midland Cold Storage Ltd v Turner** [1972] 3 773, NIRC.

Industrial Court—

Contempt—

Breach of injunction—Evidence of contempt. *See Contempt of court* (Committal—Breach of injunction—Evidence of contempt—National Industrial Relations Court).

Industrial dispute—

Act done in contemplation or furtherance of an industrial dispute—

Act not actionable in tort on specified grounds—Act not actionable if consisting of inducement or threat of breach of contract—Act also constituting unfair industrial practice—Whether fact that act an unfair practice capable of rendering it actionable in tort—Industrial Relations Act 1971, s 132. **Cory Lighterage Ltd v Transport and General Workers Union** [1973] 2 558, CA.

INDUSTRIAL RELATIONS (cont)**Industrial dispute (cont)—****Act done in contemplation or furtherance of an industrial dispute (cont)—**

Act not actionable in tort on specified grounds—Dispute between workmen and workmen—Workman allowing membership of trade union to lapse—Fellow workers refusing to work with him—Union threatening employers with strike action if workman not withdrawn—Employers supporting union's membership policy—Employers unable to dismiss workman without consent of statutory board—Consent refused—Worker suspended on full pay—Whether a dispute between employers and union—Whether union's threats made in contemplation or furtherance of industrial dispute—Industrial Relations Act 1971, ss 132 (1), (2), 167(1). **Cory Lighterage Ltd v Transport and General Workers Union** [1973] 2 558, CA.

Meaning—

Dispute between employers and workers—Dispute between worker and worker—Worker resigning from union—Union members objecting to resignation—Union threatening employers with industrial action if employee allowed to work—Employee suspended from work in consequence of threat—Whether dispute between employer and one or more workers—Industrial Relations Act 1971, ss 96(1), 167(1). **Langston v Amalgamated Union of Engineering Workers** [1974] 1 980, CA.

Dispute between employers and workers—Dispute relating wholly or mainly to specified matters—Terms and conditions of employment—Suspension of employment—Dispute between workmen and workmen not an industrial dispute—Whether 'terms and conditions of employment' confined to contractual terms and conditions—Whether 'suspension of employment' including suspension on full pay—Industrial Relations Act 1971, s 167(1). **Cory Lighterage Ltd v Transport and General Workers Union** [1973] 2 558, CA.

Unfair industrial practice—

Action in contemplation or furtherance of dispute. *See* Unfair industrial practice—Action in contemplation or furtherance of industrial dispute, *post*.

Industrial tribunal. *See* Industrial tribunal.**National Industrial Relations Court—****Jurisdiction—**

Appeals from industrial tribunals—Court's jurisdiction limited to appeals on question of law—Possibility of order for costs against appellant if appeal not involving question of law—Industrial Relations Act 1971, s 114—Industrial Court Rules 1971 (S I 1971 No 1777), r 69. **Practice Direction** [1973] 2 1264, NIRC.

Unfair industrial practice—

Relief—Order restraining respondent from continuing action—Discretion. *See* Unfair industrial practice—Relief—Order restraining respondent from continuing action—Discretion of court to grant order, *post*.

Organisation of workers—**Breach of rules—**

Complaint by member against organisation—Complaint that action by organisation constituted a breach of its rules—Rules—Meaning—Rules conferring individual rights on members against organisation—Employee making unsuccessful application to employers for senior post—Employee's union refusing to make representations on employee's behalf to employers—Union rules stating object of union 'to...protect the interests of its members'—Complaint to industrial tribunal by employee against union alleging breach of union rules—Whether clause stating overall aim of union a 'rule'—Industrial Relations Act 1971, s 107(3)(b). **Oddy v Transport Salaried Staffs' Association** [1973] 3 610, NIRC.

Industrial action. *See* Industrial action—Organisation of workers, *ante*.**Picketing. *See* Trade dispute (Picketing).****Practice—****Claim for redundancy payment or compensation for unfair dismissal—**

Position where doubt whether employee's dismissal on account of redundancy or an unfair dismissal. **Chapman v Goonvean & Rostowrack China Clay Co Ltd** [1973] 1 218, NIRC.

Proceedings—**Duplication—**

Avoidance—Proceedings in courts other than National Industrial Relations Court—Proceedings in tort—Discretion to stay proceedings arising out of acts in respect of which proceedings have been, or could be, brought in the Industrial Court—Principles governing exercise of discretion—Industrial Relations Act 1971, ss 131, 132(4). **Midland Cold Storage Ltd v Steer** [1972] 3 941, ChD.

Trade dispute. *See* Trade dispute.**Trade union membership and activities—****Rights of workers as against employer—**

Dismissal for exercising rights—Unfair dismissal—Dismissal for taking part in trade union activities—Trade union—Unregistered union—Employee dismissed for taking part in activities of unregistered union—Employee member of union entered on provisional register at date of his engagement by employers—Union ceasing to be registered shortly thereafter—Employee organising union meeting two months later—Employee dismissed immediately after for organising meeting—Whether 'trade union' including unregistered or de-registered union—Whether employee unfairly dismissed—Industrial Relations Act 1971, ss 5(1), 22(1), 28, 29(1). **Kenyon v Fred Miller Ltd** [1972] 3 686, NIRC.

INDUSTRIAL RELATIONS (cont)

Trade union membership and activities (cont)—

Rights of worker as against employer—

Dismissal for exercising rights—Unfair dismissal—Right of worker to be member of trade union—Employee summarily dismissed after one year's service—Reason for dismissal the employee's indication of intention to join a union—Employee not decided which union to join or whether chosen union to be one registered or unregistered—Whether an exercise of employee's statutory right to become a member of a trade union—Whether competent for employee to claim unfair dismissal—Industrial Relations Act 1971, ss 5(1)(a), 29(1). **Cotter v Lynch Brothers** [1972] 3 809, NIRC.

Right to take part in union activities at appropriate time—Activities on employer's premises—Activities outside working hours—Activities not requiring provision of facilities by employer—Whether workers entitled to carry out such activities on employer's premises without employer's consent—Industrial Relations Act 1971, s 5(1)(c). **The Post Office v Union of Post Office Workers** [1974] 1 229, HL.

Unfair industrial practice by employer—Discrimination by employer against worker by reason of exercise of such rights—Discrimination—Discrimination against members of unrecognised union—Discrimination in respect of negotiating rights permitted—Meaning of 'negotiating rights'—Negotiation for purpose of collective bargaining—Right of employee to be accompanied by union representative at interview to negotiate increase in individual salary—Right accorded to members of recognised unions but denied to members of unrecognised unions—Whether discrimination in respect of negotiating rights—Whether discrimination against member of unrecognised union an unfair industrial practice—Industrial Relations Act 1971, ss 5(2)(b), 44(b). **Howle v GEC Power Engineering Ltd** [1974] 1 275, NIRC.

Unfair industrial practice by employer—Discrimination by employer against worker by reason of exercise of such rights—Discrimination—Discrimination against union—Discrimination against union members—Facilities for union activities—Employees of same employer belonging to different unions—Only one union recognised by employer for negotiating purposes—Recognised union granted facilities for carrying out activities on employer's premises—Unrecognised union refused any such facilities—Refusal amounting to discrimination against members of unrecognised union—Discrimination against members by reason of the exercise of right to join one union rather than another—Discrimination unfair industrial practice except in relation to facilities for negotiating purposes—Industrial Relations Act 1971, s 5(2)(b). **The Post Office v Union of Post Office Workers** [1974] 1 229, HL.

Unfair industrial practice by employer—Discrimination by employer against worker by reason of exercise of such rights—Discrimination—Employers recognising four unions for negotiating and other purposes—Agreement for setting up of works committee—Committee consisting of representatives of management and of workers who were members of one of recognised unions—Two workers not being members of a recognised union seeking nomination for membership of works committee—Nomination papers rejected by employers because workers not members of a recognised union—Whether discrimination by employers against workers—Distinction in discriminating against workers and discriminating between workers—Industrial Relations Act 1971, s 5(2)(b), (4). **Central Electricity Generating Board v Coleman** [1973] 2 709, NIRC.

Unfair industrial practice by employer—Discrimination by employer against worker by reason of exercise of such rights—Discrimination—Workers of same employer belonging to two different unions—One union only recognised by employer—Members of recognised union permitted to receive private letters from union at place of work—Members of recognised union permitted representation by officer of union in matters involving a grievance or disciplinary charge—Members of unrecognised union not permitted similar facilities—Discrimination not unlawful as against unrecognised union—Discrimination unlawful as against members of unrecognised union—Industrial Relations Act 1971, s 5(2)(b). **The Post Office v Ravyts** [1972] 3 485, NIRC.

Worker—Meaning—Person working under contract whereby he undertakes to perform personally any work or services for other party—Test whether contract for personal work or services—Contract not permitting delegation of work or services—Football pools promoters—Scheme for collecting bets from punters—Main collector responsible to area concessionaire for appointing collectors to call on punters—Main collector required to work in accordance with instructions of area concessionaire—Whether main collector a 'worker'—Industrial Relations Act 1971, ss 5(2), 167(1). **Broadbent v Crisp** [1974] 1 1052, NIRC.

Unfair dismissal. *See* Unfair dismissal.

Unfair industrial practice—

Action in contemplation of or furtherance of industrial dispute—

Industrial dispute—Dispute between employers and workers—Employer's complaint of unfair industrial practice by workers not employed by them—Whether 'industrial dispute' if no nexus between employers and respondent workers—Industrial Relations Act 1971, ss 96, 97, 98, 167(1). **Midland Cold Storage Ltd v Turner** [1972] 3 773, NIRC.

Complaint—

Pressure on employer to infringe rights of workers—Who may make complaint—Person against whom action taken—Action deemed to be taken against employer not worker—Threat by union against employers to take industrial action if employee allowed to work—Employee suspended by employers in consequence of threat—Complaint of unfair industrial practice by employee against union—Whether competent for employee to make complaint against union—Industrial Relations Act 1971, ss 33(3)(a), 101(1)(c), 105(1). **Langston v Amalgamated Union of Engineering Workers** [1974] 1 980, CA.

INDUSTRIAL RELATIONS (cont)

Unfair industrial practice (cont)—

Complaint (cont)—

Time limit—Complaint to be presented before end of period of four weeks—Unfair dismissal—Period of four weeks beginning with the effective date of termination of contract—Meaning of 'presented'—Calculation of four week period—Industrial Tribunals (Industrial Relations, etc) Regulations 1972 (S I 1972 No 38), Sch, para 2(1). **Hammond v Haigh Castle & Co Ltd** [1973] 2 289, NIRC.

Time limit—Discretion to entertain complaint made out of time—Principles on which discretion to be exercised—Industrial Tribunals (Industrial Relations, etc) Regulations 1972 (S I 1972 No 38), Sch, r 2(1). **Westward Circuits Ltd v Read** [1973] 2 1013, NIRC.

Time limit—Jurisdiction to hear—Complaint made out of time—Industrial Relations Act 1971, Sch 6, para 5(1). **Westward Circuits Ltd v Read** [1973] 2 1013, NIRC.

Time limit—Not practicable in circumstances for complaint to be presented before end of limitation period—Circumstances to be taken into account in determining whether practicable—Complaint of unfair dismissal—Negotiation over severance terms—Agreement by employee at request of employer not to present complaint while negotiations proceeding—Validity of agreement—Relevance of question of validity—Presentation of complaint within prescribed period likely to jeopardise negotiations—Whether agreement to be disregarded as an agreement precluding presentation of complaint or excluding operation of statute and therefore void—Whether agreement rendering it not 'practicable' to present complaint within prescribed period—Industrial Relations Act 1971, s 161(1)—Industrial Tribunals (Industrial Relations, etc) Regulations 1972 (S I 1972 No 38), Sch, r 2(1). **Owen v Crown House Engineering Ltd** [1973] 3 618, NIRC.

Time limit—Not practicable in circumstances for complaint to be presented before end of limitation period—Complaint by employee of unfair dismissal—Circumstances in which employee's ignorance of legal right will be regarded as rendering it 'not practicable' for him to present complaint within period—Employee knowing that he had certain statutory rights—Employee ignorant of time limit—Employee seeking legal advice within limitation period—Legal advisers at fault in failing to present complaint within period—Whether practicable for employee to present complaint within period—Industrial Tribunals (Industrial Relations, etc) Regulations 1972 (S I 1972 No 38), Sch, r 2(1). **Dedman v British Building and Engineering Appliances Ltd** [1974] 1 520, CA.

Time limit—Not practicable in circumstances for complaint to be presented before end of limitation period—Employee unaware of right to make complaint to industrial tribunal until after expiry of time limit—Whether 'practicable' for employee to have made complaint within limitation period—Industrial Tribunals (Industrial Relations, etc) Regulations 1972 (S I 1972 No 38), Sch, r 2(1). **Westward Circuits Ltd v Read** [1973] 2 1013, NIRC.

Time limit—Not practicable in circumstances for complaint to be presented before end of limitation period—Meaning of 'practicable'—Industrial Tribunals (Industrial Relations, etc) Regulations 1972 (S I 1972 No 38), Sch, para 2(1). **Hammond v Haigh Castle & Co Ltd** [1973] 2 289, NIRC.

Inducement or threat to induce breach of contract—

Breach of contract—Contractual right to work—Suspension on full pay—Employee suspended on full pay by employers in consequence of threat by union to withdraw labour if employee allowed to work—Whether suspension on full pay a breach of contract—Whether union having induced breach of contract—Industrial Relations Act 1971, s 96(1). **Langston v Amalgamated Union of Engineering Workers** [1974] 1 980, CA.

Peaceful picketing—

Peaceful picketing permissible under general law—Employers' complaint that respondent workers guilty of unfair industrial practice—Practice consisting of peaceful picketing—Whether peaceful picketing capable of constituting an unfair industrial practice—Industrial Relations Act 1971, ss 33(3), 96, 97, 98, 134. **Midland Cold Storage Ltd v Turner** [1972] 3 773, NIRC.

Relief—

Order restraining respondent from continuing action—Discretion of court to grant order—Just and equitable to grant order—Exercise of discretion—Practice—Industrial action—Order restraining industrial action not to be made before enquiry into causes of underlying dispute—Industrial Relations Act 1971, s 101(2), (3). **Shipside (Ruthin) Ltd v Transport and General Workers Union** [1973] 3 514, NIRC.

Trade union—

Liability of unregistered union—Act of shops stewards—Scope of authority. *See* Trade union (Official—Wrongful act—Liability of union).

INDUSTRIAL TRAINING

Board. *See* Training board, *post*.

Levy—

Activities of industry—

Engineering industry—Erection of steam generating plant at thermal power station—Whether activity fell within engineering or construction—'Civil engineering work'—'Installation'—'Structures forming part of a building'—Industrial Training (Engineering Board) Order 1968 (S I 1968 No 1333 as amended by S I 1969 No 1376), Sch, paras 1(h), 2(d), 3. **Engineering Industrial Training Board v Foster Wheeler John Brown Boilers Ltd** [1970] 2 616, CA.

Hotel and catering industry—Meals supplied to airlines for passengers' consumption—Whether supply to persons for immediate consumption—Industrial Training (Hotel and Catering Board) Order 1966 (S I 1966 No 1347), Sch 1, para 1(a). **N A S Airport Services Ltd v Hotel and Catering Industry Training Board** [1970] 3 928, CA.

INDUSTRIAL TRAINING (cont)

Levy (cont)—

Assessment—

Appeal—Jurisdiction of appeal tribunal—Grounds on which liability to pay levy may be disputed—Exclusive jurisdiction of appeal tribunal to determine validity of grounds on which liability disputed—Action in High Court by Road Transport Industry Training Board against employers for recovery of sum assessed by way of levy—Employers disputing liability to pay levy—Whether court having jurisdiction to determine validity of grounds on which liability disputed—Industrial Training Act 1964, ss 4(3), 12(2)—Industrial Training Levy (Road Transport) Order 1968 (S I 1968 No 1835), art 7. **Road Transport Industry Training Board v J Wyatt Junior (Haulage) Ltd** [1972] 3 913, QBD.

Notice—Form—Address for service of notice of appeal—Whether general address of board sufficient—Industrial Training Levy (Agricultural, Horticultural and Forestry) Order 1967 (S I 1967 No 1747), art 4(3). **Agricultural, Horticultural and Forestry Industry Training Board v Kent** [1970] 1 304, CA.

Training board—

Establishment—

Activities of industry or commerce—Hotel and catering industry—Whether members' clubs subject to levy—Whether order in part ultra vires—Industrial Training (Hotel and Catering Board) Order 1966 (S I 1966 No 1347), Sch 1, para 3(c)(ii)—Industrial Training Act 1964, s 1(1), s 4. **Hotel and Catering Industry Training Board v Automobile Proprietary Ltd** [1969] 2 582, HL.

Consultation—Duty of Minister to consult with specified organisations appearing to him to be representative of those engaged in industry—Failure to consult—Effect—Failure to consult association—Association a specialist branch of parent body—Consultation with parent body—Appropriate invitation for comments on draft order sent by Minister to association—Invitation not received by association—Association having no knowledge of order until after it was made—Whether Minister under duty to consult association—Whether consultation with parent body and sending of invitation for comments constituting consultation—Whether order applicable to members of association—Industrial Training Act 1964, s 1(4)—Industrial Training (Agricultural, Horticultural and Forestry Board) Order 1966 (S I 1966 No 969). **Agricultural Horticultural and Forestry Industry Training Board v Aylesbury Mushrooms Ltd** [1972] 1 280, QBD.

Registration as a charity—

Control by court. *See* **Charity** (Registration—Control by the court—Control by court in exercise of its charitable jurisdiction—Statutory corporation—Industrial training board).

INDUSTRIAL TRIBUNAL

Appeal from tribunal—

Appeal to National Industrial Relations Court. *See* **Industrial relations** (National Industrial Relations Court—Jurisdiction—Appeals from industrial tribunals).

Point of law—

Powers of appellate tribunal—Selective employment tax. *See* **Selective employment tax** (Appeal—Decision of tribunal on question of proper industrial classification—When tribunal's decision may be interfered with).

Time for appeal—

Selective employment tax. *See* **Selective employment tax** (Appeal—Time for appealing).

Compensation for unfair dismissal—

Reasons of award. *See* **Unfair dismissal** (Compensation—Heads of loss—Duty of tribunal—Reasons for award).

Procedure—

Advocate—

Witnesses—Right of advocate to call witnesses in order chosen by him—Tribunal interfering with right—Duty of appellate court—Advocate instructed by tribunal to interpose witnesses—Likelihood of prejudice to advocate's client—Duty of appellate court to determine whether likelihood of prejudice before setting aside tribunal's decision. **Barnes v BPC (Business Forms) Ltd** [1976] 1 237, QBD.

Originating application—

Form of application—Contents of application—Address of person or persons against whom relief is sought—Industrial Tribunals (Industrial Relations, etc) Regulations 1972 (S I 1972 No 38), Sch, r 1(1). **Smith v Automobile Proprietary Ltd** [1973] 2 1105, NIRC.

INDUSTRY

Development council—

Power to set up—

Necessity of showing council desired by a substantial number of persons engaged in the industry—Need to ascertain wishes of employers and employed—Industrial Organisation and Development Act 1947, s 1(4). **Thorneloe and Clarkson Ltd v Board of Trade** [1950] 2 245, KBD.

INEQUALITY OF BARGAINING POWER

See **Equity** (Undue influence—Inequality of bargaining power).

INFANT

Accumulation of income under a trust. *See* **Accumulation** (Surplus income—Accumulation during minority).

Adoption. *See* **Adoption**.

Advancement—

Powers of trustee. *See* **Trust and trustee** (Powers of trustee—Advancement).

Affiliation. *See* **Affiliation**.

Appointing person to convey property. *See* **Trust and trustee** (Appointing person to convey property).

Appointment of new trustee by infant. *See* **Trust and trustee** (Appointment of new trustee—By infant).

INFANT (cont)

- Blood test to determine paternity. *See* **Paternity** (Blood test).
- Care and control—
 - Ward of court. *See* **Ward of court** (Care and control).
- Contract—
 - Apprenticeship—
 - Benefit of infant. *See* **Master and servant** (Apprenticeship—Benefit of infant).
- Custody—
 - Conflict of laws—
 - Wardship proceedings. *See* **Ward of court** (Jurisdiction).
 - Wardship jurisdiction. *See* **Ward of court** (Custody).
- Damages recovered by infant—
 - Jurisdiction of court to postpone entitlement until after attainment of majority. *See* **Variation of trusts** (Jurisdiction—Damages recovered by infant).
- Designation—
 - Designation of persons of less than full age in Chancery proceedings—
 - Use of term 'minor'. *See* **Practice** (Chancery Division—Designation of persons of less than full age).
- Disentailing deed—
 - Appointing person to convey property. *See* **Trust and trustee** (Appointing person to convey property—Infant beneficially interested—Disentailing deed).
- Evidence—
 - Criminal proceedings. *See* **Criminal evidence** (Child).
- Generally. *See* **Minor**.
- Guardian ad litem—
 - Variation of trusts. *See* **Variation of trusts** (Infant—Guardian ad litem).
- Guardianship—
 - Jurisdiction—
 - Magistrates' court order—Wardship proceedings. *See* **Ward of court** (Previous custody order of magistrates made under jurisdiction conferred by guardianship legislation—Circumstances in which High Court will make different order under wardship jurisdiction).
 - Originating summons—
 - Form. *See* **Originating summons** (Guardianship of infant—Form).
- Intoxicating liquor—
 - Sale to. *See* **Licensing** (Knowingly selling liquor to person under age).
- Kidnapping—
 - Foreign child—
 - Removal by parents from foreign jurisdiction—Wardship proceedings. *See* **Ward of court** (Jurisdiction—Kidnapping).
- Legitimacy. *See* **Legitimacy**.
- Limitation of action—
 - Extension of time from which limitation period begins to run—
 - Custody of parent. *See* **Limitation of action** (Persons Under disability—Custody of parent).
- Minor—
 - Use of word 'minor' in Chancery proceedings. *See* **Practice** (Chancery Division—Designation of persons of less than full age).
- Parens patriae jurisdiction. *See* **Statute** (Crown—Parens patriae jurisdiction).
- Paternity. *See* **Paternity**.
- Removal outside jurisdiction—
 - Foreign court—
 - Whether English court will return infant to foreign jurisdiction. *See* **Ward of court** (Jurisdiction—Alien—Alien children).
- Trespasser—
 - Duty of occupier to child trespasser. *See* **Occupier's liability** (Child trespasser).
- Trust—
 - Relative advantages between infant and adult beneficiaries—
 - Variation of trusts by the court. *See* **Variation of trusts** (Benefit—Infant beneficially interested).
 - Resettlement. *See* **Variation of trusts** (Jurisdiction—Infant's resettlement).
 - Variation of trusts. *See* **Trust and trustee** (Variation of trusts by the court—Infant's interests).
- Ward of court. *See* **Ward of court**.
- Welfare of infant—
 - Adoption proceedings. *See* **Adoption** (Welfare of infant).
- Workman—
 - Compensation—
 - Review. *See* **Workmen's compensation** (Review of compensation—Infant workman).

INFECTED WATER

- Water supply—
 - Supply of water for domestic purposes. *See* **Water supply** (Supply of water for domestic purposes—Duty of undertakers as respects sufficiency and purity—Infected water).

INFERIOR COURT

- Injunction—
 - Jurisdiction of High Court. *See* **Injunction** (Inferior court—Jurisdiction of High Court over inferior court).

INFLATION

- Damages—
 - Relevance to assessment—
 - Fatal accident. *See* **Fatal accident** (Damages—Inflation).

INFLATION (cont)

Damages (cont)—

Relevance of assessment—

Personal injury. *See* **Damages** (Personal injury—Amount of damages—Post-trial financial loss—Inflation).

INFORMATION

Amendment—

Jurisdiction of Crown Court to allow amendment. *See* **Crown Court** (Appeal to Crown Court—Power of court on appeal—Appeal against conviction by magistrates—Jurisdiction to allow amendment).

Dangerous dog, as to. *See* **Animal** (Dog—Dangerous dog—Information).

Dangerous driving. *See* **Road traffic** (Dangerous driving—Information).

Detection of evasion of Exchange Control Act 1947. *See* **Currency control** (Exchange control—Evasion of restrictions or requirements imposed by Act—Power of Treasury to require information to be furnished for detecting evasion of Act).

Disclosure—

Power of court to withhold information from parties. *See* **Natural justice** (Disclosure to parties of information before court—Court empowered to seek information—Power to withhold information from parties).

Food and drugs offence—

Proceedings against third party. *See* **Food and drugs** (Proceedings against third party—Information).

Handling stolen goods. *See* **Criminal law** (Handling stolen goods—Magistrates' court—Information in general terms).

Magistrates. *See* **Magistrates** (Information).

Master's duty to provide. *See* **Safe system of working** (Duty to give information or advice).

National insurance inspector—

Power to require. *See* **National insurance** (Inspector—Power to require information for the purpose of ascertaining whether contributions payable).

Negligence. *See* **Negligence** (Information or advice).

Obtaining pecuniary advantage. *See* **Criminal law** (Obtaining pecuniary advantage by deception—Information).

Road traffic offence—

Duty to give information. *See* **Road traffic** (Offence—Duty to give information).

Statutory nuisance—

Right of any person aggrieved by statutory nuisance to lay information. *See* **Nuisance** (Statutory nuisance—Abatement notice—Failure to comply—Complaint to justices—Procedure—Initiation of proceedings—Information laid by person aggrieved by nuisance).

Summons or information—

Road traffic offence. *See* **Road traffic** (Offence—Summons or information).

INFORMER

Criminal proceedings—

Disclosure of existence. *See* **Criminal evidence** (Prosecution evidence—Informer).

INFRINGEMENT

Copyright—

Generally. *See* **Copyright** (Infringement).

Registered design—

Exemption of innocent infringer from liability for damages. *See* **Design** (Innocent infringement).

Patent. *See* **Patent** (Infringement).

INHERITANCE

Family provision. *See* **Family provision**.

INJUNCTION

Alternative remedies—

Alternative remedies not exhausted—

Power of court to grant relief. *Leigh v National Union of Railwaymen* [1969] 3 1249, ChD.

Relator action—Administrative discretion of Attorney-General where doubtful whether other remedies exhausted. *Attorney-General (on the relation of Hornchurch Urban District Council) v Bastow* [1957] 1 497, QBD.

Procedure provided by statute misused for delay—

Penalty provided by statute—*Attorney-General (at the relation of Egham Rural District Council) v Smith* [1958] 2 557, QBD.

Statutory remedy in magistrates' court—

Remedy not immediately available—Defendants allegedly in breach of statutory requirement not to occupy premises until fire certificate issued by council—Criminal proceedings pending—Hearing not for several weeks—Magistrates powerless to make order prohibiting occupation until after conviction—Relator action—Power of High Court to grant injunction—London Building Acts (Amendment) Act 1939, s 34(4), (5). *Attorney-General v Chaudry* [1971] 3 938, CA.

Appeal—

Act which might deprive appellant of fruits of appeal—

Order to restrain. *Orion Property Trust Ltd v Du Cane Court Ltd* [1962] 3 466, ChD.

Application—

Premature application. *See* **Premature application for order, post**.

Assault—

Injunction restraining commission of assault—

Jurisdiction to grant. *Egan v Egan* [1975] 2 167, ChD.

INJUNCTION (cont)

Balance of convenience—

Interlocutory injunction. *See* Interlocutory—Balance of convenience, *post*.

Breach of confidence. *See* Equity (Breach of confidence—Injunction).

Breach of contract—

Breach of implied negative term—

Need for certainty—Need to be clear exactly what it is that defendant may not do—Agreement between plaintiff vendor and company—Agreement that company should form new company and that plaintiff should sell plots of land to new company in return for shares and cash—Company formed for purpose of developing land as marina—New company subsequently advertising one of plots of land for sale—Plaintiff seeking injunction restraining company and new company from disposing of any of land—Contract at most requiring company to use best endeavours to procure if practicable development of property as marina—Obligation not sufficiently certain to found claim for injunction to restrain company or new company from disposing of land. **Bower v Bantam Investments Ltd** [1972] 3 349, ChD.

Contract for personal services—

Breach of restrictive covenant—Whether necessary to prove that damage will result from breach—Enforcement of contract for personal services. **Marco Productions Ltd v Pagola** [1945] 1 155, KBD.

Management agreement between group of musicians and manager—Professional careers of group to be advanced—Personal and fiduciary character of services to be rendered by manager—Repudiation of agreement by group for alleged breaches—Injunction sought by manager to restrain group until trial from engaging new manager—Grant of interlocutory injunction would compel group to continue to employ manager and thus enforce rendering of personal services by manager—Whether injunction should be refused as tantamount to specific performance of a contract for personal service. **Page One Records Ltd v Britton (trading as 'The Troggs')** [1967] 3 822, ChD.

Foreign corporation—

Submission to English jurisdiction—No evidence of assets within jurisdiction—Whether remedy by injunction available to restrain its agents from further breaches of contract. **Board of Governors of the Hospital for Sick Children v Walt Disney Productions Inc** [1967] 1 1005, CA.

Irrevocable licence—

Grant of irrevocable licence to use theatre—Negative covenant by licensor not to revoke implied in grant—Right of licensees to injunction to restrain licensor from acting on purported revocation. **Millenium Productions Ltd v Winter Garden Theatre (London) Ltd** [1947] 2 331, HL.

Breach of injunction—

Aiding and abetting breach—

Unlawful interference with trade or business—Unlawful interference by compliance with another's unlawful directions—Directions unlawful as given in breach of injunction—Defendant foreign company refusing to continue supplying plaintiffs with an essential part of equipment—Equipment manufactured and sold by plaintiffs under licence from another foreign company—Licence agreement stated to be subject to English law—Injunction granted to plaintiffs against licensors restraining them from impeding plaintiffs in manufacture and sale of equipment—Licensors, in breach of injunction, instructing defendants not to supply essential part of equipment to the plaintiffs—No contract between plaintiffs and defendants—Whether remedy by way of injunction available against defendants. **Acrow (Automation) Ltd v Rex Chainbelt Inc** [1971] 3 1175, CA.

Committal for contempt of court. *See* Contempt of court (Committal—Breach of injunction).

Breach of undertaking given to court—

Aiding and abetting breach—

Respondents to motion for injunction not parties to the action—Whether injunction was the appropriate remedy. **Elliot v Klinger** [1967] 3 141, ChD.

Children—

Child of the dissolved marriage—

Child at school in Scotland—Injunction restraining divorced wife from allowing letter sent to child's school to be handed to him—Supreme Court of Judicature (Consolidation) Act 1925, s 45(1). **R v R and I** [1961] 3 461, Div.

Injunction against child—

Parent's house—Injunction restraining child from entering house. **Egan v Egan** [1975] 2 167, ChD.

Molestation. *See* Husband and wife—Molestation—Molestation of child, *post*.

Removal from jurisdiction. *See* Husband and wife—Removing children from jurisdiction, *post*.

Company—

Compulsory winding-up—

Injunction restraining presentation of petition. *See* Company (Compulsory winding-up—Restraining presentation of petition—Injunction).

Compliance outside defendant's control—

Local authority—

Authority unable to comply with injunction without financial grant—Grant obtainable only on authority of Minister—Whether ground for refusing injunction. **Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd** [1952] 1 1326, ChD.

Confidential information—

Power of court to restrain disclosure—

Cabinet proceedings. *See* Constitutional law (Cabinet—Proceedings—Disclosure of documents or information—Confidential information—Public interest in non-disclosure—Disclosure of information by cabinet minister—Injunction).

Contract of service—

Generally. *See* Master and servant (Contract of service—Breach of contract—Injunction).

Negative stipulations. *See* Master and servant (Contract of service—Injunction—Film actress—Negative stipulations).

INJUNCTION (cont)

County court action—

Jurisdiction of Divorce Court—

Wife's petition for divorce pending—Application by wife to restrain proceedings against daughters of full age for eviction from matrimonial home. **Murcutt v Murcutt** [1952] 2 427, Div.

Criminal proceedings—

Civil proceedings instituted previously—

Issues of law in both sets of proceedings substantially the same—Originating summons to determine whether plaintiff company subject to Pilotage Act 1913, ss 11, 43—Informations laid by defendants' employee against plaintiff company's employee alleging offences under ss 11, 43—Whether injunction granted to restrain criminal proceedings while civil proceedings pending. **Thames Launches Ltd v Corpn of the Trinity House of Deptford Strond** [1961] 1 26, ChD.

Damages in lieu of injunction—

Breach of confidence. *See* **Equity** (Breach of confidence—Damages).

Breach of restrictive covenant affecting land—

Conduct of parties—Restrictive covenant against use of land otherwise than for horse-racing—Tort of inducing breach of contract by entering into agreement for sale and purchase of land for housing—Vendor contending that horse-racing on land no longer profitable—Vendor deciding to cease operating racecourse, with consequence that land would probably be acquired compulsorily for housing—Whether damages should be granted in lieu of injunction. **Tophams Ltd v Sefton (Earl)** [1966] 1 1039, HL.

Measure of damages—Breach not diminishing value of retained land—Defendant making profit from breach—Plaintiff not limited to nominal damages—Damages representing a percentage of profit anticipated from activity constituting breach—Calculation of percentage. **Wrotham Park Estate Company v Parkside Homes Ltd** [1974] 2 321, ChD.

Positive or negative obligation—

Solus agreement in relation to petrol filling station—Consequence of injunction that proprietor obliged to keep garage open. **Esso Petroleum Co Ltd v Harper's Garage (Stourport) Ltd** [1966] 1 725, CA.

Defence—

Undertaking—

Offer of undertaking with denial of liability—Right of plaintiff to disregard undertaking. **Oliver v Dickinson** [1936] 2 1004, ChD.

Discharge—

Interlocutory injunction. *See* **Interlocutory**—Discharge, *post*.

Disciplinary power—

Whether court will interfere with exercise. *See* **Fire brigade** (Discipline—Exercise of disciplinary power—Interference by court—Injunction).

Discretion—

Mandatory injunction. *See* **Mandatory injunction**—Discretion over grant of remedy, *post*.

Natural justice—

Injunction to restrain breach of rules of natural justice—Failure to give party opportunity to be heard—University—Suspension of student—Student not denying commission of offence—Student suffering no injustice by reason of breach of rules—Refusal of injunction. **Glynn v Keele University** [1971] 2 89, ChD.

Ex parte injunction—

Appeal—

Appeal against ex parte injunction granted by Chancery Division of High Court—Injunction discharged. **Harper v Secretary of State for the Home Department** [1955] 1 331, CA.

Application—

Costs. *See* **Costs** (Order for costs—Ex parte proceedings—Motion for injunction).

Jurisdiction to make—

Court's inability to hear full application—No fault of plaintiff or defendant—Prima facie case showing irreparable damage likely to plaintiff. **Beese v Woodhouse** [1970] 1 769, CA.

Grant prior to issue of originating process—Custody of children—Inherent jurisdiction in cases of urgency—Divorce proceedings to be issued in county court—Exercise of High Court jurisdiction—Supreme Court of Judicature (Consolidation) Act 1925, s 45—RSC Ord 29, r 1(3). **L v L** [1969] 1 852, Div.

Pending appeal—Application made when appeal pending against refusal of interlocutory injunction—Ex parte motion for injunction—Motion dismissed—Jurisdiction of judge to grant ex parte application pending appeal against dismissal of motion. **Erinford Properties Ltd v Cheshire County Council** [1974] 2 448, ChD.

Exclusion of spouse from matrimonial home—

Decree nisi granted—

Applicant having no proprietary interest in home—Council dwelling—Tenancy in husband's name—Wife granted decree in consequence of husband's behaviour—Parties living together in home with grown-up children—Husband and wife not on speaking terms—Application by wife for injunction to exclude husband from home—Whether court having jurisdiction to grant injunction. **Brent v Brent** [1974] 2 1211, FamD.

Jurisdiction—Injunction requiring husband to leave matrimonial home and restraining him from molesting wife. **Cook v Cook** [1961] 2 791, Div.

Restraint on husband's continuing in residence—Wife's rights in matrimonial home of which husband statutory tenant—Wife's entitlement to jurisdiction to prevent trespass after decree absolute—Injunction to restrain assaulting and molesting—Jurisdiction of court to restrain husband from continuing in residence—Matrimonial Homes Act 1967, ss 1, 7—Supreme Court of Judicature (Consolidation) Act 1925, s 45(3). **Maynard v Maynard** [1969] 1 1, Div.

INJUNCTION (cont)**Exclusion of spouse from matrimonial home (cont)—****Divorce proceedings pending—**

Balance of hardship—Circumstances making it impossible or intolerable for wife to live in same house as husband—Wife looking after child of family—Need to provide home for wife and child—No suitable alternative accommodation for wife and child—Marriage relationship having broken down completely—Hostility between parties—Matrimonial home too small to allow parties to live there separately—No evidence that husband would have difficulty in finding alternative accommodation—Whether wife entitled to injunction excluding husband from home. **Bassett v Bassett** [1975] 1 513, CA.

Husband owner of home—Wife leaving home prior to institution of proceedings—Husband installing mistress in home shortly after wife's departure—Power of court to order husband to leave home—No apprehension of cruelty by husband or of pressure on wife to abandon petition—Injunctions ordering husband and mistress to leave home and restraining husband from preventing wife's return. **Jones v Jones** [1971] 2 737, CA.

Mistress living in home—Three-roomed home—Husband occupying small separate bedroom—Husband moved into sitting-room, and admitted mistress and their baby to live there with him—Injunction on husband to remove mistress and restraining him from continuing to occupy sitting-room—Injunction that husband should leave matrimonial home not granted. **Pinckney v Pinckney** [1966] 1 121, Div.

Unpleasantness, inconvenience or tension pending divorce proceedings—Insufficient grounds for excluding spouse—Protection of spouse and interests of the children relevant considerations—Petition by wife for judicial separation on ground of cruelty—Whether exclusion of husband from matrimonial home justifiable—Whether impossible for both parties to live together—Parties living in large house belonging to husband—Husband away at work all day—No evidence that order necessary for wife's protection or in children's interests. **Hall v Hall** [1971] 1 762, CA.

Wife owner of home—Jurisdiction to make order excluding spouse exercised cautiously. **Boyt v Boyt** [1948] 2 436, CA.

Wife owner of home—Whether entitled to exclude husband—Married Women's Property Act 1882, s 12, as amended by Law Reform (Married Women and Tortfeasors) Act 1935, s 5, Sch 1. **Gorulnick v Gorulnick** [1958] 1 146, CA.

Judicial separation—

Parties continuing to live in same premises after decree—Tenancy of premises in husband's name—Jurisdiction to restrain husband by injunction from molesting wife—No jurisdiction to compel husband to leave premises. **Montgomery v Montgomery** [1964] 2 22, Div.

Proceedings pending. **Silverstone v Silverstone** [1953] 1 556, Div.

Maintenance proceedings pending—

Relief sought by husband not sufficiently related to wife's claim for maintenance—RSC Ord 29, r 1(1)—Supreme Court of Judicature (Consolidation) Act 1925, s 45(1). **Des Salles d'Epinoix v Des Salles d'Epinoix** [1967] 2 539, CA.

Marriage dissolved—

Parties joint tenants of former matrimonial home—Parties continuing to live in home—Circumstances in which injunction will be granted—Injunction against husband—Conditions making it tolerable for wife and child to continue sharing accommodation with husband—Husband's behaviour endangering mental health of wife and child—No evidence of physical assault or apprehension of violence. **Phillips v Phillips** [1973] 2 423, CA.

Wife legal owner of home—

Right to exclude husband from home—Discretion of court. **Boyt v Boyt** [1948] 2 436, CA.

Fire brigade—**Disciplinary power—**

Whether court will interfere with exercise. *See* **Fire brigade** (Discipline—Exercise of disciplinary power—Interference by court—Injunction).

Foreign proceedings—**Divorce petition by wife—**

Injunction to restrain respondent from proceeding with suit in France—Burden of proof. **Orr-Lewis v Orr-Lewis** [1949] 1 504, Div.

Form of order—**Breach of confidence—**

Restraining manufacture of goods 'merely colourably differing' from goods of certain styles. **Peter Pan Manufacturing Corp'n v Corsets Silhouette Ltd** [1963] 3 402, ChD.

Interlocutory injunction—

Nuisance—Use of adjoining premises for prostitution. **Thompson-Schwab v Costaki** [1956] 1 652, CA.

Mandatory injunction—

Order in general terms not specifying details of work to be done—Injunction requiring defendants to take all necessary steps to restore the support to the plaintiffs' land. **Redland Bricks Ltd v Morris** [1969] 2 576, HL.

Nuisance—

Local authority—Licence needed for work necessary for compliance with injunction. **Pride of Derby and Derbyshire Angling Assn Ltd v British Celanese Ltd** [1953] 1 179, CA.

Passing-off—

Action against limited company—Order against 'defendants by their servants workmen agents or otherwise', not against 'the defendants their staff servants and agents'. **Marengo v Daily Sketch and Sunday Graphic Ltd** [1948] 1 406, HL.

Sale of goods—

Selling car as new. **Morris Motors Ltd v Phelan** [1960] 2 208, ChD.

Two defendants—

Injunction restraining the defendants from obstructing roadway—Acts of obstruction done by second defendant alone—Whether acts by one defendant alone constituted breach of injunction. **Lenton v Tregoning** [1960] 1 717, CA.

INJUNCTION (cont)

Grant of injunction before issue of originating process—.

Title of proceedings. *See Practice* (Title of proceedings—Application for injunction—Grant of injunction before issue of originating process).

High Court—

Applications in matrimonial proceedings—

Procedure. *Practice Direction* [1974] 2 1119, FamD.

Restraint of proceedings pending in High Court—

Garnishee proceedings—Supreme Court of Judicature (Consolidation) Act 1925, s 41.

Llewellyn v Carrickford [1970] 2 24, ChD.

Husband and wife—

Decree absolute—

Grant of injunction after decree absolute—Jurisdiction. *See Divorce* (Injunction—Jurisdiction to grant an injunction extending beyond decree absolute).

Decree for restitution of conjugal rights—

Injunction after—Jurisdiction to grant. *See Divorce* (Injunction—Jurisdiction to grant injunction after decree of restitution of conjugal rights).

Ex parte applications—

Cases of urgency—Applications at Royal Courts of Justice—Procedure—Form of injunction—

High Court—County courts—Divorce Registry—CCR Ord 13, rr 1(1)(b), 8(2), (3)—

Matrimonial Causes Rules 1971 (S I 1971 No 953), r 114(2). *Practice Direction* [1972] 2 1360, FamD.

Exclusion from matrimonial home. *See* Exclusion of spouse from matrimonial home, *ante*.

Maintenance proceedings—

Dealing with assets—Injunction to prevent husband dealing with property pending hearing of applications to vary secured and unsecured maintenance. *Wright v Wright* [1954] 1 707, Div.

Removal of assets abroad—Injunction to prevent husband removing assets outside jurisdiction pending hearing of application for maintenance—Law Reform (Miscellaneous Provisions) Act 1949, s 5(1). *Scott v Scott* [1950] 2 1154, CA.

Matrimonial home—

Restraining wife dealing with her interest. *Bedson v Bedson* [1965] 3 307, CA.

Molestation—

Meaning—Pestering—Absence of violence—Relevance of past conduct—Injunction restraining husband from molesting wife—Husband having inflicted violence on wife on earlier occasions—Husband previously committed several times for breaches of similar injunction—Husband calling on wife at home and place of work—Husband pestering wife to go out with him—Husband not committing violence against wife—Wife frightened of husband and pestering affecting health—Whether husband guilty of molestation. *Vaughan v Vaughan* [1973] 3 449, CA.

Molestation of child—Injunction not granted except where purpose was protection of child. *D v D* [1970] 3 893, Div.

Wife's application for leave to present petition for divorce within three years of marriage—Wife's application for injunction—Jurisdiction of court to entertain. *Winstone v Winstone* [1959] 3 580, Vacation Ct.

Wife's application for leave to present petition for divorce within three years of marriage—Wife's application for injunction—Jurisdiction of court to entertain—Whether sufficient nexus between injunction sought and application for leave to present petition—Supreme Court of Judicature (Consolidation) Act 1925, s 225—Matrimonial Causes Act 1965, s 2—Matrimonial Causes Act 1967, s 10(1)—RSC Ord 29, r 1. *McGibbon v McGibbon* [1973] 2 836, FamD.

Wife's petition for judicial separation—Husband's application for injunction to restrain molestation—Husband of sufficient means to live elsewhere than in matrimonial home, but choosing to remain there—Injunction not granted. *Freedman v Freedman* [1967] 2 680, Div.

Removing children from jurisdiction—

Petition for divorce presented in England by husband—Preliminary issue as to domicile—Children living with husband but no order for their custody—Removal of children out of jurisdiction by wife—Order against wife to bring children within jurisdiction within specified time. *Fabbri v Fabbri* [1962] 1 35, Div.

Settlement of property—

Interlocutory injunction to restrain dealings with property constituting alleged settlements—Jurisdiction. *Hindley v Hindley* [1957] 1 653, Div.

Illegal act of statutory body—

Injunction to restrain—

Suspension of dock workers. *Barnard v National Dock Labour Board* [1952] 2 424, QBD.

Inferior court—

Jurisdiction of High Court over inferior court—

Inferior court exceeding jurisdiction—Jurisdiction to grant injunction to restrain party from executing order of inferior court—Prohibition appropriate remedy—Leave required for application for prohibition—Jurisdiction to grant injunction restraining party from enforcing order of inferior court alleged to be a nullity—RSC Ord 53, r 1. *Johns v Chatalos* [1973] 3 410, ChD.

Interlocutory—

Balance of convenience—

Breach of contractual negative stipulation—Strong prima facie case of breach—Interlocutory injunction not available as matter of course—Maintenance of status quo—Protection of plaintiff's interests—Damages inadequate remedy. *Texaco Ltd v Mulberry Filling Station Ltd* [1972] 1 513, ChD.

Irrelevance where relief sought to prevent clear breach of covenant. *Hampstead and Suburban Properties Ltd v Diomedous* [1968] 3 545, ChD.

INJUNCTION (cont)**Interlocutory (cont)—****Balance of convenience (cont)—**

Likelihood of loss to plaintiff if interlocutory relief refused—No evidence that defendant would suffer greater hardship—Plaintiff corporation claiming statutory monopoly of right to hold markets within area of city—Defendant holding unlicensed market within city—Plaintiff establishing clear prima facie right—Potential loss to plaintiff from fall in revenue from licensed markets—No greater loss to defendant from grant of injunction—Defendant's business not involving much capital outlay. **Birmingham Corp v Perry Barr Stadium Ltd** [1972] 1 725, ChD.

Matters to be considered by court in determining whether balance of convenience lies in favour of granting or refusing relief. **American Cyanamid Co v Ethicon Ltd** [1975] 1 504, HL.

Prima facie entitlement to relief—Serious question to be tried—Unnecessary for applicant to establish prima facie case—Open to court to consider whether on balance of convenience interlocutory relief should be granted provided claim not frivolous or vexatious. **American Cyanamid Co v Ethicon Ltd** [1975] 1 504, HL. **Fisher v Fellowes** [1975] 2 829, CA.

Procuring breach of service contract—Servant not party to proceedings—Alternative remedy dismissal of servant. **Hivac Ltd v Park Royal Scientific Instruments Ltd** [1946] 1 350, CA.

Prospect that defendants' activities would interfere with plaintiffs' business—Defendants picketing plaintiffs' offices in support of campaign—Injunction forbidding picketing not preventing defendants from pursuing campaign. **Hubbard v Pitt** [1975] 3 1, CA.

Relative strength of each party's case—Circumstances in which relative strength should be taken into account—Action for breach of covenant in restraint of trade—Allegation that covenant invalid as being too wide. **Fellowes v Fisher** [1975] 2 829, CA.

Company—

Resolution to remove director—Whether director entitled to interlocutory injunction to restrain company acting on resolution. *See* **Company** (Director—Removal—Resolution to remove director)—Interlocutory injunction to restrain company acting on resolution).

Condition of relief—

Security for fulfilment of cross-undertaking—Foreign company as plaintiffs. **Harman Pictures NV v Osborne** [1967] 2 324, ChD.

Copyright—

Defence of fair dealing—Newspaper reporting current events—No interlocutory injunction if fair dealing pleaded. **Fraser v Evans** [1969] 1 8, CA.

Defence of fair dealing—Plaintiff having arguable case not sufficient to justify grant where defence of fair dealing raised. **Hubbard v Vosper** [1972] 1 1023, CA.

Plaintiff entitled to call for an assignment of copyright—Plaintiff owner in equity of copyright—Whether plaintiff entitled to move for interlocutory injunction as 'owner' of copyright—Copyright Act 1956, s 17. **Merchant Adventurers Ltd v M Grew & Co Ltd** [1971] 2 657, ChD.

Prima facie entitlement—Preservation of status quo governing consideration after establishing prima facie case. **Donmar Productions Ltd v Bart** [1967] 2 338, ChD.

Screenplay alleged to infringe plaintiff's film copyright in book—Historical subject—Common sources of material—Plaintiffs' book supplied with others to author of screenplay—Similarities of incidents and situations—Differences in detail—Absence of explanation by author of screenplay of manner and extent of use of plaintiffs' book and of how he worked and for how long—Whether interlocutory injunction should be granted and whether limited in scope. **Harman Pictures NV v Osborne** [1967] 2 324, ChD.

Damages not appropriate remedy—

Occupation of dwelling by employee under terms of employment—Termination of employment—Retaking of possession by employer without court proceedings—Whether employee entitled to interlocutory injunction designed to secure access to dwelling—Rent Act 1965, s 32(1), (2). **Warder v Cooper** [1970] 1 1112, ChD.

Danger that defendant may transfer assets out of jurisdiction—

Injunction restraining disposition of defendant's assets within jurisdiction—Whether court having jurisdiction to grant injunction in advance of judgment—Supreme Court of Judicature (Consolidation) Act 1925, s 45(1). **Nippon Yusen Kaisha v Karageorgis** [1975] 3 282, CA.

Discharge—

Injunction granted on ex parte application—Ex parte application to discharge or vary—Whether order will be made. **London City Agency (JCD) Ltd v Lee** [1969] 3 1376, ChD.

Subsequent decisions of Court of Appeal reversing decisions subsisting when injunction granted. **Regent Oil Co Ltd v J T Leavesley (Lichfield) Ltd** [1966] 2 454, ChD.

Form of order. *See* Form of order—Interlocutory injunction, *ante*.**Injunction having effect of granting sole relief claimed in action—**

Petition to wind up company on just and equitable grounds—Injunction restraining petitioner moving court to wind up company—Whether interlocutory relief appropriate. **Bryanston Finance Ltd v de Vries (No 2)** [1976] 1 25, CA.

Unincorporated association—Membership in dispute—Relief sought for members deprived of rights—Whether proper case for granting injunction. **Woodford v Smith** [1970] 1 1091, ChD.

Irrevocable letters of credit—

Injunction restraining bank from paying on presentation of draft. *See* **Bank** (Documentary credit—Irrevocable credit—Circumstances in which court may restrain bank from paying on presentation of draft—Interlocutory injunction).

Mandatory injunction—

Injunction mandatory in substance—Injunction to restrain unlawful withholding of supplies under Resale Prices Act 1964—Injunction in substance mandatory—Scheme of the Act taking injunction out of normal sphere of operation of injunctions. **Comet Radiovision Services Ltd v Farnell-Tandberg Ltd** [1971] 3 230, ChD.

INJUNCTION (cont)

Interlocutory (cont)—

Mandatory injunction (cont)—

Probability of success at trial—Reluctance of court to grant mandatory injunction except when success at trial probable. **London Borough of Hounslow v Twickenham Garden Developments Ltd** [1970] 3 326, ChD.

Preservation of status quo—

Prospect of obtaining permanent injunction at trial—Failure to show strong or at least reasonable prospect not a factor precluding grant of interlocutory injunction—Factor weighing against grant. **Evans Marshall & Co Ltd v Bertola SA** [1973] 1 992, CA.

Principle governing grant—

Anticipated litigation—Abuse of process of court—Injunction to restrain anticipated litigation on ground it would constitute an abuse of process—Action for injunction restraining presentation of petition to wind up company on specified grounds—Motion for interlocutory injunction—Whether company having to establish *prima facie* case that petition abuse of process. **Bryanston Finance Ltd v de Vries (No 2)** [1976] 1 25, CA.

Trespass—

Air space. *See* **Trespass to land** (Air space—Invasion of air space of another—Injunction). No defence on facts—Whether interlocutory remedy available for substantial relief before final judgment. **Manchester Corp v Connolly** [1970] 1 961, CA.

Revocation of licence—Defendant's licence to be on premises revoked—Forcible re-entry. **Thompson v Park** [1944] 2 477, CA.

Undertaking as to damages—

Discharge of injunction—Enquiry as to damages—Whether enquiry would be ordered prior to trial. **Ushers Brewery Ltd v P S King & Co (Finance) Ltd** [1971] 2 468, ChD.

Matrimonial and children's matters concerning personal conduct—High Court—County court—Undertaking not to be incorporated in order except in certain circumstances. **Practice Direction** [1974] 2 400, FamD.

Undertaking by Crown—Proceedings against companies for injunction to enforce compliance with statutory order—Order made by Secretary of State regulating prices at which companies permitted to sell drugs—Companies alleging order invalid and *ultra vires*—Secretary of State applying for interlocutory injunction—Whether companies entitled to undertaking as to damages as condition of submitting to interlocutory injunction—Monopolies and Restrictive Practices (Inquiry and Control) Act 1948, ss 10(1) (as amended by the Monopolies and Mergers Act 1965, ss 3(2), 11(5), Sch 3), 11(2)—Monopolies and Mergers Act 1965, s 3(1)(4). **F Hoffmann-La Roche & Co AG v Secretary of State for Trade and Industry** [1974] 2 1128, HL.

Jurisdiction—

Injunction against Minister. *See* **Crown** (Relief against Crown—Injunction against Minister—Jurisdiction).

Landlord and tenant—

Covenant—

Breach—Joined with claim for possession on forfeiture of lease. *See* **Landlord and tenant** (Forfeiture of lease—Action for possession by lessor—Injunctions to restrain breaches of covenant also claimed without prejudice to claim for possession).

Legal right—

Injunction in aid of legal right—

No other means of enforcing right unused for over a century. **Wyld v Silver** [1962] 3 309, CA.

Triviality of injury. **Armstrong v Sheppard & Short Ltd** [1959] 2 651, CA.

Libel action. *See* **Libel and slander** (Injunction).

Locus standi—

Criminal offence created by statute—

No legal right conferred on individual—Enforcement under the control of the Attorney-General—Incitement to racial hatred—Alleged anti-German propaganda by broadcast and television—No cause of action by individual without consent of Attorney-General—Race Relations Act 1965, s 3, s 6. **Thorne v British Broadcasting Corp** [1967] 2 1225, CA.

Exclusion of director from board of company—

Sufficiency of interest to obtain relief. **Hayes v Bristol Plant Hire Ltd** [1957] 1 685, ChD.

Landlord—

Sufficiency of interest—Covenant restraining annoyance by music from restaurant—Breach of covenant—Interlocutory application—Whether landlord had sufficient interest in relief sought—Balance of convenience irrelevant in instance of clear breach of covenant. **Hampstead and Suburban Properties Ltd v Diomedous** [1968] 3 545, ChD.

Mandatory injunction—

Covenant not to transfer land without procuring purchaser to enter into similar restrictive covenant—

Transferor company owning petrol station subject to solus agreement with plaintiffs—Holding company acquiring control of transferor company—Holding company procuring company to transfer petrol station to another subsidiary company free of solus agreement—Whether court having power to compel retransfer of petrol station to transferor company. **Esso Petroleum Co Ltd v Kingswood Motors (Addlestone) Ltd** [1973] 3 1057, QBD.

Discretion over grant of remedy—

Breach of covenant in conveyance—Suspension of injunction to allow defendant to ameliorate breach—Propriety. **Charrington v Simons & Co Ltd** [1971] 2 588, CA.

Franchise ferry—Owner sustaining loss—Injunction to maintain and operate ferry refused. **Attorney-General (at the relation of Allen) v Colchester Corp** [1955] 2 124, QBD.

Houses built in breach of restrictive covenant—No interlocutory relief claimed—Whether plaintiff entitled to injunction requiring demolition of houses. **Wrotham Park Estate Co v Parkside Homes Ltd** [1974] 2 321, ChD.

Interlocutory motion—Criteria for exercise of discretion. **Shepherd Homes Ltd v Sandham** [1970] 3 402, ChD.

INJUNCTION (cont)**Mandatory injunction (cont)—****Discretion over grant of remedy (cont)—**

Order sought requiring supervision over period of years—Negative injunction mandatory in form—Covenant by local authority to maintain airfield as municipal aerodrome—Injunction to enforce covenant refused—Remedy in damages. **Dowty Boulton Paul Ltd v Wolverhampton Corpn** [1971] 2 277, ChD.

Unreasonable expense—Loss of support of plaintiffs' land by reason of defendants' excavation on neighbouring land—Order requiring expenditure of £30,000 for benefit of land, etc, worth not more than £12,000. **Redland Bricks Ltd v Morris** [1969] 2 576, HL.

Form of order. *See* Form of order—Mandatory injunction, *ante*.

Interlocutory. *See* Interlocutory—Mandatory injunction, *ante*.

Quia timet action—

Jurisdiction—Loss of support of plaintiff's house by reason of defendant's excavation—Excavation causing loss of support of land near house—Real probability that in time loss of support would cause actual damage to house—Jurisdiction to grant injunction. **Hooper v Rogers** [1974] 3 417, CA.

Trespass—

Advertising sign projecting eight inches into air space above shop premises. **Kelsen v Imperial Tobacco Co (of Great Britain and Ireland) Ltd** [1957] 2 343, QBD.

Matrimonial home—

Exclusion of spouse from home. *See* Exclusion of spouse from matrimonial home, *ante*.

Minister, against—

Jurisdiction. *See* **Crown** (Relief against the Crown—Injunction against Minister—Jurisdiction).

Molestation—

Husband and wife. *See* Husband and wife—Molestation, *ante*.

Nuisance—**Continuing damage—**

Roots of trees causing damage to adjoining premises. **McCombe v Read** [1955] 2 458, QBD.

Continuing threat of damage—

Only effective remedy—Suspension. **Lotus Ltd v British Soda Co Ltd** [1971] 1 265, ChD.

Form of order. *See* Form of order—Nuisance, *ante*.

Interlocutory injunction—

Form of order. *See* Form of order—Interlocutory injunction—Nuisance, *ante*.

Public nuisance—

Dust and vibration from quarry affecting adjoining householders—Remedial measures taken since action begun—Relevance of defendants' attitude to complaints—Whether injunction should be granted—Whether isolated acts would amount to a public nuisance and thus constitute a breach of an injunction against committing one. **Attorney-General (on the relation of Glamorgan County Council and Pontardawe Rural District Council) v PYA Quarries Ltd** [1957] 1 894, CA.

Parliamentary affairs—**Opposition to private Bill—**

Jurisdiction of court. **Bilston Corpn v Wolverhampton Corpn** [1942] 2 447, ChD.

Passing-off—

Form of order. *See* Form of order—Passing-off, *ante*.

Premature application for order—**Disciplinary rules—**

Alleged breach—Member invited to attend meeting—Proceedings commenced by member before meeting held. **Draper v British Optical Assn** [1938] 1 115, ChD.

Public nuisance. *See* Nuisance—Public nuisance, *ante*.

Public right—**Relator action—**

Scope of court's discretion in relator action. **Attorney-General (on the relation of Hornchurch Urban District Council) v Bastow** [1957] 1 497, QBD, **Attorney-General (on the relation of Manchester Corpn) v Harris** [1960] 3 207, CA.

Quia timet action—

Mandatory injunction. *See* Mandatory injunction—Quia timet action, *ante*.

Relator action—

Circumstances in which relator procedure may be dispensed with. *See* **Attorney-General** (Relator action—Dispensing with relator procedure—Circumstances in which procedure may be dispensed with—Claim for injunction or declaration).

Sale of goods—

Form of order. *See* Form of order—Sale of goods, *ante*.

Motor car—

Sale of car as new—Injunction at instance of manufacturers against retail purchaser re-selling car as new. **Morris Motors Ltd v Lilley (trading as G & L Motors)** [1959] 3 737, ChD.

Secretary of State, against—

Jurisdiction. *See* **Crown** (Relief against the Crown—Injunction against Secretary of State—Jurisdiction).

Summary procedure—**Practice—**

Summary judgment for injunction—Master not having power to grant injunction—Application direct to judge—RSC Ord 14. **Shell-Mex and BP Ltd v Manchester Garages Ltd** [1971] 1 841, CA.

INJUNCTION (cont)

Sunday—

Dies non juridicus—

Judicial acts not to be done on Sunday—Interim injunction granted as emergency measure on a Sunday to prevent father abducting children on terms that summons to make them wards of court be issued on the next day—Whether granting of injunction was excepted from judicial acts not to be done on a Sunday—Title of order for injunction—RSC Ord 29, r 1. **Re N (infants)** [1967] 1 161, ChD.

Title of proceedings—

Grant of injunction before issue of originating process. *See Practice* (Title of proceedings—Application for injunction—Grant of injunction before issue of originating process).

Trespass to land—

Invasion of air space. *See Trespass to land* (Air space—Invasion of air space of another).

Undertaking—

Undertaking as to damages—

Interlocutory injunction. *See Interlocutory—Undertaking as to damages, post.*

Variation—

Form—Release and substitution of new undertaking—Undertaking in lieu of injunction to admit bookmaker to greyhound racing track until further order—Dissolution of injunction granted on similar terms in another action against the same defendants by Court of Appeal—Application for variation of undertaking—Application wrong in form—Betting and Lotteries Act 1934, s 11(2)(a). **Cutler v Wandsworth Stadium Ltd** [1945] 1 103, CA.

Wardship proceedings—

Whether inherent jurisdiction to grant injunction before issue of originating process. *See Ward of court* (Jurisdiction—Injunction—Interim injunction—Originating process not yet issued).

INJURIOUS ACT

Physical injury caused by injurious act in combating enemy. *See War injury* (Physical injury caused by injurious act in combating enemy—Injurious act).

INJURIOUS AFFECTION

Compensation. *See Compensation* (Injurious affection).

INJURIOUS FALSEHOOD

See Malicious falsehood.

INJURIOUS FOOD

Offences in connection with preparation and sale of. *See Food and drugs.*

INJURY

Accident arising out of and in the course of employment—

Workman—

Compensation. *See Workmen's compensation* (Injury by accident arising out of and in the course of employment).

Aggravation of injury by war service. *See War pension* (Aggravation of injury by war service).

Compensation—

Criminal injuries. *See Compensation* (Criminal injuries).

War injury. *See War injury* (Compensation).

Damages—

Fatal Accident. *See Fatal accident* (Damages).

Generally. *See Damages.*

Industrial. *See Industrial injury.*

War—

Generally. *See War injury.*

War pension. *See War pension* (Attributability of injury to war service).

INN

Damage to guest's property—

Liability of innkeeper at common law—

Extent of hospitium—Permission by innkeeper to park motor coach at petrol station—Petrol station owned by inn, but separated by public road—Garages and car park at inn—Coach damaged. **Watson v People's Refreshment House Assn Ltd** [1952] 1 289, KBD.

Damage to guests' property—

Liability of innkeeper at common law—

Guest's car left in garage of inn—Garage destroyed by fire and car ruined—No negligence on part of innkeeper. **Williams v Owen** [1956] 1 104, Assizes.

Duty to supply refreshment and lodging to traveller—

Refusal—

Action by traveller—No special damage—Right to general damages. **Constantine v Imperial London Hotels Ltd** [1944] 2 171, KBD.

Reasonableness of refusal—Question of fact for jury—Extent of duty at common law—Right to reserve tables. **R v Higgins** [1947] 2 619, CCA.

Lien—

Luggage—

Ring handed to innkeeper as security for bill—Bill unpaid—Right of innkeeper to exercise lien on ring. **Marsh v Comr of Police and McGee** [1944] 2 392, CA.

Loss of guest's property—

Liability of innkeeper—

Bedroom door without lock—Fur cape left by guest in bedroom—Theft of cape. **Brewster v Drenan** [1945] 2 705, CA.

Failure of guest to take reasonable care of property—Locking bedroom—Failure to deliver jewellery to innkeeper for safe custody—Innkeepers' Liability Act 1863, ss 1, 3. **Shacklock v Ethorpe Ltd** [1939] 3 372, HL.

INN (cont)

Loss of guest's property (cont)—

Liability of innkeeper (cont)—

Residential hotel—Theft of resident's clothing from room—Key left on board in office during absence—No proper system of control. *Olley v Marlborough Court Ltd* [1949] 1 127, CA.

Theft of luggage from motor car—Car parked in inn garage three hundred yards from inn—Hospitium of inn—Notices excluding liability—Guest's own negligence. *Gresham v Lyon* [1954] 2 786, QBD.

Theft of motor car from car park of inn—Need to prove guest a traveller—Traveller—Resident in neighbourhood—Car park within hospitium of inn—Notice relieving innkeeper of liability. *Williams v Linnitt* [1951] 1 278, CA.

Safety of premises—

Hotel drive—

Duty to take reasonable care to see reasonably safe—Slipperiness. *Bell v Travco Hotels Ltd* [1953] 1 638, CA.

Lighting of passages—

Duty to light passages—Reasonable hours—Doorway leading immediately to steep flight of steps. *Campbell v Shelbourne Hotel Ltd* [1939] 2 351, KBD.

INNOCENT MISREPRESENTATION

See **Misrepresentation** (Innocent misrepresentation).

INNS OF COURT

Senate of the Four Inns of Court—

Disciplinary jurisdiction. *See* **Counsel** (Disciplinary jurisdiction—Senate of the Four Inns of Court).

INNUENDO

Libel. *See* **Libel and slander** (Innuendo).

INPUT TAX

Value added tax. *See* **Value added tax** (Input tax).

INQUEST

Coroner. *See* **Coroner** (Inquest).

INQUIRY

Appeal against enforcement notice. *See* **Town and country planning** (Enforcement notice—Appeal against notice—Inquiry by inspector appointed by Minister).

Commission of inquiry—

Procedure—

Freedom to obtain information its own way where no procedure prescribed—Requirements of natural justice. *University of Ceylon v Fernando* [1960] 1 631, PC.

Natural justice—

Duty to hear parties—

Opportunity to consider reasons for decision—Housing—Compulsory purchase order. *See* **Natural justice** (Hearing—Duty to hear parties—Opportunity to consider reasons for decision—Reasons not put forward at hearing—Housing—Compulsory purchase order—Inquiry by inspector).

Next-of-kin, for. *See* **Practice** (Chancery Division—Enquiries for next-of-kin).

Tribunal of inquiry. *See* **Tribunal** (Tribunal of inquiry).

INSANITY

Criminal appeal. *See* **Criminal law** (Appeal—Insanity).

Defence in criminal cases. *See* **Criminal law** (Insanity).

Divorce—

Ground for. *See* **Divorce** (Insanity).

Generally. *See* **Mental health**.

Nullity of marriage—

Grounds for nullity. *See* **Nullity** (Insanity).

INSCRIPTION

Gravestone, on—

Charge for—

Burial board, by. *See* **Burial** (Burial ground—Charge for monumental inscription—Right of burial board to charge for permission to cut inscriptions on gravestone).

INSOLVENCY

Distribution of assets—

Contract having effect of varying statutory rules—

Company—Voluntary winding-up. *See* **Company** (Voluntary winding-up—Distribution of company's property—Application in satisfaction of liabilities—Contract having effect of varying statutory rules).

INSPECTION

Accounts—

Generally. *See* **Account** (Inspection).

Solicitor's. *See* **Solicitor** (Clients' account).

Ballot papers—Local government elections. *See* **Elections** (Local government—Ballot papers—Inspection).

Document—

Document for which privileged claimed. *See* **Discovery** (Privilege—Inspection of documents by court).

Production for inspection. *See* **Discovery** (Production of documents).

INSPECTION (cont)

- Documents—
 - Local authority. *See* **Local government** (Documents—Inspection).
- File of bankruptcy proceedings—
 - Transcript of private examination. *See* **Bankruptcy** (Record of proceedings—Private examination—Inspection of file).
- Judge. *See* **Practice** (Inspection by judge).
- National insurance inspector, by. *See* **National insurance** (Inspector).
- Property—
 - Practice. *See* **Practice** (Inspection of property).
- Solicitor—
 - Inspection of trust documents. *See* **Solicitor** (Trust—Trust documents—Inspection).

INSPECTOR

- Evidence before—
 - Board of Trade investigation into affairs of company. *See* **Company** (Investigation by Board of Trade—Evidence before inspectors).

INSTRUMENT

- Abortion—
 - Procuring instrument with intent to effect abortion. *See* **Criminal law** (Abortion—Procuring drugs or instrument with intent to effect abortion).
- Measuring. *See* **Weights and measures** (Weighing or measuring equipment for use for trade).

INSULTING BEHAVIOUR

- See* **Criminal law** (Insulting behaviour).

INSURANCE

- Accident insurance—
 - Exception clause—
 - Age limit for personal injuries—Exclusion of personal injuries sustained by insured if over the age of sixty-five years—Personal injuries—Insured aged sixty-five years, seven months. **Lloyds Bank Ltd v Eagle Star Insurance** [1951] 1 914, KBD.
 - Influence of intoxicating liquor—Exclusion of liability if injury sustained 'whilst under the influence of intoxicating liquor'—Whether the word 'whilst' connoted a casual connexion—What state was predicated by the words 'under the influence of intoxicating liquor'. **Louden v British Merchants Insurance Co Ltd** [1961] 1 705, QBD.
 - Perils insured against—
 - Accident—Public policy—Hearth and home policy—Liability to third parties—Extent of cover—Public policy precluding claim—Death resulting from insured threatening violence with loaded gun—No intention to cause death or injury—First shot deliberately fired into ceiling to frighten deceased—Second shot resulting in death involuntarily fired when insured fell down staircase while grappling with deceased—Whether death caused by 'accident'—Public policy precluding claim for accident arising from threatening violence with gun—Insured not entitled to indemnity in respect of damages claimed by deceased's dependants. **Gray v Barr (Prudential Assurance Co Ltd, Third Party)** [1971] 2 949, CA.
 - Causation—Accident whilst riding in, mounting into, or dismounting from car—Car accident causing concussion—Insured walking into river while in such state—Independency of accident and death. **Smith v Cornhill Insurance Co Ltd** [1938] 3 145, KBD.
 - Demolition—Liability to third parties—Use of explosives—Warranty—Change of risk. **Beauchamp v National Mutual Indemnity Insurance Co Ltd** [1937] 3 19, KBD.
 - Subsidence or collapse of building—Construction of policy—Meaning of 'subsidence' and 'collapse'. **David Allen & Sons Billposting Ltd v Drysdale** [1939] 4 113, KBD.
 - Policy of insurance effected by any man on his own life—
 - Moneys payable on disablement or death—Married Women's Property Act 1882, s 11. **Re Gladitz** [1937] 3 173, ChD.
- Admiralty proceedings—
 - Arrested property. *See* **Admiralty** (Practice—Insurance—Arrested property).
- All risks insurance—
 - Policy covering property whilst in bank—
 - Prior advice of removal—Extension of cover given for period when property not in bank subject to prior advice to broker of intention to remove from bank custody—Policy covering jewellery—Broker knowing jewellery not in bank at inception of policy—Loss of jewellery—Underwriters' liability—Whether necessary for jewellery first to be placed in bank before underwriters on risk—Whether prior advice deemed to have been given to broker. **Jaglom v Excess Insurance Co Ltd** [1972] 1 267, QBD.
 - Property insurance. *See* **Property insurance**—Perils insured against—All risks, *post*.
- Assessor—
 - Appointment—
 - Appointment by broker at request of insurer. **Anglo-African Merchants Ltd v Bayley** [1969] 2 421, QBD, **North & South Trust Co v Berkeley** [1971] 1 980, QBD.
- Aviation insurance—
 - Condition—
 - Breach of condition—Onus of proof. **Bond Air Services Ltd v Hill** [1955] 2 476, QBD.
- Broker—
 - Appointment of assessors by broker at request of insurer—
 - Non-disclosure to assured—Breach of duty by broker. **Anglo-African Merchants Ltd v Bayley** [1969] 2 421, QBD, **North & South Trust Co v Berkeley** [1971] 1 980, QBD.

INSURANCE (cont)

Broker (cont)—

Duty—

Completion of proposal form—Broker completing form on basis of information supplied by client—Duty of broker to record accurately answers to questions given by client—Misstatement in form due to slip or misunderstanding—Client invited to check completed form before signing it—Client glancing through form and failing to notice misstatement—Consequent repudiation of liability by insurers on claim made under policy—Whether broker in breach of duty to complete form accurately—Whether failure of client to notice error sole and effective cause of loss. *O'Connor v BDB Kirby & Co (a Firm)* [1971] 2 1415, CA.

Delay in forwarding cover note to insured—No cover obtained against loss sustained before cover note received. *United Mills Agencies Ltd v RE Harvey, Bray & Co* [1952] 1 225, KBD.

Duty to principal—Effect of custom. *See Agent* (Duty to principal—Effect of custom—Acts inconsistent with duty to principal—Acts in accordance with long standing practice—Insurance brokers).

Failure to insure clients against employers' liability—Accident through employers' negligence and breach of statutory duty—Employers held liable for damages—Action by employers against brokers—Defence that no damage suffered because insurers could have set up breach of condition in projected policy—Condition that employer should take reasonable precautions to prevent accidents—Need for breach of condition to be reckless to afford defence—Need to show that insurers would have repudiated liability on policy. *Fraser v BN Furman (Productions) Ltd (Miller Smith & Partners, Third Parties)* [1967] 3 57, CA.

Slip tendered to underwriters by broker—

Underwriters' liability—Effect of amendments made to slip by subsequent underwriters—Basis on which underwriters agreeing to take a line. *Jaglom v Excess Insurance Co Ltd* [1972] 1 267, QBD.

Burglary insurance—

Claim—

Repudiation of claim without repudiation of policy by insurance company. *West v National Motor and Accident Insurance Union Ltd* [1955] 1 800, CA.

Risk—

Description of risk—Clause relating to theft while van in garage—Meaning of garage. *Barnett and Block v National Parcels Insurance Co Ltd* [1942] 2 55, CA.

Capital gains tax—

Rights of insured under policy of insurance. *See Capital gains tax* (Insurance policies—Rights of insured under policy of insurance).

Church property—

Movables. *See Ecclesiastical law* (Insurance—Property of parish church—Movables).

C i f contract. *See Sale of goods* (C i f contract—Insurance).

Claim—

Notice—

Condition—Employer's liability. *See Employer's liability insurance—Condition—Notice of claim, post.*

Particulars—

Fire insurance. *See Fire insurance—Condition—Particulars of claim, post.*

Repudiation—

Burglary insurance. *See Burglary insurance—Claim—Repudiation of claim without repudiation of policy by company, ante.*

Company—

Winding-up. *See Company* (Insurance company—Winding-up).

Compromise of claim—

Mistake as to validity of claim. *See Mistake* (Agreement to compromise—Mistake as to validity of claim).

Contingency insurance—

Risk—

Description of risk—Cover against non-receipt of money within a given time—Money received after time expired—Right to subrogation. *Meacock v Bryant & Co* [1942] 2 661, KBD.

Contract of insurance—

Nature of contract—

Contract for the payment of a sum of money on happening of specified event—Contract for the provision of services on happening of event—Whether contracts of insurance limited to contracts for payment of sum of money. *Department of Trade and Industry v St Christopher Motorists Association Ltd* [1974] 1 395, ChD.

Cover note—

Delay in forwarding note—

Breach of duty by broker. *See Broker—Duty—Delay in forwarding cover note to insured, ante.*

Demolition—

Accident insurance. *See Accident insurance—Perils insured against—Demolition, ante.*

Disclosure—

Duty to disclose—

Property insurance. *See Property insurance—Non-disclosure—Duty of assured to disclose material facts, post.*

Duty of broker. *See Broker—Duty, ante.*

employers' liability insurance—

Accident at work—

Contemporaneous statement made by plaintiff—Production—Privilege. *See Discovery* (Legal professional privilege—Communications between parties to litigation—Accident in course of employment—Contemporaneous statement made by plaintiff to defendant employers' insurers).

INSURANCE (cont)

employers' liability insurance (cont)—

Broker—

Failure to insure client. *See* Broker—Duty—Failure to insure clients against employers' liability, *ante*.

Condition—

Condition as to prevention of accidents—Employer to take reasonable precautions to prevent accidents—Need for failure to be reckless not merely negligent—Failure to fence machinery in breach of statutory duty—Alteration of machine nullifying former precaution against accident—Employers not appreciating danger. **Fraser v B N Furman (Productions) Ltd (Miller Smith & Partners, Third Parties)** [1967] 3 57, CA.Condition as to prevention of accidents—Employer to take reasonable precautions to prevent accidents—Question as to safety of works and plant—Whether directed to present or to future state of works and plant. **Woolfall & Rimmer Ltd v Moyle** [1941] 3 304, CA.Notice of claim—Subrogation—Receiver and manager appointed for employers—Employee obtaining judgment in default of appearance against employers—Action by employee against insurers for damages and costs—Condition of policy—Every writ served on employers to be notified to insurers immediately on receipt—Failure of employee to notify insurers until judgment obtained—Whether breach of condition relieving insurers of liability—Third Parties (Rights against Insurers) Act 1930, s 1(1)(b). **Farrell v Federated Employers Insurance Association Ltd** [1970] 3 632, CA.

Description of risk—

Contract of service—Whether servant under 'contract of service' with assured—Loan of servant to assured—Unskilled labourer. **Denham v Midland Employers' Mutual Assurance Ltd** [1955] 2 561, CA.Injury arising out of and in the course of employment—Loan of car by employers to employee on condition that fellow employee given lifts to work—Fellow employee injured by negligent driving of employee—Whether employers entitled to indemnity under policy. **Vandyke v Fender (Sun Insurance Office Ltd, third party)** [1970] 2 335, CA.

Third party's rights against insurers—

Set-off by insurers—Third party's claim—Judgment against employer in action for personal injuries—Bankruptcy of employer—Premiums owing by employer to insurers—Whether statutory transferred rights enjoyed by third party against insurers were subject to set-off in respect of premiums owing—Third Parties (Rights against Insurers) Act 1930, s 1. **Murray v Legal and General Assurance Society Ltd** [1969] 3 794, QBD.

Explosion—

Fire insurance—

Explosion of boiler. *See* Fire insurance—Perils insured against—Explosion of boiler, *post*.

Fatal accident—

Liability admitted by insurance company—

Writ issued more than 12 months after death. *See* Limitation of action (Fatal accident—Application of statutory limitation period—Third-party insurance).

Fidelity insurance—

Proposal form—

Answers to questions as to duties of person proposed—Whether warranties. **Hearts of Oak Building Society v Law Union and Rock Insurance Co Ltd** [1936] 2 619, KBD.

Fire insurance—

Amount payable by insurer—

Where insured's interest limited—Goods held in trust or on commission—Extent of insurance—Profits—Right of bailee to deduct from insurance moneys in respect of commission and charges not earned. **Maurice v Goldsborough Mort & Co. Ltd** [1939] 3 63, PC.

Condition—

Burden of proof—Loss by reason of specified occurrences—Abnormal conditions—Whether insurers liable. **Levy v Assicurazioni Generali** [1940] 3 427, PC.Particulars of claim—Conditions precedent—Compliance within a reasonable time—Banking accounts only disclosed on cross-examination. **Welch v Royal Exchange Assurance** [1938] 4 289, CA.Covenant in lease. *See* Landlord and tenant (Covenant—Insurance—Fire).

Insurable interest—

Agricultural holding—Tenant's insurance—Crops—Crops destroyed by fire after tenant quit holding pursuant to notice to quit—Whether tenant had insurable interest in crops after quitting holding. **Thomas v National Farmers Union Mutual Insurance Society Ltd** [1961] 1 363, QBD.

Measure of indemnity—

Basis of calculation—Mansion partly destroyed by fire—Agreed value in excess of actual value. **Elcock v Thomson** [1949] 2 381, KBD.

Payment of loss—

Mistake—Policy indorsed in favour of three named parties 'for their respective rights and interests'—Claim made by one and payment by cheque in favour of all three—Cheques indorsed by all and paid to credit of claimant—Action to recover amount paid on ground of arson by claimant's employee—Whether money recoverable from parties other than claimant as paid under mistake of fact. **General Accident Fire and Life Assurance Corpn Ltd, and Drysdale v Midland Bank Ltd, Scoffin and Willmott Ltd, and Plant Bros Ltd (in liquidation)** [1940] 3 252, CA.

Perils insured against—

Explosion of boiler—Use for domestic purposes—Insurance against damage by explosion of boilers used for domestic purposes only—Boiler used for heating building—Certain rooms in building used for business purposes—Whether boiler used for domestic purposes only. **Re An Arbitration between Willesden Borough Council and Municipal Mutual Insurance Ltd** [1945] 1 444, CA.Ignition—Goods placed in grate for safety—Fire lit forgetting goods placed there—Whether insurers liable. **Harris v Poland** [1941] 1 204, KBD.

INSURANCE (cont)

Fire insurance (cont)—

Reinstatement—

Double insurance clause—Insurance of premises by lessor and lessee—Equitable interest—Ratification of insurance—Reinstatement of premises—Fires Prevention (Metropolis) Act 1774, s 83. *Portavon Cinema Co Ltd v Price and Century Insurance Co Ltd* [1939] 4 601, KBD.

Flood—

Householder's policy. *See* Householder—Storm, tempest or flood, *post*.

Guarantee insurance—

Bonds—

Guarantee of payment of bonds—Bonds containing gold clause—Guarantee of redemption at par—Whether insurance of payment on a gold basis. *AL Sturge & Co v Excess Insurance Co Ltd* [1938] 4 424, KBD.

Subrogation. *See* Subrogation—Guarantee insurance, *post*.

Hearth and home policy—

Accident. *See* Accident insurance—Perils insured against—Accident—Public policy—Hearth and home policy, *ante*.

Householder—

Storm, tempest or flood—

Flood—Gradual ingress of water from natural source—Policy covering loss, destruction or damage to property from 'storm, tempest or flood'—Seepage of water into plaintiff's lavatory caused by natural source beneath—Water on lavatory floor standing three inches deep—Whether a 'flood'. *Young v SUn Alliance and London Insurance Ltd* [1976] 3 561, CA.

Householder's comprehensive policy—

Liability insurance. *See* Liability insurance—Householder's comprehensive policy, *post*.

Ignition—

Fire insurance. *See* Fire insurance—Perils insured against—Ignition, *post*.

Income tax—

Payment under policy—

Capital or income. *See* Income tax (Capital or income receipts—Insurance—Payment under policy).

Industrial injuries—

National insurance—

Contributions. *See* National insurance (Contributions).

Generally. *See* Industrial injury.

Insurable interest—

Fire insurance. *See* Fire insurance—Insurable interest, *ante*.

Lease—

Covenant. *See* Landlord and tenant (Covenant—Insurance).

Liability insurance—

Employers' liability. *See* Employers' liability insurance, *ante*.

Forged documents—

Bank—Indemnity against loss due to advance on invalid documents—Payment to be for excess of named sum lost 'by each and every loss or occurrence'—Daily advances on security of invoices—Fictitious invoices—Whether series of losses or one large loss. *Philadelphia National Bank v Price* [1938] 2 199, CA.

Householder's comprehensive policy—

Damage to premises by settlement caused by tree roots—Whether damage caused 'by accident'—Whether insurers liable. *Mills v Smith (Sinclair Third Party)* [1963] 2 1078, QBD.

Policy covering sums for which assured liable as occupier of flat—Damage to premises by fire negligently lit by assured in order to destroy birds' nest under cornice of building—Whether insurers liable. *Sturge v Hackett* [1962] 3 166, CA.

Professional indemnity insurance—

Accountant—Indemnity against claims in respect of neglect, default or error—Q C clause—Accountants' clerk converting client's money to own use—Action by client against accountants—Whether client's claim covered by policy—Meaning of 'claim' in policy. *West Wake Price & Co v Ching* [1956] 3 821, QBD.

All losses—Loss due to embezzlement by employee. *Goddard and Smith v Frew* [1939] 4 358, CA.

Solicitor—Indemnity in respect of loss arising from neglect, omission, or error committed by solicitors or their employees—Fraud on clients by employee—Resulting loss by solicitors—Whether covered by policy. *Davies v Hosken* [1937] 3 192, KBD.

Solicitor—Limitation of liability—Liability limited to £3,000 in respect of each occurrence—Advice to several persons injured in same accident—Widow advised to become administratrix of estate against which claim to be made—Claims allowed to become statute barred—Whether one occurrence—Repudiation by insurers of liability in excess of £3,000—Whether solicitor entitled to recover own costs in contesting claims. *Forney v Dominion Insurance Co Ltd* [1969] 3 831, QBD.

Public liability insurance—

Exception clause—Cause of damage—Exception in respect of damage attributable to specified cause—Damage resulting from more than one cause—Cover against legal liability to pay damages consequent on damage to property as a result of accident—Exception in respect of damage caused by nature of goods supplied by insured—Insured held liable for damage to factory from fire—Two causes of fire—Nature of goods supplied by insured and negligent conduct of insured's employee—Whether nature of goods supplied dominant and effective cause—Whether, if both causes equally effective, damage within exception clause. *Wayne Tank and Pump Co Ltd v The Employers' Liability Assurance Corp Ltd* [1973] 3 825, CA.

INSURANCE (cont)

Liability insurance (cont)—

Public liability insurance (cont)—

Third party's rights against insurers—Action by third person against insurers—Damage to Post Office cable in street by insured company digging for water main—Liability denied by company—Company went into liquidation—Post Office sued insurers direct—Liability of company not yet established and its amount not yet ascertained—Whether action maintainable—Third Parties (Rights against Insurers) Act 1930, s 1(1). **Post Office v Norwich Union Fire Insurance Society Ltd** [1967] 1 574, CA.

Life insurance—

Assignment—

Stamp duty—Sufficiency of stamp—Amount recoverable by assignee—Interest. **Re Waterhouse's Policy** [1937] 2 91, ChD.

Estate duty—

Gift inter vivos. *See* **Estate duty** (Gift inter vivos—Settlement—Property taken—Proposal for assurance of life of settlor made by trustee).

Property in which deceased had an interest. *See* **Estate duty** (Aggregation—Property in which deceased had an interest—Insurance policy).

Exception—

Suicide—Suicide 'within one year from commencement of insurance'—Suicide nine years after issue—Public policy. **Beresford v Royal Insurance Co Ltd** [1938] 2 602, HL.

Life assurance company—

Management expenses—Income tax. *See* **Income tax** (Management expenses—Life assurance company).

Policy—

Beneficiary—Entitlement—Policy moneys—Trust—Policy taken out by father on the life and for the benefit of his daughter—Premiums paid by father up to his death and thereafter by executors of his will until benefit of policy assigned to daughter—Policy moneys not payable until after the anniversary of commencement of insurance next before attainment by daughter of twenty-five years—Whether policy gave rise to a trust for the daughter of the policy moneys. **Re Foster's Policy** [1966] 1 432, ChD.

Policy effected for benefit of widow or children—'Post-nuptial settlement'. **Lort-Williams v Lort-Williams** [1951] 2 241, CA.

Rectification—Illustration stating terms of insurance issued with proposal form—Policy subsequently issued in different terms—Whether rectification should be granted. **Sun Life Assurance Co of Canada v Jervis** [1943] 2 425, CA.

Policy moneys—

Child's endowment policy—Godchild of assured—Right of assured's estate—Law of Property Act 1925, s 56. **Re Sinclair's Life Policy** [1938] 3 124, ChD.

Lien on policy moneys—Policy taken out by father on life of son—Proceeds held to belong to father's estate—Premiums after death of father paid by or on behalf of son—Premiums paid under common mistake as to right to policy moneys. **Re Foster (No 2)** [1938] 3 610, ChD.

Lien on policy moneys—Policy taken out by husband for benefit of wife—Death of wife—Husband continuing to pay premiums—Married Women's Property Act 1882, s 11. **Re Smith** [1937] 3 472, ChD.

Policy taken out by father on life of son—Powers exercisable on behalf of son—Father's interest to cease on son attaining 21 years—Policy held in trust for son. **Re Webb** [1941] 1 321, ChD.

Policy taken out by father on life of son—Whether father's estate or son's estate entitled—Law of Property Act 1925, s 56. **Re Foster** [1938] 3 357, ChD.

Trust—Benefit of wife and named daughter—Named person an adopted child. **Re Clay's Policy of Assurance** [1937] 2 548, ChD.

Premium—

Payment—Assignment of policy—Offer by assignee to pay premium—Refusal by insurance company—Post-dated cheque given by assured in respect of premium—Death of assured before date of cheque—Tender. **Farquharson v Pearl Assurance Co Ltd** [1937] 3 124, KBD.

Limitation of liability—

Professional indemnity assurance. *See* **Liability insurance**—Professional indemnity insurance—Solicitor—Limitation of liability, *ante*.

Loans by insurance company—

Annual payments for income tax purposes. *See* **Income tax** (Annuity—Monthly loans by insurance company).

Local authority houses, of. *See* **Housing** (Local authority houses—Management—Insurance).Marine insurance. *See* **Marine insurance**.

Mistake—

Payment of loss—

Fire insurance. *See* **Fire insurance**—Payment of loss—Mistake, *ante*.

Motor insurance—

Ceylon. *See* **Ceylon** (Motor insurance).

Generally. *See* **Motor insurance**.

Motor Insurers' Bureau. *See* **Motor insurance** (Rights of third parties against insurers—Motor Insurers' Bureau).Motor vehicle. *See* **Motor insurance**.

Mutual insurance—

Income tax. *See* **Income tax** (Profits—Mutuality principle—Mutual insurance association).

National health insurance. *See* **National health insurance**.

INSURANCE (cont)

National insurance. *See* **National insurance**.

Non-disclosure—

Property insurance. *See* **Property insurance—Non-disclosure, post**.

Notice of claim—

Condition—

Employer's liability insurance. *See* **Employer's liability insurance—Condition—Notice of claim, ante**.

Payments under policy—

Capital or income—

Administration of estates. *See* **Administration of estates (Capital or income—Payments under insurance policy)**.

Policy—

Life insurance. *See* **Life insurance—Policy, ante**.

Proper law. *See* **Conflict of laws (Contract—Proper law of contract—Insurance policy)**.

Protection of policyholders. *See* **Protection of policyholders, post**.

Solicitor—

Negligence—Action on motor insurance policy—Solicitor giving effect to pooling arrangement among insurance companies. *See* **Solicitor (negligence—Action on motor insurance policy—Solicitor giving effect to pooling arrangement among insurance companies)**.

Stamp duty. *See* **Stamp duty (Insurance policy)**.

Variation of settlement—

Sum payable on death of husband. *See* **Variation of settlement (Insurance policy—Sum payable on death of husband)**.

Policy moneys—

Estate duty. *See* **Estate duty (Property deemed to pass—Insurance policy)**.

Trust—

Discretionary power under endowment assurances for pension. *See* **Trust and trustee (Discretionary trust—Uncertainty—Power of selection)**.

Premium—

Income tax—

Annual payment. *See* **Income tax (Annual payment—Insurance premiums)**.

Capital or income. *See* **Income tax (Capital or income receipts—Insurance—Premiums)**.

Life insurance. *See* **Life insurance—Premium, ante**. 193730124

Professional indemnity insurance. *See* **Liability insurance—Professional indemnity insurance, ante**.

Property insurance—

All risks. *See* **All risks insurance, ante**.

Goods in transit—

Duration of risk—Carriers insured goods against all risks of loss 'whilst temporarily housed during the course of transit'—Goods delivered by customer to carriers—Goods stolen while awaiting loading—Whether lost during the course of transit. **Crows Transport Ltd v Phoenix Assurance Co Ltd** [1965] 1 596, CA.

Duration of risk—Policy describing goods as property of I, in transit, and including loading and unloading—Insurance pursuant to agreement by carrier with I to effect full comprehensive insurance—Goods stolen after carrier's vehicle arrived at I's premises but before unloading—No negligence by carrier—Whether goods still on risk—Whether carrier could recover in respect of owner's proprietary interest. **Hepburn v A Tomlinson (Hauliers) Ltd** [1966] 1 418, HL.

Employee's reference—Carrier's insurance under goods in transit policy—Clause providing that insured shall take all reasonable precautions for the protection and safeguarding of goods—Lorry driver employed without reference being checked—Lorry and load stolen—Whether clause referred to selection of staff or only to protection of physical safety of goods—Need for failure to take precautions to be reckless not merely negligent. **W & J Lane v Spratt** [1970] 1 162, QBD.

Insurance of haulage contractors against liability for loss of goods in transit carried by sub-contractors—Goods delivered by the contractors' order to vehicle apparently that of sub-contractors—Theft of goods—Whether goods held by contractors 'in trust' within policy. **John Rigby (Haulage) Ltd v Reliance Marine Insurance Co Ltd** [1956] 3 1, CA.

Non-disclosure—

Duty of assured to disclose material facts—Lloyd's jewellers' block policy—Foreign jurisdiction clause—Policy covering stock-in-trade of diamond merchants against loss—Diamonds and pearls lost by theft in Italy—Alleged discovery by underwriters of practice of assured to smuggle diamonds into Italy—Repudiation of liability by underwriters on ground of non-disclosure and illegality—Whether such dispute was within foreign jurisdiction clause. **Mackender v Feldia AG** [1966] 3 847, CA.

Duty of assured to disclose material facts—Nature and age of goods material—'New men's clothes in bales for export'—Government surplus goods described in trade as new—Nature and age of goods not brought to attention of insurer—Insurer not put on enquiry by description of goods. **Anglo-African Merchants Ltd v Bayley** [1969] 2 421, QBD.

Perils insured against—

All risks—Goods sent to Germany for treatment—Insolvency of German firm—Accident or fortuitous casualty. **London & Provincial Leather Processes Ltd v Hudson** [1939] 3 857, KBD.

Risk—

Description of risk—Goods insured while 'in store'—Goods packed in lift vans and placed in enclosed yard at depository—Whether goods 'in store'. **Wulfson v Switzerland General Insurance Co Ltd** [1940] 3 221, KBD.

INSURANCE (cont)

Proposal—

Form—

Fidelity insurance. *See* Fidelity insurance—Proposal form, *ante*.

Protection of policyholders—

Liquidation of insurance company—

Interim payments to policyholders—Indemnity to liquidator—Power of board to give liquidator indemnity covering such payments—Extent of power—Indemnity against personal liability of liquidator in event of deficiency of assets—Whether power including a power to give company an undertaking to make good shortfall of assets resulting from payments—Policyholders Protection Act 1975, s 15(3)(b). **Policyholders Protection Board v Official Receiver** [1976] 2 58, ChD.Public liability insurance. *See* Liability insurance—Public liability insurance, *ante*.

Reinstatement—

Fire insurance. *See* Fire insurance—Reinstatement, *ante*.

Repudiation of claim—

Burglary insurance. *See* Burglary insurance—Claim—Repudiation of claim without repudiation of policy by insurance company, *ante*.

Risk—

Description of risk—

Burglary insurance. *See* Burglary insurance—Risk—Description of risk, *ante*.Contingency insurance. *See* Contingency insurance—Risk—Description of risk, *ante*.Employers' liability insurance. *See* Employers' liability insurance—Description of risk, *ante*.Property insurance. *See* Property insurance—Risk—Description of risk, *ante*.

Duration of risk—

Goods in transit. *See* Property insurance—Goods in transit—Duration of risk, *ante*.

Subrogation—

Guarantee insurance—

Export contract—Policy insuring exporting company against percentage of loss from buyer's inability to transfer currency owing to foreign exchange control restrictions—Claim under policy satisfied by insurer—Insurer's right against liquidator of company—Assignment of rights to sums recovered from buyer. *Re Miller, Gibb & Co Ltd* [1957] 2 266, ChD.Export contract—Right of insurer to sums recovered—Relevance of principle of subrogation—Express terms of policy—Insurers entitled to 90 per cent of sums recovered 'in respect of a loss to which policy applies'—Insurance relating to export contract between merchant and foreign buyer—Risks covered including delay in payment by foreign buyer—Insurers undertaking to pay 90 per cent of loss—Amount of loss—Payment under contract in foreign currency—Rate of exchange—Loss to be calculated according to rate of exchange at date of export—Delay in payment caused by exchange control restrictions imposed by buyer's country—Payment by insurers in respect of loss—Subsequent payment by buyers—Sterling proceeds of payment exceeding loss calculated under policy because of devaluation of sterling—Whether insurers entitled to recover sum in excess of amount paid in respect of loss. *L Lucas Ltd v Export Credits Guarantee Department* [1973] 2Express terms of policy—Right of insurers to sums recovered in respect of loss—Principle of subrogation—Principle to be applied only when doubt or ambiguity as to express terms of policy. *L Lucas Ltd v Export Credits Guarantee Department* [1973] 2 984, CA.

Suicide—

Exception of life policy. *See* Life insurance—Exception—Suicide, *ante*.

Third party's rights—

Employer's liability insurance. *See* Employer's liability insurance—Third party's rights against insurers, *ante*.Public liability insurance. *See* Liability insurance—Public liability insurance—Third party's rights against insurers, *ante*.

Underwriter—

Liability—

Amendments to slip. *See* Broker—Slip tendered to underwriters by broker—Underwriter's liability, *ante*.Unemployment insurance. *See* Unemployment insurance.

Value added tax—

Exemption. *See* Value added tax (Exemption—Insurance—Provision of insurance of any description).

Variation of trust—

Protection against possible shortfall in consequence of capital transfer tax. *See* Variation of trust (Protection against possible shortfall in consequence of capital transfer tax—Insurance).

War damage—

Insurance of goods against war damage. *See* War damage (Insurance of goods against war damage).**INSURANCE COMPANY**Winding-up. *See* Company (Insurance company—Winding-up).

INTENTION

- Corporate body. *See* **Landlord and tenant** (Opposition to grant of new tenancy of business premises—Intention of landlord to demolish or reconstruct premises comprised in holding—Local authority landlord).
- Creation of legal relations. *See* **Contract** (Intention to create legal relationship).
- Criminal liability. *See* **Criminal law** (Intention).
- Cruelty—
 - Divorce. *See* **Divorce** (Cruelty—Element of offence—Intention).
- Desertion—
 - Divorce. *See* **Divorce** (Desertion—Intention).
- Domicile—
 - Abandonment of domicile of choice.
 - See* **Domicile** (Abandonment of domicile of choice—Intention).
- Intoxication negating intention—
 - Defence to criminal proceedings. *See* **Criminal law** (Intoxication—Intoxication as a defence—Capacity to form intent).

INTEREST

- Arbitration award. *See* **Arbitration** (Award—Interest).
- Charging order. *See* **Execution** (Charging order—Interest on order).
- Conflict of duty and interest—
 - Solicitor. *See* **Solicitor** (Duty—Conflict of duty and interest).
- Contingent interest—
 - Settlement. *See* **Settlement** (Contingent interest). 197420530
- Costs—
 - Divorce. *See* **Divorce** (Costs—Interest on costs).
- Customs duty—
 - Deposit by way of security for unpaid duty. *See* **Customs and excise** (Imported goods—Delivery on giving security for duty—Interest on security).
- Damages—
 - Award in foreign currency—
 - Rate of interest—Contract governed by foreign law—Entitlement to interest determined by foreign law—Interest to be assessed in accordance with English law as *lex fori*—Appropriate rate that at which person could reasonably have borrowed in foreign currency—Law Reform (Miscellaneous Provisions) Act 1934, s 3(1)(a). **Miliangos v George Frank (Textiles) Ltd (No 2)** [1976] 3 599, QBD.
 - Award of interest—
 - Equitable jurisdiction—Simple or compound interest—Fiduciary duty—Breach—Misappropriation of funds by person in fiduciary position—Company director—Funds used for purpose of commercial transaction—Presumption that profit made by wrongdoer out of use of funds—Rate of interest—Loans obtained from company by director to purchase shares in company—Judgment against director in respect of transaction—Court entitled to award compound interest with yearly rests—Rate of interest one per cent above bank rate or minimum lending rate. **Wallersteiner v Moir (No 2)** [1975] 1 849, CA.
 - Breach of contract—
 - Receipts from insurers—Whether receipts from insurers to be taken into account in awarding interest. **Harbutt's Plasticine Ltd v Wayne Tank and Pump Co Ltd** [1970] 1 225, CA.
 - Claim to—
 - Prejudice to client's claim by delay in service of writ—Liability of solicitor. *See* **Solicitor** (Negligence—Litigation—Delay in issuing and serving writ).
 - Collision at sea—
 - Collision during war between British ship and ship belonging to enemy alien—Damages awarded to alien at end of hostilities—Time from which interest accrues—Date of collision. **The Berwickshire** [1950] 1 699, Adm.
 - Interest included in award of Admiralty Court—Income tax deductible—Whether notification to be given on payment into court. **The Norseman** [1957] 2 660, Adm.
 - Commercial cases—
 - Appropriate rate of interest on damages—Method of assessing appropriate rate. **Cremer v General Carriers S A** [1974] 1 1, QBD.
 - Judgment on admission of facts—
 - Payment into court—Admission of negligence but denial of damage—Interlocutory judgment. *See* **Judgment** (Judgment on admission of facts—Negligence—Admission of negligence but denial of damage—Payment into court—Interlocutory judgment—Interest on damages).
 - Jurisdiction to include interest in award of damages—
 - Court not authorised to give interest upon interest—Meaning of 'interest upon interest'—Damages for breach of contract—Plaintiffs entitled under contract to pay purchase price in instalments over two year period—In consequence of defendants' breach plaintiffs having to pay whole purchase price immediately—Claim for damages representing loss of interest incurred in consequence of having to pay whole purchase price immediately—Claim for interest on damages—Whether a claim for 'interest upon interest'—Law Reform (Miscellaneous Provisions) Act 1934, s 3(1). **Bushwall Properties Ltd v Vortex Properties Ltd** [1975] 2 214, ChD.
 - Personal injury—
 - Amount of damages increased on appeal—Interest on increase to run from date of trial—Rate of interest. **Cook v J L Kier & Co Ltd** [1970] 2 513, CA.
 - Fatal accident—Principles to be applied in awarding interest—Special damages and general damages—Law Reform (Miscellaneous Provisions) Act 1934, s 3, as amended by the Administration of Justice Act 1969, s 22. **Jefford v Gee** [1970] 1 1202, CA.

INTEREST (cont)**Damages (cont)—****Personal injury (cont)—**

General damages—Date from which interest payable—Notice of claim—Service of writ by plaintiff on first defendant—Third party notice served by first defendant on second defendant—Second defendant subsequently added as defendant to plaintiff's action—Liability apportioned between first and second defendants—Date from which interest on general damages payable by second defendant—Law Reform (Miscellaneous Provisions) Act 1934, s 3, as amended by the Administration of Justice Act 1969, s 22. **Slater v Hughes** [1971] 3 1287, CA.

Loss of earning capacity—Damages awarded to cover risk that plaintiff might have to take less well paid employment or be without employment—Whether interest payable on award. **Clarke v Rotax Aircraft Equipment Ltd** [1975] 3 794, CA.

Payment into court—Order for payment out to plaintiff—R S C Ord 22, r 5—Law Reform (Miscellaneous Provisions) Act 1934, s 3(1A) (added by Administration of Justice Act 1969, s 22). **Waite v Redpath Dorman Long Ltd** [1971] 1 513, QBD.

Payment into court—R S C Ord 22, r 5—Law Reform (Miscellaneous Provisions) Act 1934, s 3(1A) (added by Administration of Justice Act 1969, s 22). **Newall v Tunstall** [1970] 3 465, Assizes.

Unliquidated damages—

Award of interest on damages during period of assessment—Law Reform (Miscellaneous Provisions) Act 1934. **Carr v Boxall** [1960] 1 495, ChD.

Wrongful dismissal—

Rate of interest—196330849 Date from which interest to run. **Bold v Brough, Nicholson & Hall Ltd** [1963] 3 849, QBD.

Debt—**Company—**

Winding-up—Application of bankruptcy rules. *See* **Company** (Winding-up—Application of bankruptcy rules—Interest on debts).

Winding-up—Proof. *See* **Company** (Winding-up—Proof and ranking of claims—Interest on debt).

Deceased's estate. See Administration of estates (Interest).**Deposit—****Sale of land—**

Deposit held by estate agent. *See* **Estate agent** (Deposit—Interest).

Expectancy, in—

Estate duty. *See* **Estate duty** (Interest in expectancy).

Income tax—**Annual payments—**

Appropriation to taxed profits. *See* **Income tax** (Annual payment—Appropriation to taxed profits—Interest).

Generally. *See* **Income tax** (Interest).

Persons chargeable—

Receipt of interest. *See* **Income tax** (Persons chargeable—Receipt of income—Person receiving income chargeable—Interest of money).

Ultra vires payment. *See* **Income tax** (Annual payment—Ultra vires payment—Interest).

Land—

Charging order. *See* **Execution** (Charging order—Land—Interest in land).

Legacy—**Date from which legacy carrying interest—**

Legacy to infant—Legacy payable at 21—Trustees empowered to use legacy or any part thereof for education of legatee until he shall attain age of 21—Payment of interest from date of testator's death. **Re Selby-Walker (decd)** [1949] 2 178, ChD.

Limitation fund—

Admiralty. *See* **Admiralty** (Practice—Interest—Rate of interest on limitation fund).

Moneylender—**Rate of interest—**

Generally. *See* **Moneylender** (Interest—Rate).

Memorandum. *See* **Moneylender** (Memorandum—Rate of interest charged on loan).

Mortgage—

Entitlement of mortgagee in redemption action to arrears of interest. *See* **Mortgage** (Redemption—Mortgagee's entitlement to arrears of interest).

Notice by mortgagor to pay off—

Failure to pay on date named—Sum due not set aside and available on date of expiry of notice—Right to interest after date of expiry. **Barratt v Gough-Thomas** [1951] 2 48, ChD.

Notice by mortgagor to redeem—

Right to interest after date of expiry of notice. *See* **Mortgage** (Interest—Notice by mortgagor to pay off).

Payment into court. See Practice (Payment into court—Interest).**Pleading. See Practice (Interest—Pleading).****Proceeds of sale—****Jurisdiction of court to award interest—**

Interest on proceeds of sale of gold bars and bank balances belonging to Dutch bank and sold by Administrator of Hungarian Property—Owners entitled to recover property, or proceeds of sale, from Administrator 'but not to any other remedy'—Treaty of Peace (Hungary) Order 1948 (S 1 1948 No 116), art 1(5)(g). **Bank Voor Handel En Scheepvaart v Slatford Custodian of enemy Property** [1951] 2 779, KBD.

Rate of interest—**Debt—**

Company—Winding-up—Application of bankruptcy rules. *See* **Company** (Winding-Up—Application of bankruptcy rules—Interest on debts—Rate of interest).

INTEREST (cont)

Sale of land—

Interest on unpaid purchase money. *See* **Sale of land** (Interest on unpaid purchase money).

Stamp duty—

Repayment. *See* **Stamp duty** (Repayment—Interest on overpaid duty).

Trust—

Breach of trust—

Rate of interest chargeable against trustee. *See* **Trust and trustee** (Breach of trust—Interest chargeable against trustee—Rate of interest).

War-damaged hereditament, in—

Compulsory acquisition—

Compensation—Assessment. *See* **Compulsory purchase** (Compensation—Assessment—Interest in war-damaged hereditament).

Will—

Apportionment—

Interest accruing after death of tenants for life. *See* **Will** (Apportionment—Interest accruing after death of tenant for life).**INTERIM ORDER**Adoption. *See* **Adoption** (Interim order).**INTERLOCUTORY APPEAL**

County court—

Leave—

Appeal from county court on point of law. *See* **County court** (Appeal—Right of appeal—Point of law—Interlocutory appeal).Criminal cases. *See* **Criminal law** (Court of Appeal—Jurisdiction—Interlocutory appeal).Generally. *See* **Court of Appeal** (Interlocutory appeal).**INTERLOCUTORY INJUNCTION***See* **Injunction** (Interlocutory).**INTERLOCUTORY MOTION**

Discovery—

Application for. *See* **Discovery** (Interlocutory motion).Preservation of subject-matter of cause of action. *See* **Practice** (Inspection of property—Property subject matter of action or in respect of which question arising—Interlocutory motion).Rectification of land register. *See* **Land registration** (Rectification of register—Interlocutory motion).

Vaction of entry in land charges register—

Jurisdiction to order vaction on motion. *See* **Land charge** (Vaction of entry in register—Interlocutory motion—Jurisdiction to order vaction on motion).**INTERLOCUTORY PROCEEDINGS**

Affidavit—

Application to strike out. *See* **Affidavit** (Striking out—Hearsay—Exception—Interlocutory proceedings).Chancery Division. *See* **Practice** (Chancery Division—Interlocutory procedure).**INTERNATIONAL AIR TRANSPORT ASSOCIATION**

Clearing house—

Members—

Agreement to settle mutual debits and credits through clearing house only—Members in liquidation—Whether agreement binding on liquidation. *See* **Company** (Voluntary winding-up—Distribution of company's property—Application in satisfaction of liabilities—Contract having effect of varying statutory rules—Validity—Public policy—Contract entered into for good business reasons and not for purpose of circumventing insolvency legislation—International Air Transport Association).**INTERNATIONAL CARRIAGE BY AIR**Goods. *See* **Carriage by air** (Carriage of goods—International carriage).Passengers. *See* **Carriage by air** (Carriage of passengers—International carriage).**INTERNATIONAL CONVENTION**Generally. *See* **International law** (Convention).

Ratification—

Conflict with statute law. *See* **Conflict of laws** (International convention—Ratified by statute—Implemented by state—Conflict between convention and statute).**INTERNATIONAL LAW**Act of state. *See* **Constitutional law** (Act of state).Armed forces of foreign state. *See* **Constitutional law** (Foreign sovereign state—Armed forces of foreign state).

Convention—

Enforcement by English courts—

Provisions of convention not given force by Act of Parliament—Rights of individuals under convention—Human rights and fundamental freedoms—Whether convention part of English law—Whether convention conferring enforceable rights on individuals—Convention for the Protection of Human Rights and Fundamental Freedoms, art 8(1). **R v Chief Immigration Officer, Heathrow Airport, ex parte Salamat Bibi** [1976] 3 843, CA.

INTERNATIONAL LAW

Convention—

Generally. *See* **Conflict of laws** (International convention).Criminal jurisdiction. *See* **Criminal law** (Jurisdiction).

Municipal law—

Relationship—

Right of individual under international law—Enforcement of right in English courts—Necessity of showing rule of international law has been adopted by English law—Duty of country to receive back nationals expelled by foreign state—British protected person—Whether British protected person having right to enter United Kingdom on being expelled from country of residence—Whether right enforceable by individual English courts. **Thakrar v Secretary of State for the Home Department** [1974] 2 261, CA.

Private international law. *See* **Conflict of laws**.

Recognition of foreign government—

Retroactive effect—

Offer of compensation by former government—Payment of compensation to officers and men of Polish merchant navy on their leaving their ships—Offer made in London on 5th July 1945, by Minister of old Polish government, on behalf of Polish shipping company—Recognition by British government of new Polish government from midnight on 5th/6th July 1945—Offer accepted and acted on, in England, after recognition of new Polish government. **Gdynia Ameryka Linie Żeglugowe Spolka Akcyjna v Boguslawski** [1952] 2 470, HL.

Ownership of aircraft in Hong Kong—Property of Chinese nationalist government—Sale before recognition by British government of communist government as de jure government of China—Effect of decrees of communist government before recognition. **Civil Air Transport Inc v Central Air Transport Corp** [1952] 2 733, PC.

Validity of laws. *See* **Conflict of laws** (Foreign government—Recognition—Law as declared by courts of foreign country).

United Nations Organisation. *See* **United Nations**.

INTERPLEADER

Appeal—

Appeal against order of registrar—

Whether appeal lies to judge in chambers or Divisional Court. *See* **Appeal** (Interpleader proceedings—Appeal from registrar).

Appeal from county court—

Leave—Necessity for leave—Value of goods less than £20—Claim for damages for illegal distress—Whether claim for damages part of interpleader proceedings—Whether leave necessary—County Courts Act 1934, s 105(c)—County Court Rules 1936, Ord 28, r 11. **Crocker v Hadley** [1941] 3 286, CA.

Appeal from registrar—

Order for costs against petitioner in divorce suit—Execution on motor car—Appeal against registrar's order—Whether appeal lies to judge in chambers or Divisional Court—Matrimonial Causes Rules 1950 (S I 1950 no 1940), r 59. **Waight v Waight and Walker** [1952] 2 290, Div.

Application—

Time—

When entitled to relief—Must be real foundation for expectation of being sued by rival claimant. **Watson v Park Royal (Caterers) Ltd** [1961] 2 346, QBD.

Issue of interpleader summons—

Claimant a company in compulsory liquidation—

Leave of Companies Court required for issue of interpleader summons to which company a respondent—Companies Act 1948, s 231. **Eastern Holdings Establishment of Vaduz v Singer & Friedlander Ltd (Able Securities Ltd, In Liquidation, First Claimant; Sempah (Holdings) Ltd, Second Claimant)** [1967] 2 1192, ChD.

Jurisdiction—

Order barring claim—

Power of master to bar—Signature to claim by director of company in wrong capacity—Validity of claim—Competence of action by claimants against execution creditors—R S C Ord 57, rr 10, 16(1). **JRP Plastics Ltd v Gordon Rossall Plastics Ltd (Hexa Pen Co Ltd, claimants)** [1950] 1 241, KBD.

Order directing trial of issue between claimants—

Husband and wife—Property stored by wife—Claim by husband against warehouseman—Right of warehouseman to interplead—Order directing issue between husband and wife—Jurisdiction to make such order—Married Women's Property Act 1882, ss 12, 17—RSC Ord 57, r 7. **De la Rue v Hernu, Peron & Stockwell Ltd, De la Rue, claimant** [1936] 2 411, CA.

Reference of interpleader issues to arbitration. *See* **Arbitration** (Interpleader proceedings).

Sheriff's interpleader—

Claimant the wife of the debtor—

Claim to all furniture and goods seized in the matrimonial home—Application by execution creditor for wife to give evidence on oath and be cross-examined—Adjournment refused and wife's claim allowed—Order set aside—Proper practice on such claims—Meaning of words, may 'summarily determine the question at issue', in RSC Ord 17, r 5(2). **PBJ Davies Manufacturing Co Ltd v Fahn (Fahn claimant)** [1967] 2 1274, CA.

Position of sheriff—

Position analogous to that of officer of court—Neutrality in dispute between parties—Inventory—Claim covering all goods—Copy not to one party only—Production at earliest practicable moment to court. **Fredericks and Pelhams Timber Building v Wilkins (Read, Claimant)** [1971] 3 545, CA.

INTERPLEADER (cont)

Sheriff's interpleader (cont)—

Summary determination—

Consent of claimants—Regard to be had to nature of dispute and value of property—Claim to chattels of considerable overall value—Prospect of difficult point of law—Whether summary determination of claim appropriate—R S C Ord 17, r 5(2). **Fredericks and Pelhams Timber Buildings v Wilkins (Read, Claimant)** [1971] 3 545, CA.

Dispensing with precise formulation of issue and pleadings—Need for normal trial of issue—

Allegations of fraud—Need for clear formulation in advance—R S C Ord 17, r 5(2).

Fredericks and Pelhams Timber Buildings v Wilkins (Read, Claimant) [1971] 3 545, CA.

INTERPRETATION

Articles of association. *See* **Company** (Articles of association—Construction).

Dock labour scheme. *See* **Employment** (Dock labour scheme—Application).

Memorandum of association—

Objects clause. *See* **Company** (Object clause—Construction).

Standard Industrial Classification—

Selective employment tax. *See* **Selective employment tax** (Standard Industrial Classification).

Statute. *See* **Statute** (Construction).

Statutory instrument. *See* **Statutory instrument** (Construction).

INTERPRETER

Evidence—

Calling of interpreter as expert witness. *See* **Practice** (Interpreter—Evidence—Interpreter called to give evidence on religious customs).

INTERROGATION

Suspected criminal—

Admissibility of answers. *See* **Criminal evidence** (Admissions and confessions—Answers and statements to police—Judges' Rules—Interrogation).

INTERROGATORY

Acknowledgment of debt—

Interrogatory answer amounting to acknowledgement. *See* **Limitation of action** (Acknowledgement).

Defamation actions. *See* **Libel and slander** (Interrogatory).

Divorce. *See* **Divorce** (Practice—Interrogatories).

Generally. *See* **Discovery** (Interrogatory).

Joint tortfeasors. *See* **Tort** (Joint tortfeasors—Interrogatories).

INTER-STATE TRADE

Freedom of—

Australia. *See* **Australia** (Freedom of inter-state trade).

INTERVENTION

Admiralty action in rem. *See* **Admiralty** (Practice—Action in rem—Intervention).

Attorney-General, by. *See* **Practice** (Parties—Intervention by persons not parties—Attorney-General).

Divorce proceedings, in. *See* **Divorce** (Intervention).

INTESTACY

Administration pendente lite—

Number of administrators—

Power to appoint one administrator—Supreme Court of Judicature (Consolidation) Act 1925, ss 160(1), 163(1). *In the Estate of Lindley (decd)* [1953] 2 319, Prob. *Re Haslip (decd)* [1958] 2 275, Prob.

Practice—

Probate Division—Follows practice of Chancery Division in appointing receivers. *Re Bevan (decd)* [1948] 1 271, CA.

Appropriation by personal representatives—

Surviving spouse—

Matrimonial home—Valuation—Date of valuation—Right of surviving spouse of intestate to require appropriation of matrimonial home in or towards satisfaction of spouse's interest in intestate's estate—Valuation of home for purpose of appropriation—Whether home to be valued at date of intestate's death or date of appropriation—Administration of Estates Act 1925, s 41—Intestates' Estates Act 1952, Sch 2, para 1(1). *Robinson v Collins* [1975] 1 321, ChD.

Beneficial interest. *See* **Administration of Estate** (Beneficial interest).

Crown rights. *See* **Crown** (Rights on intestacy).

Distribution of intestate's estate—

Right of widow—

Wife leaving husband and living in adultery at the time of his death—Onus of proof—Alberta Intestate Succession Act 1928, s 19(1). *Burns v Burns* [1938] 4 173, PC.

Domicile—

Deceased domiciled abroad—

Grant of administration. *See* **Grant of administration**—Grant where deceased domiciled abroad, *post*.

Evidence—

Admissibility of evidence to prove testator had not died intestate. *See* **Will** (Evidence—Executor dies without taking out probate—Admissibility of evidence to prove testator had not died intestate).

Exclusion from benefit. *See* **Succession**—Exclusion from benefit, *post*.

Family provision—

Failure to provide for dependant. *See* **Family provision**.

INTESTACY (cont)

Family provision. *See* Family Provision.

Foreign adoption—

Devolution of property. *See* Adoption (Foreign adoption—Death—Devolution of property—Intestacy).

Grant of administration—

Application—

Practice—Applicant's right dependent on a person's legitimation. **Practice Direction** [1965] 2 560, Prob.

Presumption of death—Declaration of death by competent foreign court—Independent evidence. *In the Goods of Schulhof, In the Goods of Wolf* [1947] 2 841, Prob.

Estate of enemy alien—

Discretionary grant—Enemy national dying in England—Persons entitled enemies resident in enemy country—Supreme Court of Judicature (Consolidation) Act 1925, s 162—Administration of Justice Act 1928, s 9. **Re Fischer** [1940] 2 252, Prob.

Grant ad colligenda bona—Grant to Public Trustee—Special powers—Motion in court when necessary—Supreme Court of Judicature (Consolidation) Act 1925, s 162—Administration of Justice Act 1928, s 9(b). *In the Estate of Sanpietro, In the Estate of Van Tuyl Van Serooskerken (Baron)* [1940] 4 482, Prob.

Ghana. *See* Ghana (Intestacy—Grant of administration).

Grant for purpose of representation of deceased in action—

Grant to Official Solicitor—Whether general grant or one limited to defending particular action—Supreme Court of Judicature (Consolidation) Act 1925, s 162—Administration of Justice Act 1928, s 9—Law Reform (Miscellaneous Provisions) Act 1934, s 1(1). *In the Goods of Knight* [1939] 3 928, Prob.

Grant to sole administrator—

Possible life interest—Jurisdiction of court—Supreme Court of Judicature (Consolidation) Act 1925, s 160(1), s 162(1) (as amended by Administration of Justice Act 1928, s 9). **Re Hall (decd)** [1950] 1 718, Prob.

Grant to trust corporation—

Consent of persons interested in estate—Grant stating that named individuals only persons entitled to share in estate—Named persons alone known to be interested at time of grant—Subsequent appearance of other persons equally interested—Whether necessary to revoke or amend letters of administration to enable other persons to participate. **Re Ward (decd)** [1971] 2 1249, ChD.

Grant to widow—

Divorce proceedings pending—Wife's notice of application for decree nisi to be made absolute received and filed on day of husband's death—Death of husband prior to receipt of notice by registrar—Whether wife entitled to grant of letters of administration as widow. **Re Seaford (decd)** [1968] 1 482, CA.

Grant where deceased domiciled abroad—

Grant to person entitled to administer under law of domicile—Discretion of court—Court of Probate Act 1857, s 73—Supreme Court of Judicature (Consolidation) Act 1925, s 162(1) (as amended by Administration of Justice Act 1928, s 9). *In the Estate of Kaufman* [1952] 2 261, Prob.

Procedure—Non-Contentious Probate Rules 1954 (SI 1954 No 796), r 29. **Practice Direction** [1957] 1 576, Prob.

Partial intestacy—

Residue undisposed of—Claim by Crown of administration—Persons to be cited—Administration of Estates Act 1925, s 46(1)(vi)—Non-Contentious Probate Rules, r 119. *In the Estate of Hanley* [1941] 3 301, CA.

Person incapable of managing his own affairs—

Applicant not authorised by Court of Protection—Application for use and benefit of person not resident in institution—Evidence of incapacity of such person. **Practice Direction** [1969] 1 494, Prob.

Applicant not authorised by Court of Protection—Evidence of incapacity of person for whose benefit grant required. **Practice Note** [1958] 2 600, Prob, **Practice Note** [1962] 2 613, Prob.

Practice—

Oath of administrator—Clearing of prior classes—Relationship of proposed grantee to deceased—Illegitimate child—Family Law Reform Act 1969. **Practice Direction** [1969] 3 1343, Prob.

Revocation of grant—

Discovery of will—Effect of laches. **Re Coghlan (decd)** [1948] 2 68, CA.

Solicitor's estate—

Grant of Law Society's nominee—Grant to nominees where solicitor practising on his own at his death—Procedure. **Practice Direction** [1965] 1 923, Prob.

Interest on intestacy—

Disclaimer—

Effect—Bona vacantia—Disclaimer of interest arising on partial intestacy by sole members of class—Whether Crown entitled to interest as bona vacantia—Whether interest passing to members of class next entitled on intestacy—Administration of Estates Act 1925, s 46(1) (as amended by the Intestates Estates Act 1952, s 1). **Re Scott (deceased)** [1975] 2 1033, ChD.

Legitimacy. *See* Succession—Legitimacy, *post*.

Notice to quit—

Service. *See* Landlord and tenant (Notice to quit—Service—Intestacy).

Palestine. *See* Palestine (Intestacy).

Partial intestacy—

Grant of administration. *See* Grant of administration—Partial intestacy, *ante*.

Hotchpot. *See* Administration of Estates (Partial intestacy—Hotchpot).

INTESTACY (cont)

Person of unsound mind—

Succession. *See* Succession—Person of unsound mind, *post*.

Revocation of grant of administration. *See* Grant of administration—Revocation of grant, *ante*.

Rights of surviving spouse—

Personal chattels—

Herd of shorthorn cattle—Administration of Estates Act 1925, ss 46(1), 55(1)(x). **Re Ogilby** [1942] 1 524, ChD.

Horses used for racing—Administration of Estates Act 1925, s 46(1)(i), s 55(1)(x). **Re Hutchinson (decd)** [1955] 1 689, ChD.

Rights as respects matrimonial home—

Right to appropriate interest in home to interest in estate—Nature of right—Occupation of matrimonial home by widow—Registered proprietor sought possession—Application to have defence struck out—Defendant widow had no interest recognisable by law in the house—No locus standi to defend action—Proceedings launched to join Official Solicitor as defendant to defend rights of estate—Intestates' Estates Act 1952, s 5, Sch 2, para 1. **Lall v Lall** [1965] 3 330, ChD.

Statutory trusts—

Advancement—

Property held on statutory trusts for issue divisible into shares—Presumption of advancement—Contrary intention—Contrary intention appearing from circumstances of case—Test for determining whether contrary intention appearing—Transfer of shares in family company to son and daughter—Son and daughter employed in company's business—Transfer to exclusion of daughter not employed in business—Clear intention to prefer son and daughter so far as business concerned—Whether intention to prefer them with regard to whole of expected inheritance—Administration of Estates Act 1925, s 47(1)(iii). **Hardy v Shaw** [1975] 2 1052, ChD.

Property held on statutory trusts for issue divisible into shares—Presumption of advancement—Meaning of 'advancement'—Gift whereby permanent provision made for donee—Transfer of shares in family company to son and daughter—Son and daughter employed in company's business—Transfers to exclusion of daughter not employed in business—Whether transfers by way of advancement—Administration of Estates Act 1925, s 47(1)(iii). **Hardy v Shaw** [1975] 2 1052, ChD.

Succession—

Conflict of laws. *See* Conflict of laws (Succession—Intestacy).

Death after 1952—

Nearest surviving relatives being issue of uncles and aunts of the whole blood who had predeceased intestate—Whether entitled to take—Administration of Estates Act 1925, s 46(1)(v), s 47(1)(i), (3), (5), as added by Intestates' Estates Act 1952, s 1, s 4, Sch 1. **Re Lockwood (decd)** [1957] 3 520, ChD.

Exclusion from benefit—

Public policy—Felonious killing of deceased—Exclusion of killer from class entitled on intestacy—Interest of Crown—Bona vacantia—Administration of Estates Act 1925, s 46(1). **Re Callaway (decd)** [1956] 2 451, ChD.

Public policy—Felonious killing of deceased—Insanity—Onus of proof—Sufficiency of proof. **Re Pollock** [1941] 1 360, ChD.

Public policy—Manslaughter. *See* Will (Benefit—Exclusion from benefit—Public policy—Manslaughter).

Legitimacy—

Children of polygamous marriage legitimate according to law of domicile—Succession to intestate's estate—Whether English laws of succession apply only to children of monogamous marriage—Marriage Ordinance of the Colony of Lagos (No 14 of 1884), s 41. **Bamgbose v Daniel** [1954] 3 263, PC.

Person of unsound mind—

Gavelkind land—Lunatic surviving 1925 and dying without recovering testamentary capacity—Whether descent according to custom or to common-law heir. **Re Higham** [1937] 2 17, ChD.

Lunatic entitled as sole next-of-kin to estate of intestate brother—Brother entitled at his death to freehold property—Nature of lunatic's beneficial interest in brother's estate—Beneficial interest in real estate—Administration of Estates Act 1925, ss 33(1), (4), 52(2). **Re Donkin** [1947] 2 690, ChD.

Lunatic entitled on father's death in 1906 to undivided share in freehold estates—Freeholds unsold and held by trustees on statutory trusts—Nature of lunatic's interest—Beneficial interest in real estate—Administration of Estates Act 1925, s 51(2). **Re Bradshaw (decd)** [1950] 1 643, CA.

Real estate—Beneficial interest in proceeds of sale of land formerly copyhold—Deceased incapable of making a will and not recovering capacity before death—Whether technical term 'real estate' included copyhold lands—Whether beneficial interest in proceeds of sale devolved according to the general law applicable to freehold land before 1926—Administration of Estates Act 1925, s 51(2). **Re Sirett (decd)** [1968] 3 186, ChD.

Surviving spouse—

Appropriation by personal representatives. *See* Appropriation by personal representatives—Surviving spouse, *ante*.

Rights of spouse. *See* Rights of surviving spouse, *ante*.

Will—

Construction. *See* Will (Construction—Intestacy).

INTIMIDATION

Threat to break contract. *See* Tort (Intimidation—Unlawful act—Threat to break contract).

INTIMIDATION (cont)

Witness—

Obstructing course of justice. *See* **Criminal law** (Obstructing course of justice—Witness—Intimidation).

INTOXICATING LIQUOR

Accident insurance—

Exception clause. *See* **Insurance** (Accident insurance—Exception clause—Influence of intoxicating liquor).

Consumption after permitted hours. *See* **Licensing** (Consumption of intoxicating liquor after permitted hours).

Licensed premises—

Constable—

Right of entry—Constable's right to enter premises for purpose of preventing or detecting commission of offence—Whether reasonable suspicion of commission of offence necessary prerequisite to exercise of constable's right—Licensing Act 1964, s 186(1). *Valentine v Jackson* [1972] 1 90, QBD.

Licensing. *See* **Licensing**.

Manslaughter—

Intoxication. *See* **Criminal law** (Manslaughter—Mens rea—Causing death by unlawful act—Intoxication).

Offences—

Drunk and disorderly in a public place—

Repeal of enactment creating offence—Whether enactment creating the offence was repealed before the replacing enactment in s 91 of the Criminal Justice Act 1967 was brought into operation—Licensing Act 1872, s 12(1)—Criminal Justice Act 1967, s 91(5), s 103(2), Sch 7, Pt 1—Criminal Justice Act 1967 (Commencement No 1) Order 1967 (S 1 1967 No 1234), art 1, Sch 1, App. *Osgerby v Rushton* [1968] 2 119, QBD.

Tied house covenants. *See* **Restraint of trade by agreement** (Public house).

INTOXICATION

Criminal proceedings—

Defence. *See* **Criminal law** (Intoxication as a defence).

INVALID NOTICE

Enforcement notice. *See* **Town and country planning** (Enforcement notice—Invalid notice).

INVENTION

Confidence—

Breach of confidence—

Use of information given by inventor in confidence. *See* **Equity** (Breach of confidence—Damages—Use of information obtained in confidence—Springboard for activities detrimental to informant—Unpatented device disclosed by inventor as alternative in course of negotiations for marketing his patented device).

Invention of servant. *See* **Master and servant** (Invention of servant).

Patent. *See* **Patent** (Invention).

INVESTIGATION

Company—

Investigation by Board of Trade. *See* **Company** (Investigation by Board of Trade).

INVESTMENT

Friendly society funds. *See* **Friendly society** (Investment of funds).

Funds in court—

Admiralty action. *See* **Admiralty** (Practice—Directions—Application of Admiralty Registrar's practice directions).

Public Trustee. *See* **Public Trustee** (Investment of funds in court).

Income—

Inclusion in computation of profits for purposes of excess profits tax. *See* **Excess profits tax** (Computation of profits—Inclusion of income received from investments).

Special charge to tax. *See* **Income tax** (Special charge—Investment income).

Inducement to invest money—

Criminal liability. *See* **Criminal law** (Inducement to invest money).

Settlement. *See* **Settlement** (Investment).

Trust—

Discretion of trustees. *See* **Variation of trusts** (Extension of powers of investment—Discretion).

Evidence of stockbroker or expert. *See* **Variation of trusts** (Evidence—Investment).

Powers of investment—

Extension. *See* **Variation of trusts** (Extension of powers of investment).

Trustee's. *See* **Trust and trustee** (Investments).

INVESTMENT ALLOWANCE

Income tax. *See* **Income tax** (Capital allowances).

INVESTMENT COMPANY

Income tax. *See* **Income tax** (Investment company).

INVESTMENT GRANT

Discretion to grant—

Exercise of discretion—

No obligation to make grant in respect of each eligible product—Industrial Development Act 1966, s 1(1). *British Oxygen Co Ltd v Minister of Technology* [1970] 3 165, HL.

INVESTMENT GRANT (cont)

Discretion to grant (cont)—

Limit of cost—

Application of rule applying limit of cost below which no grant to be made—Whether proper exercise of discretion—Industrial Development Act 1966, s 1(1). **British Oxygen Co Ltd v Minister of Technology** [1970] 3 165, HL.

Machinery and plant—

Dual purpose plant—

One purpose to which plant used eligible—Other purpose not eligible—Whether competent for Minister to approve grant in respect of expenditure referable to eligible purpose. **British Oxygen Co Ltd v Minister of Technology** [1970] 3 165, HL.

Vehicle—

Articulated vehicle with tank and tanker lorry—Tanks integral part of vehicle—Industrial Development Act 1966, s 13(1). **British Oxygen Co Ltd v Minister of Technology** [1970] 3 165, HL.

Trailer with battery of detachable cylinders—Cylinders in practice not detached—Primary use of cylinders for delivery rather than storage—Cylinders integral part of vehicle—Industrial Development Act 1966, s 13(1). **British Oxygen Co Ltd v Minister of Technology** [1970] 3 165, HL.

Qualifying industrial process—

Storage—

Storage ceasing when cylinders used for storage despatched for delivery of product to customer—Industrial Development Act 1966, s 1(3). **British Oxygen Co Ltd v Minister of Technology** [1970] 3 165, HL.

INVITEE

Occupier's liability—

Duty to invitee. See **Occupier's liability (Duty to invitee)**.

Invitee or licensee—

Distinction. See **Occupier's liability (Invitee or Licensee)**.

INVOLUNTARY MANSLAUGHTER

Accessory before the fact. See **Criminal law (Accessory before the fact—Involuntary manslaughter)**.

IRELAND

Republic of Ireland—

Extradition. See **Magistrates (Indorsement of Irish warrant)**.

IRISH WARRANT

Arrest—

Warrant backed in England—

Validity. See **Arrest (Warrant—Irish warrant backed in England)**.

Indorsement. See **Magistrates (Indorsement of Irish warrant)**.

IRON AND STEEL INDUSTRY

Compensation—

Denationalisation—

Loss of employment—Sale of subsidiary company by Iron and Steel Holding and Realisation Agency to consortium under statutory duty—Resale of company by consortium to two members—Closure of company shortly after resale—Novus actus interveniens—Whether employee's loss of employment was 'in consequence of' sale by Agency—Iron and Steel Act 1953, s 24(1)(b)—Iron and Steel (Compensation to Officers and Servants) (No 2) Regulations 1953 (S I 1953 No 1849), reg 3(1)(d). **Iron and Steel Holding and Realisation Agency v Compensation Appeal Tribunal** [1966] 1 769, QBD.

IRREGULARITY

Criminal trial—

Right of appeal. See **Criminal law (Appeal—Right of appeal—Irregularity at trial)**.

IRREVOCABLE SETTLEMENT

Children—

Income tax. See **Income tax (Settlement—Children—Irrevocable settlement)**.

ISLE OF MAN

Mines and minerals—

Crown rights to minerals, flagg, slate and stone—

Shale—Whether included in the rights reserved—Act of Settlement 1703—4. **Attorney-General for Isle of Man v Moore** [1938] 3 263, PC.

ISOLATED TRANSACTION

Trading for tax purposes. See **Income tax (Trade—Adventure in the nature of trade—Isolated transaction)**.

ISSUE

Children—

Will. See **Will (Children—Ultimate gift of daughter's settled fund—Issue)**.

Will—

Specific donees. See **Will (Gift—Specific donees—Issue of our marriage)**.

ISSUE ESTOPPEL

Criminal proceedings. See **Criminal law (Issue estoppel)**.

Generally. See **Estoppel (Issue estoppel)**.

ISSUING HOUSE

Moneylender—

Whether exempt from Moneylenders Acts. *See* **Moneylender** (Exception from definition of moneylender).

JACK RUSSELL TERRIERS

Attack on child—

Liability of owner in negligence. *See* **Animal** (Negligence—Domestic animal—Liability of owner or keeper—Liability in negligence for personal injuries caused by animal—Dog—Dog not known to have propensity to attack humans—Defendant breeder of Jack Russell)

JAMAICA

Constitutional law—

Fundamental rights and freedoms—

Criminal proceedings to be in public—Presumption that proceedings in camera reasonably required in interests of public safety, public order or protection of private lives of persons concerned in proceedings—Special court established to deal with firearms offences—Provision that court should sit in camera—Whether provision unconstitutional—Jamaica (Constitution) Order 1962 (S I 1962 No 1550), Sch 2, s 20(3)(4)—Gun Court Act 1974 (Jamaica), s 13(1). **Hinds v The Queen** [1976] 1 353, PC.

Judicature—

Higher judiciary—Jurisdiction—Constitution impliedly prohibiting transfer of jurisdiction to courts consisting of members of lower judiciary—Constitution containing special provisions for appointment and tenure of office of members of higher judiciary—Statute establishing special court to deal with firearm offences—Division of court consisting of members of lower judiciary—Division having jurisdiction over offences previously cognisable only by higher judiciary—Whether statutory provisions establishing provision void as being inconsistent with Constitution—Jamaica (Constitution) Order 1962 (S I 1962 No 1550), Sch 2, ss 2, 97(1)—Gun Court Act 1974 (Jamaica), ss 4(b), 5(2). **Hinds v The Queen** [1976] 1 353, PC.

Separation of powers—

Judicature—Punishment of offences—Transfer of power to executive body—Validity—Firearms offences—Statute establishing mandatory sentence—Detention at hard labour during Governor-General's pleasure—Convicted person only to be discharged at direction of Governor-General acting in accordance with recommendation of review board—Majority of members of review board not members of judiciary—Whether provision for mandatory sentence void—Jamaica (Constitution) Order 1962 (S I 1962 No 1550), Sch 2, s 2—Gun Court Act 1974 (Jamaica), ss 8(2), 22(1). **Hinds v The Queen** [1976] 1 353, PC.

Criminal law—

Sentence—

Age of offender. *See* **Sentence** (Age of offender).

Income tax—

Appeal—

Right of any person who objects to the amount of any repayment by commissioner to appeal—Meaning of amount—Whether including a nil amount—Whether person to whom no repayment made having right of appeal—Income Tax Law (No 59 of 1954), s 63(3). **Seramco Ltd Superannuation Fund Trustees v Income Tax Comr** [1976] 2 28, PC.

Avoidance—

Artificial or fictitious transaction reducing amount of tax payable—Right of commissioner to disregard artificial transaction—Sale of shares in company to trustees of exempt superannuation fund—Purchase price payable by instalments—Trustees having no moneys to invest in purchase of shares—Trustees paying instalments from dividends declared by company—Dividends paid after deduction of tax—Whether transaction 'artificial or fictitious'—Whether commissioner entitled to disregard transaction and refuse to repay tax—Income Tax Law (No 59 of 1954), s 10(1). **Seramco Ltd Superannuation Fund Trustees v Income Tax Comr** [1976] 2 28, PC.

Wear and tear allowance—

Business—Carrying on business—Acquisition and letting of premises—Whether acquisition and letting of premises was a business—Whether building let was used by owner for the purpose of acquiring income from a business carried on by him—Income Tax Law (No 59 of 1954), s 8(o). **Commissioner of Income Tax v Hanover Agencies Ltd** [1967] 1 954, PC.

Local authority—

Action against authority—

Notice—Action improperly constituted in absence of notice—Action against corporation and not individual officer—Whether notice required—Public Health Law 1925 (Jamaica), ss 22(2)(a), 89(1), (2)—Kingston and St Andrew Corporation Law 1931, s 223. **Hall v Kingston and St Andrew Corp'n** [1941] 2 1, PC.

Moneylending—

Mortgage—

Variation of contract—Interest—Rate of interest raised—Increase accepted by mortgagor by letter—No provision in mortgage for raising rate of interest but principal repayable on demand—No written memorandum of variation complying with Moneylending Law—No memorandum in writing of original mortgage necessary—Whether mortgage enforceable without the variation in rate of interest—Moneylending Law of Jamaica, s 8. **United Dominions Corp'n (Jamaica) Ltd v Shoucair** [1968] 2 904, PC.

JEWELLER

Ear-piercing operation—

Duty to exercise reasonable skill and care. *See* **Negligence** (Professional person—Duty to exercise reasonable skill and care—Minor surgical operation—Jeweller undertaking minor surgical operation often done by jewellers).

JEWELLERY

Will—

Gift—

Specific bequests. *See* Will (Gift—Specific bequests—Jewellery).

JOCKEY CLUB

Trainer's licence—

Withdrawal—

Natural justice. *See* Natural justice (Domestic tribunal—Jockey Club—Withdrawal of trainer's licence).

JOINDER

Causes of action. *See* Practice (Joinder of causes of action).

Charges—

Indictment. *See* Indictment (Joinder of charges).

Originating summons—

Joinder of Crown as party. *See* Originating summons (Parties—Joinder of Crown as party).

Parties—

Bankruptcy—

Proceedings for declaration of fraudulent preference—Joinder of surety. *See* Bankruptcy (Fraudulent preference—Joinder of parties—Bankrupt's account guaranteed by surety).

Defendants—

Several defendants—Alternative claims—Costs. *See* Costs (Action—Several defendants—Alternative claims against one defendant or against the others).

JOINDER OF PARTIES

Civil action. *See* Practice (Parties—Joinder of parties).

JOINT ACCOUNT

Bank. *See* Bank (Account—Joint account).

Husband and wife. *See* Husband and wife (Property—Joint

JOINT ENTERPRISE

Criminal liability—

Concerted action. *See* Criminal law (Concerted action).

Conspiracy. *See* Criminal law (Conspiracy).

JOINT TENANCY

Bankruptcy of one of joint tenants—

Husband and wife—

Matrimonial home. *See* Bankruptcy (Property available for distribution—Matrimonial home—Husband and wife joint tenants).

Joint tenancy of property charged to secure loan. *See* Bankruptcy (Proof—Secured creditor—

Joint tenancy of property charged to secure loan).

Business premises—

New tenancy—

Application. *See* Landlord and tenant (Business premises—Application for new tenancy—Joint tenants).

Death of one of two joint tenants—

Rent—

Liability of executors. *See* Landlord and tenant (Rent—Joint tenancy—Death of one of two joint tenants—Tenancy of committee rooms—Liability of executors).

Land held on trust for sale—

Joint tenants legally and beneficially entitled—

Whether tenants' interest an interest in land. *See* Execution (Charging order—Land—Interest in land—Property held legally and beneficially by joint tenants).

Matrimonial home—

Deserted wife in occupation—

Bankruptcy of husband. *See* Bankruptcy (Property available for distribution—Matrimonial home—Deserted wife).

Means of effecting severance—

Agreement or conduct—

Agreement—Unenforceable agreement—Agreement indicating parties no longer intended tenancy to operate as joint tenancy—Agreement subsequently repudiated by one party—Whether agreement effecting severance of joint tenancy. *Burgess v Rawnsley* [1975] 3 142, CA.

Conduct falling short of agreement—Conduct indicating common intention that joint tenancy should be regarded as severed—Whether conduct effecting severance. *Burgess v Rawnsley* [1975] 3 142, CA.

Inference of agreement—Conduct giving rise to an inference of agreement to sever—Two joint tenants negotiating agreement to sever joint tenancy—Death of one joint tenant before agreement concluded—Whether conduct of joint tenants supporting an inference of agreement to sever. *Nielson-Jones v Fedden* [1974] 3 38, ChD.

Inference of agreement—Conduct giving rise to inference of agreement to sever—Letter and subsequent transfer of share. *Hawksley v May* [1955] 3 353, QBD.

Application to determine interests in matrimonial property—

Service of summons and supporting affidavit—Land—Dwelling-house conveyed to husband and wife in fee simple as joint tenants at law and in equity—Wife subsequently obtained decree nisi and applied under s 17 of the Married Women's Property Act 1882, for sale and distribution of the proceeds of sale—Husband remained in possession until shortly before his death—Whether beneficial joint tenancy severed in lifetime of husband—Law of Property Act 1925, s 36(2). *Re Draper's Conveyance* [1967] 3 853, ChD.

JOINT TENANCY (cont)

Means of effecting severance (cont)—

Unilateral declaration—

Unequivocal declaration by one of two joint tenants that he wishes to sever joint tenancy—Whether unilateral declaration capable of severing joint tenancy. **Nielson-Jones v Fedden** [1974] 3 38, ChD.

Notice of severance—

Form of notice—

Irrevocable notice—Originating summons supported by affidavit—Power of plaintiff to withdraw proceedings—Whether originating summons capable of constituting effective notice of severance—Law of Property Act 1925, s 36(2). **Nielson-Jones v Fedden** [1974] 3 38, ChD.

Personality—

Written notice of desire to sever joint tenancy communicated by one joint tenant to the other—Whether written notice capable of effecting severance of joint tenancy of personality. **Burgess v Rawnsley** [1975] 3 142, CA.

Service—

Registered post—Recorded delivery—Law of Property Act 1925, ss 36(2), 196(4). **Re 88 Berkeley Road, London NW9** [1971] 1 254, ChD.

Settlement—

Disagreement as to exercise of power of sale. *See* **Settlement** (Powers of tenant for life—Joint tenants).

Statutory trust for sale—

Application to court for order for sale—

Contract not to sell without unanimous consent—Overriding trust—Law of Property Act 1925, ss 30, 35, 36. **Re Buchanan-Wollaston's Conveyance** [1939] 2 302, CA.

Continuance of trust—

Whole property accruing to survivor. *See* **Trust and Trustee** (Joint tenants—Statutory trust for sale—Whole property accruing to survivor).

Surrender—

Surrender by one tenant of rights held jointly—

Absence of express authority from other tenant—Whether joint tenancy terminated. **Leek and Moorlands Building Society v Clark** [1952] 2 492, CA.

JOINT TORTFEASORS

Costs. *See* **Costs** (Joint tortfeasors).

Generally. *See* **Tort** (Joint tortfeasors).

Limitation of action—

When time begins to run. *See* **Limitation of action** (When time begins to run—Joint tortfeasors).

Offer. *See* **Practice** (Joint tortfeasors—Offer).

JOINT WILL

Probate. *See* **Probate** (Grant—Joint will).

JOINTURE RENTCHARGE

Settlement. *See* **Settlement** (Jointure rentcharge).

JOURNAL

Passing off—

Alteration of copies without authority. *See* **Passing off** (Journal).

JOURNALIST

Privilege—

Evidence. *See* **Evidence** (Privilege—Press—Newspaper reporter).

JUDGE

Appeal—

Presence of judge in court—

Presence at time of judgment—Dismissal of appeal in Fiji on reading of reserved written judgments of judges who had come to Fiji to hear appeal but were not present when judgments were read—Validity. **Bharat, Son of Dorsamy v R** [1959] 3 292, PC.

Circuit judge—

Circuit judges sitting as judges of High Court—

Hearing of 'short' High Court matrimonial causes. *See* **Practice** (Hearing—Matrimonial causes—Royal Courts of Justice—Circuit judges sitting as judges of High Court).

Deputy circuit judge—

Mode of address—Style of reference in court list. **Practice Note** [1976] 3 159, CA.

Colonial judge—

Appointment—

Trinidad and Tobago. *See* **Trinidad and Tobago** (Colonial courts—Judges—Appointment as acting judge of Supreme Court).

Tenure of office—

Tenure during pleasure—Appointment by letter from Secretary of State—Letter stating retiring age 62—Appointment terminated when judge 61—Whether contract to employ judge until 62. **Terrell v Secretary of State for the Colonies** [1953] 2 490, QBD.

Criminal trial. *See* **Criminal law** (Trial—Judge).

Crown Court—

Justices. *See* **Crown Court** (Justices as judges).

Discretion—

Reference to European Court. *See* **European Economic Community** (Reference to European Court—Request for preliminary ruling concerning interpretation of treaty—Power of national court to refer questions it considers necessary to enable it to give judgment).

JUDGE (cont)

Discretion (cont)—

Review of exercise of discretion on appeal. *See Court of Appeal* (Discretion of judge—Review of exercise of discretion).

Function of judge—

Civil action—

Intervention on examination of witnesses. *Jones v National Coal Board* [1957] 2 155, CA.

Negligence—Latent defect—System of maintenance—Decision on evidence before judge—Whether he should pursue enquiries on his own. *Henderson v Henry E Jenkins & Sons* [1969] 1 401, CA.

High Court—

Hearings of longer applications in county court matrimonial causes. *See Practice* (Hearing—Matrimonial causes—Royal Courts of Justice).

Jurisdiction to set aside order of another High Court judge on ground fresh evidence obtained. *See Evidence* (Fresh evidence—Application to High Court for order for new trial—Original trial by High Court judge).

Immunity from suit—

Circuit judge—

Crown Court—Appeal from magistrate—Appeal against recommendation for deportation—Order by magistrate that appellant be not detained pending decision on recommendation—Appeal dismissed—Magistrate's order remaining in force—Crown Court having jurisdiction to amend so as to authorise detention—Jurisdiction not exercised—Judge mistakenly believing appellant liable to detention—Judge ordering detention—Whether Crown Court exercising appellate jurisdiction superior or inferior court—Whether judge immune from action for assault and false imprisonment. *Sirros v Moore* [1974] 3 776, CA.

Scope of immunity—

Acts done in judicial capacity—Acts outside jurisdiction—Act done in honest but mistaken belief that within jurisdiction—Distinction between immunity of judges of superior and inferior courts—Liability of judge of inferior court for acts outside jurisdiction—Whether immune provided he is acting bona fide. *Sirros v Moore* [1974] 3 776, CA.

Inspection by. *See Practice* (Inspection by judge).

Jurisdiction—

Criminal contempt—

Summary committal. *See Contempt of court* (Criminal contempt—Jurisdiction—Summary committal—Power of judge on own motion to commit summarily for contempt).

Notes—

Appeal. *See Court of Appeal* (Judge's note).

Retirement—

Evidence taken before his retirement. *See Admiralty* (Practice—Evidence—New trial—Retirement of trial judge during trial).

Single judge—

Refusal of leave to appeal—

Criminal proceedings. *See Criminal law* (Appeal—Leave to appeal—Refusal—Single judge).

JUDGE ADVOCATE

See Court-Martial (Judge Advocate).

JUDGES' RULES

Court-martial—

Application of Judges' Rules to. *See Court-martial* (Evidence—Admissibility—Judges' Rules).

Generally. *See Criminal evidence* (Admissions and confessions—Answers and statements to police).

JUDGMENT

Action on—

Limitation period. *See Limitation of action* (Action on judgment).

Admission of facts. *See Judgment on admission of facts, post.*

Amendment—

Correction of clerical mistakes or accidental slips or omissions. *See Order—Correction—Accidental slip or omission, post.*

Restrictive Practices Court. *See Restrictive trade practices* (Appeal to Court of Appeal by way of case stated—Application after judgment for judgment to be amplified or amended).

Appeal—

Prior reading of judgment or decision and cases cited therein. *See Court of Appeal* (Practice—Prior reading of judgment or decision and cases cited therein).

Arbitrator's award.

Sees Arbitration (Award).

Assignment—

Recovery of possession—

Judgment for recovery of land—Whether judgment passes with land on conveyance thereof. *Chung Kwok Hotel Co Ltd v Field* [1960] 3 143, CA.

Bankruptcy notice—

Notice requiring debtor to pay in accordance with judgment or order—

Defect in notice. *See Bankruptcy* (Bankruptcy notice—Validity—Prescribed form—Formal defect or irregularity—Jurisdiction of court to cure defect—Judgment or order).

Charging order. *See Execution* (Charging order).

Compromise of action—

Approval of court. *See Practice* (Compromise of action—Approval of court).

Consent—

Amendment of title of action after judgment. *See Practice* (Parties—Substitution—Substitution after judgment).

JUDGMENT (cont)

County court—

Appeal—

Provision of note of county court judgment. *See* **County Court** (Appeal—Note of county court judgment—Provision of note).

Generally. *See* **County court** (Judgment or order).

Debt—

Non-payment of judgment debt—

Committal. *See* **Debt** (Non-payment of judgment debt—Committal).

Debtor—

Costs—

Unsuccessful garnishee proceedings. *See* **Costs** (Garnishee proceedings—Discretion of court—Unsuccessful garnishee proceedings—Power of court to award costs against judgment debtor).

Declaratory judgment—

Agent's right to commission. *See* **Agent** (Commission—Right to commission—Declaratory judgment).

Default of appearance—

Application for leave to enter judgment—

Dismissal—Application dismissed as to part of sum claimed on ground that it might be a penalty—Whether RSC Ord 13, r 19, *ultra vires*—Alternative procedures for obtaining judgment—RSC Ord 13, rr 12, 19, Ord 27, r 11. **Lombank Ltd v Cook** [1962] 3 491, QBD.

Discovery of mistake—

Motion to set aside order—Inherent jurisdiction of court not to be invoked where alternative remedy available. **Perry v St Helens Land and Construction Co Ltd** [1939] 3 113, CA.

Discrepancy between writ and statement of claim—

Discretion of court—Amendment of writ—RSC Ord 28, r 1. **Mann v Phillips** [1948] 1 138, ChD.

Interlocutory judgment—

Liquidated demand—Writ claiming price of goods and damages for breach of contract—Value of goods and damages claimed in statement of claim—RSC Ord 13, r 7. **Abbey Panel and Sheet Metal Co Ltd v Barson Products (a firm)** [1947] 2 809, CA.

Liquidated demand—

Claim for specific sum fraudulently converted—RSC Ord 13, r 3. **GL Baker Ltd v Barclays Bank Ltd** [1956] 3 519, CA.

Possession—

Rent controlled premises. *See* **Rent restriction** (Possession—Procedure—Court—Judgment for possession signed in High Court by landlord in default of appearance).

Postal delay. *See* **Practice** (Post—Postal delay—Time limited for entry of appearance—Entry of judgment in default of appearance).

Setting aside judgment—

Discretion of judge—Power of Court of Appeal to interfere with discretion exercised by judge in chambers—RSC Ord 13, r 10—RSC Ord 27, r 15. **Evans v Bartlam** [1937] 2 646, HL.

Excessive amount to plaintiffs' knowledge—Acceptance by plaintiffs, entitled to enter judgment in default of appearance, of cheque for part of sum claimed—Judgment entered for full amount after cheque taken—Cheque subsequently met—defendants' right to have judgment set aside and to have order as to costs. **Bolt & Nut Co (Tipton) Ltd v Rowlands, Nicholls & Co Ltd** [1964] 1 137, CA.

Summary judgment—Specific performance—Purchaser's action—Appearance not entered by vendor—Judgment obtained under RSC Ord 14A—Judgment not carried into effect—Action commenced to have judgment set aside on ground of vendor's contractual incapacity and of undue influence—Application by purchaser to have statement of claim struck out—Whether second action appropriate procedure—Whether judgment under RSC Ord 14A was a judgment by default within RSC Ord 27, r 15. **Dsane v Hagan** [1961] 3 308, ChD.

Writ not received. *See* **Writ** (Service on company—Service by post—Writ not received by company—Judgment in default of appearance).

Default of defence—

Duty of court—

Court to give such judgment as plaintiff entitled to—Requirement directory not mandatory—Allegations of fraud—Open to defendant to show he has good defence—Defendant only to be shut out from defending charge of fraud if admissions or evidence showing no defence—RSC Ord 19, r 7(1). **Wallersteiner v Moir** [1974] 3 217, CA.

Form of order—

Declaratory relief—Declaration only appropriate where justice to plaintiff requires it—In general declaratory relief to be granted only after trial. **Wallersteiner v Moir** [1974] 3 217, CA.

Detinue. *See* **Detinue** (Judgment).

Divorce—

Reading judgment in previous suit between same parties—

Discretion case. **Sharma v Sharma and Davis** [1959] 3 321, CA.

Effect—

Order made but irregular in form—

Want of jurisdiction to make order in that form. *See* **Order**—Form—Irregularity, *post*.

Enforcement—

Leave. *See* **Emergency legislation** (Leave to enforce judgment or order).

Stay of execution. *See* **Execution** (Stay).

Estoppel by. *See* **Estoppel** (Res judicata).Execution. *See* **Execution**.

JUDGMENT (cont)

Final or interlocutory order—

Legal aid. *See* **Legal aid** (Unassisted person's costs out of legal aid fund—Order by judge in chambers—Final or interlocutory order).

Foreign. *See* **Conflict of laws** (Foreign judgment).

Form of judgment—

Claim for possession by mortgagee—

Irregular procedure—RSC Ord 55, r 8A. **Redditch Benefit Building Society v Roberts** [1940] 1 342, CA.

Contributory negligence—

Both parties to blame—Claim and counterclaim—Equal share of blame—Judge dismissing claim and counterclaim—Proper form of order judgment for both parties for half damages proved by each—Law Reform (Contributory Negligence) Act 1945, s 1(1). **Smith v WH Smith & Sons Ltd** [1952] 1 528, CA.

Defendants joined on different causes of action—

Causes of action in respect of same subject-matter—Supreme Court of Judicature (Consolidation) Act 1925, s 41—RSC Ord 16, r 4. **B O Morris Ltd v Perrott and Bolton** [1945] 1 567, CA.

Detinue. *See* **Detinue** (Forms of judgment).

Interest—

Damages. *See* **Interest** (Damages).

Proceeds of sale.

See **S Interest** (Proceeds of sale).

Judgment on admission of facts—

Availability of defence—

Tort—Criminal conviction of defendant. *See* **Tort** (Availability of defence—Criminal conviction of defendant—Judgment on admission of facts).

Discretion of court—

Specially indorsed writ—Unconditional leave to defend granted although claim partially admitted—Defence partially admitting claim—Payment into court—RSC Ord 32, r 6. **Lancashire Welders Ltd v Harland and Wolff Ltd** [1950] 2 1096, CA.

Interlocutory or final judgment—

Appeal—Whether appeal against judgment ranking as an interlocutory or final appeal—RSC Ord 27, r 3. **Technistudy Ltd v Kelland** [1976] 3 632, CA.

Negligence—

Admission of negligence but denial of damage—Payment into court—Interlocutory judgment—Interest on damages—Plaintiff not entitled to judgment on admission of negligence only—Proof of damage necessary to establish liability—Failure to obtain judgment disentitling plaintiff to claim interest on money paid into court—RSC Ord 27, r 3. **Blundell v Rimmer** [1971] 1 1072, QBD.

Judgments, orders and other documents for use abroad. *See* **Practice** (Documents—Documents for use abroad).

Order—

Affiliation order. *See* **Affiliation** (Affiliation order).

Amendment—

Correction of accidental slip or omission. *See* **Order—Correction—Accidental slip or omission, post.**

Interlocutory appeal—Costs—RSC Ord 20, r 11. **Adam & Harvey Ltd v International Maritime Supplies Co Ltd** [1967] 1 533, CA.

Ante-dating of order—

Death of party after judgment reserved. RSC Ord 41, r 3. **Bonsor v Musicians' Union** [1954] 1 822, CA.

Compromise of action—

Approval of court. *See* **Practice** (Compromise of action—Approval of court).

Consent order—

Amendment—Addition of 'liberty to apply'—Order for forfeiture. **Chandless-Chandless v Nicholson** [1942] 2 315, CA.

Appeal—Order made by registrar—Appeal without registrar's leave—Supreme Court of Judicature (Consolidation) Act 1925, s 31(1)(h). **Purcell v FC Trigell Ltd** [1970] 3 671, CA.

Compromise of action. *See* **Practice** (Compromise of action—Consent order).

Construction—Evidence of surrounding circumstances—Consent order on appeal construed having regard to limits of order at first instance. **General Accident Fire and Life Assurance Corp Ltd v Inland Revenue Comrs** [1963] 3 259, CA.

Counsel entering compromise agreement without authority. *See* **Counsel** (Authority—Limitation—Compromise—Consent order based on compromise—Power to set aside order).

Drawing-up in Chancery Division. **Practice Direction** [1960] 3 415, ChD.

Interlocutory order—Setting aside order—Contractual effect of order—Grounds for setting aside order. **Purcell v FC Trigell Ltd** [1970] 3 671, CA.

Maintenance—Divorce—Effect of order. *See* **Divorce** (Maintenance—Order by consent).

Maintenance—Divorce—Variation of order. *See* **Divorce** (Maintenance—Variation of order—Consent order).

Misrepresentation. **Thorne v Smith** [1947] 1 39, CA.

Procedure for obtaining. *See* **Practice** (Consent order—Summons issued and indorsed with consent—Procedure for obtaining order).

Construction—

Unambiguous judgment—Pleadings and history of action not regarded for purpose of construing judgment. **Gordon v Gonda** [1955] 2 762, CA.

Correction—

Accidental slip or omission—Damages awarded against two defendants—Judgment entered as 'each defendant liable for half judgment'—Whether error can be corrected under slip rule. **Smith v Harris** [1939] 3 960, CA.

JUDGMENT (cont)

Order (cont)—

Correction (cont)—

Accidental slip or omission—Discretion to refuse correction—No intervening rights of third parties in ignorance of error—Discretion wherever something intervened since date of order rendering correction inexpedient or inequitable—Stay of execution pending appeal omitted from order as drawn up—Appeal prosecuted to House of Lords—Subsequent application to insert stay of execution in judgment refused—RSC Ord 20, r 8, r 11. **Moore v Buchanan, Buchanan v Moore-Pataleewa** [1967] 3 273, CA.

Accidental slip or omission—Divorce decree—Application to amend to refer to prior marriage—Matrimonial Causes Rules 1950 (S I 1950 No 1940), r 80—RSC Ord 28, r 11. **Thynne v Thynne** [1955] 3 129, CA.

Accidental slip or omission—Judgment awarding damages—Accidental omission of award of interest—Application by summons inter partes for award of interest—Summons dismissed for want of jurisdiction—Subsequent application under slip rule for amendment of judgment by inclusion of award of interest—Whether court precluded from amending judgment by reason of dismissal of earlier summons. **Tak Ming Co Ltd v Yee Sang Metal Supplies Co** [1973] 1 569, PC.

Accidental slip or omission—Omission of counsel to apply for certain costs—Costs incurred before issue of summons—RSC Ord 28, r 11. **Re Inchcape** [1942] 2 157, ChD.

Accidental slip or omission—Right to apply for correction—RSC Ord 28, r 11. **Re An Application by Marly Laboratory Ltd** [1952] 1 1057, CA.

Omission of remuneration of trustees of debenture trust deed—Matter not in mind of court when order made—Fund from which remuneration to be paid still in hand—Correction of date—RSC Ord 55, r 71. **Re City Housing Trust Ltd** [1942] 1 369, ChD.

Costs. *See* **Costs** (Order for costs).

County court. *See* **County court** (Judgment or order).

Discharge—

Motion to discharge district registrar's order—Action in Chancery Division of High Court in London—Action in warned list at date of application to district registrar to alter venue. **Fullerton v Ryman** [1956] 2 232, ChD.

Motion to discharge order made in chambers—Time for. **Re Eastcheap Alimentary Products Ltd** [1936] 3 276, ChD.

Drawing-up—

Chancery Division. *See* **Practice** (Chancery Division—Order—Order on motion—Drawing up of order).

Enforcement—

Leave. *See* **Emergency legislation** (Leave to enforce judgment or order).

Ex parte order—

Setting aside—General rule—Exclusion by statute. *See* **Limitation of action** (Extension of time limit—Order for extension).

Examination of officer of company—

Compulsory winding-up of company. *See* **Company** (Compulsory winding-up—Public examination—Order for attendance of directors).

Form—

Irregularity—Effectiveness of order until varied—Order for family provision for widow of deceased—Made in form in which there was not jurisdiction to make it. **In the Estate of Gale (decd)** [1966] 1 945, CA.

Form of order—

Divorce proceedings—Expression of sums of money. *See* **Divorce** (Practice—Order—Form—Expression of sums of money).

Judgment requiring execution of deed—Judgment in default of appearance. *See* **Practice** (Chancery Division—Order—Order requiring execution of deed—Judgment in default of appearance—Form of order).

Order dismissing action unless fixed for trial within six years from 'date of alleged loss'—193620834

Four-day order—

Whether available to enforce order for payment out of testator's estate. *See* **Family provision** (Order—Order for payment of sum out of capital of testator's estate—Enforcement—No payment made under order—Application for four day order for payment).

Injunction—

Form of order. *See* **Injunction** (Form of order).

Interlocutory order—

Leave to appeal against order. *See* **Court of Appeal** (Interlocutory appeal—Leave to appeal).

Minutes of order drawn by counsel—

Chancery Division. **Practice Direction** [1960] 3 415, ChD.

Possession—

Protected tenancy. *See* **Rent restriction** (Possession—Order).

Procedural orders made in chambers—

Drawing up in Chancery Division. **Practice Direction** [1960] 3 415, ChD.

Production of books—

Voluntary winding-up of company—Examination of officer of company. *See* **Company** (Voluntary winding-up—Examination of officer of company, etc—Order to produce books).

Production of register of title to registered land. *See* **Land registration** (Production of register of title—Order for production).

Recall by judge—

Chancery Division. **Harrison's Share Under a Settlement, order—Setting Ropner's Settlement Trusts** [1955] 1 185, CA.

Setting aside order—

Consent order—Interlocutory order. *See* **Order—Consent order—Interlocutory order—Setting aside order, ante.**

JUDGMENT (cont)

Order (cont)—

Supplemental order—

Jurisdiction to make supplemental order—New facts—Plaintiffs obtaining order for specific performance—Subsequent application by plaintiffs for supplemental order for enquiry into damages—Supplemental order limited to damage arising after date of order for specific performance. *Ford-Hunt v Raghbir Singh* [1973] 2 700, ChD.

Winding-up of company. *See* **Company** (Compulsory winding-up—Winding-up order).

Payment of sum of money—

Foreign currency—

Claims in foreign currency—Applications for transfer of claims to county court—Payment of foreign currency into court—Interest—Enforcement of judgment debt in foreign currency—Forms. *Practice Direction* [1976] 1 669.

Conversion date—Bill of exchange—Bills payable in foreign currency—Bills accepted but dishonoured on presentment—Appropriate date for conversion—Whether judgment sum to be calculated in accordance with rate of exchange in force on days bills payable or on date of payment or enforcement of judgment—Bills of Exchange Act 1882, s 72(4). *Barclays Bank International Ltd v Levin Bros (Bradford) Ltd* [1976] 3 900, QBD.

Enforcement of judgment—Judgment for payment of sum of money expressed in foreign currency—Conversion of sum into sterling—Appropriate date for conversion—Whether sum to be converted in accordance with rate of exchange prevailing on date leave given to enforce judgment. *Miliangos v George Frank (Textiles) Ltd* [1975] 3 801, HL.

Jurisdiction to order payment of sum expressed in foreign currency—Contract—Currency of contract foreign currency—European Economic Community—Creditor of member state entitled against debtor of another member state to payment in own currency—Circumstances in which judgment should be given for payment of a sum expressed in foreign currency—EEC Treaty, art 106. *Schorsch Meier GmbH v Hennin* [1975] 1 152, CA.

Jurisdiction to order payment of sum expressed in foreign currency—Contract—Law of foreign country proper law of contract—Money of account and payment expressed in currency of that country—Action in English court for price of goods sold and delivered under contract—Whether court having jurisdiction to give judgment for sum expressed in foreign currency. *Miliangos v George Frank (Textiles) Ltd* [1975] 3 801, HL.

Jurisdiction to order payment of sum expressed in foreign currency—Proper law of contract English—Currency of account and payment foreign—Whether court having jurisdiction to order payment of sum expressed in foreign currency. *Barclays Bank International Ltd v Levin Bros (Bradford) Ltd* [1976] 3 900, QBD.

Possession—

Enforcement. *See* **Landlord and tenant** (Recovery of possession—Judgment for possession—Enforcement).

Setting aside—

Judgment in default of appearance. *See* **Default of appearance**—Setting aside judgment, *ante*.

Judgment obtained by fraud—

Power of court to impose terms—RSC Ord 27, r 15—RSC Ord 36, r 33. *Kennedy v Dandrick* [1943] 2 606, ChD.

Judgment without jurisdiction—

Inherent power of court to set aside. *Chief Kofi Forfie v Barima Kwabena Seifah* [1958] 1 289, PC.

Order for extension of time limit. *See* **Limitation of action** (Extension of time limit—Order for extension).

Specific performance—

Judgment in default of defence. *See* **Specific performance** (Judgment in default of defence).

Summary judgment—

Generally. *See* **Practice** (Summary judgment).

Injunction. *See* **Injunction** (Summary procedure—Practice—Summary judgment for injunction).

Tender—

Claim for £149—

£106 paid into court—£136 awarded to plaintiff—Amount for which judgment should be given—Costs—County Courts Act 1934, s 47. *Read's Trustee in Bankruptcy v Smith (Portman Building Society, third party)* [1951] 1 406, ChD.

Title—

Infant plaintiff having attained full age—

Action started by next friend—Adoption of action by infant on attaining full age—Proper title of proceedings. *Carberry v Davies* [1968] 2 817, CA.

Transcript—

Correction and alteration by judge—

Appeal—Whether original version admissible to be looked at on appeal. *Bromley v Bromley* [1964] 3 226, CA.

West Africa—

Judgment without jurisdiction. *See* **West Africa** (Judgment—Judgment without jurisdiction).

JUDGMENT DEBT

Deceased's estate. *See* **Administration of estates** (Order of application of assets—Judgment debt).

Interest—

Income tax. *See* **Income tax** (Interest—Judgment debt).

Non-payment of—

Committal. *See* **Debt** (Non-payment of judgment debt—Committal).

JUDICATURE

Constitutional position—

Jamaica. *See* **Jamaica** (Constitutional law—Judicature).**JUDICIAL COMMITTEE***See* **Privy Council**.**JUDICIAL IMMUNITY***See* **Judge** (Immunity from suit).**JUDICIAL OFFICE**Characteristics. *See* **Court** (Judicial office—Characteristics).**JUDICIAL PRECEDENT***See* **Precedent**.**JUDICIAL SEPARATION**

Decree—

Form of decree. *See* **Husband and wife** (Judicial separation—Decree—Form of decree).

Reversal of decree—

Power of court. *See* **Husband and wife** (Judicial separation—Decree—Reversal of decree).Generally. *See* **Divorce**.Jurisdiction. *See* **Husband and wife** (Judicial separation—Jurisdiction).

Petition—

Form. *See* **Husband and wife** (Judicial separation—Form of petition).**JUDICIAL TRUSTEE***See* **Trust and trustee** (Judicial trustee).**JURISDICTION**Admiralty. *See* **Admiralty** (Jurisdiction).Adoption. *See* **Adoption** (Jurisdiction).

Adoption—

Magistrates. *See* **Magistrates** (Juvenile court—Jurisdiction—Adoption).Affiliation proceedings. *See* **Affiliation** (Application for order—Jurisdiction).

Agricultural holding—

Arbitration—

Setting aside award. *See* **Agricultural holding** (Arbitration—Award—Setting aside award—Jurisdiction).

Armorial bearings—

Court of Chivalry. *See* **Court of Chivalry** (Jurisdiction—Armorial bearings).

Auditor's certificate—

Jurisdiction of court to set aside. *See* **Auditor** (Certificate—Circumstances in which court having jurisdiction to interfere).Bail. *See* **Criminal law** (Bail—Application—Jurisdiction).Certiorari. *See* **Certiorari** (Jurisdiction).

Charity—

Scheme. *See* **Charity** (Scheme—Jurisdiction).

Child—

Removal outside jurisdiction. *See* **Minor** (Removal outside jurisdiction).

Children and young persons—

Approved school order. *See* **Children and young persons** (Approved school order—Jurisdiction).

Commons—

Registration—

Disputed claim. *See* **Commons** (Registration—Disputed claim).

Company—

Companies liquidation account—

Disputed claim to assets. *See* **Company** (Winding-up—Unclaimed or undistributed assets—Claim to assets in Companies Liquidation Account—Disputed claim—Determination of dispute by court).

Oppression of minority—

Petition under Companies Act 1948, s 210. *See* **Company** (Oppression—Petition—Jurisdiction of court).Rectification of mistake in company's articles of association. *See* **Company** (Articles of association—Mistake—Rectification of mistake—Jurisdiction of court).

Winding-up by court—

Foreign unregistered company. *See* **Company** (Compulsory winding-up—Unregistered company—Foreign company—Jurisdiction).

Compromise—

Absent parties—

Family provision. *See* **Family provision** (Compromise—Jurisdiction—Application by widow for reasonable provision to be made for her—Application for additional provision—Compromise by parties to summons—No jurisdiction to make order binding on persons not before court).

Compulsory purchase—

Question as to validity of compulsory purchase order. *See* **Compulsory purchase** (Compulsory purchase order—Validity—Jurisdiction to question validity of order).Consistory court. *See* **Ecclesiastical law** (Consistory court—Jurisdiction).

Contempt of court—

County court—

Breach of injunction. *See* **Contempt of court** (Committal—Breach of injunction—Jurisdiction—County court).

JURISDICTION (cont)

Contempt of court (cont)—

Criminal contempt—

Summary committal. *See* **Contempt of court (Criminal contempt—Jurisdiction—Summary committal)**.

Contract—

Exclusion of jurisdiction of court—

Illegality. *See* **Contract** (Illegality—Public policy—Jurisdiction of court—Exclusion).

Contribution between joint tortfeasors. *See* **Tort** (Contribution between joint tortfeasors—

Jurisdiction to apportion blame without special application).

Costs—

Generally. *See* **Costs** (Jurisdiction).

Order for costs. *See* **Costs** (Order for costs—Jurisdiction).

Costs. See Costs (Jurisdiction).

Costs—

Taxation—

Review of taxation. *See* **Costs** (Taxation—Review of taxation—Jurisdiction).

County court—

Generally. *See* **County court** (Jurisdiction).

Jurisdiction to postpone execution of order for possession. *See* **Landlord and tenant** (Recovery of possession—County court action—Order for possession—Jurisdiction to postpone execution of order).

Probate. *See* **Probate** (County court—Jurisdiction).

Salvage action—

Costs. *See* **Admiralty** (Costs—Jurisdiction—County court—Salvage action).

Specific performance. *See* **Specific performance** (County court jurisdiction).

Court in bankruptcy. *See* **Bankruptcy** (Jurisdiction).

Court of Appeal—

Criminal cases. *See* **Criminal law** (Court of Appeal—Jurisdiction).

Criminal proceedings. *See* **Criminal law** (Court of Appeal—Jurisdiction).

Generally. *See* **Court of Appeal** (Jurisdiction).

Court of Chivalry—

Armorial bearings. *See* **Court of Chivalry** (Jurisdiction—Armorial bearings).

Court of Protection. *See* **Mental health** (Court of Protection—Jurisdiction).

Court-martial. *See* **Court-Martial** (Jurisdiction).

Courts-Martial Appeal Court—

Application for leave to appeal—

Second application. *See* **Court-martial** (Appeal—Application for leave to appeal—Second application—Jurisdiction of court to entertain).

Criminal. *See* **Criminal law** (Jurisdiction).

Crown Court. *See* **Crown Court** (Jurisdiction).

Customs—

Importation of prohibited goods—

Knowingly concerned in fraudulent evasion of prohibition or restriction—Acts performed abroad. *See* **Customs and excise** (Importation of prohibited goods—Knowingly concerned in fraudulent evasion of prohibition or restriction—Jurisdiction—Acts performed abroad).

Declaration—

Declaration on originating summons. *See* **Originating summons** (Declaration on originating summons—Jurisdiction).

Generally. *See* **Declaration** (Jurisdiction).

Marriage—

Validity. *See* **Marriage** (Validity—Declaration—Jurisdiction).

Divisional Court—

Appeal from master's order for trial of preliminary point of law. *See* **Appeal** (Jurisdiction—

Divisional Court—Appeal from master's order for trial of preliminary point of law).

Generally. *See* **Divisional Court** (Jurisdiction).

Divorce. *See* **Divorce** (Jurisdiction).

Domestic tribunal—

Review of decision by court. *See* **Tribunal** (Review of decision—Domestic tribunal—Jurisdiction of court).

Ecclesiastical—

Faculty proceedings. *See* **Ecclesiastical law** (Faculty—Jurisdiction).

Equity—

Jurisdiction of court to grant relief from forfeiture—

Extent of jurisdiction. *See* **Equity Forfeiture—Relief—Jurisdiction of court**.

Ex parte injunction. *See* **Injunction** (Ex parte injunction—Jurisdiction to make).

Excess of jurisdiction—

Magistrates—

Prohibition. *See* **Prohibition** (Justices—Right to issue).

Rent tribunal—

Prohibition. *See* **Prohibition** (Rent tribunal).

Family provision—

Application made more than six months from date on which representation first taken out. *See* **Family provision** (Application—Jurisdiction—Application made more than six months from date on which representation first taken out).

Hearing of applications. *See* **Family provision** (Hearing of applications).

Foreign citizen resident abroad—

Submission to jurisdiction—

Maintenance of child. *See* **Minor** (Maintenance—Jurisdiction—Father foreign citizen resident abroad).

Foreign company. *See* **Company** (Foreign company—Jurisdiction).

JURISDICTION (cont)

Foreign court—

Judgment—

Enforcement. *See* **Conflict of Laws** (Foreign judgment—Enforcement—Action in England—Jurisdiction of foreign court).

Forfeiture of lease—

Breach of covenant—

Relief against forfeiture. *See* **Landlord and tenant** (Relief against forfeiture—Jurisdiction—Breach of covenant).

Forum conveniens—

Ward of court. *See* **Ward of court** (Jurisdiction—Forum conveniens).Fugitive offender. *See* **Extradition** (Fugitive offender—Jurisdiction).Habeas corpus. *See* **Habeas corpus** (Jurisdiction).

High Court—

Dispute as to form of divine service. *See* **Ecclesiastical law** (Divine service—Obligation to hold services—Dispute as to form of service—Jurisdiction of High Court).Jurisdiction of High Court judge to set aside order of another High Court judge on ground fresh evidence obtained. *See* **Evidence** (Fresh evidence—Application to High Court for order for new trial—Original trial by High Court judge).Supervisory jurisdiction over Crown Court. *See* **Crown Court** (Supervisory jurisdiction of High Court).

Husband and wife—

See **Husband and Wife** (Judicial separation—Jurisdiction).

Maintenance—

Conflict of jurisdiction. *See* **Husband and wife** (Maintenance—Conflict of jurisdiction).Generally. *See* **Husband and wife** (Maintenance—Jurisdiction).

Industrial Court—

Reference by Minister. *See* **Industrial Court** (Reference by Minister—Jurisdiction).

Inferior court—

Excess of jurisdiction—

Injunction. *See* **Injunction** (Inferior court—Jurisdiction of High Court over inferior court—Inferior court exceeding jurisdiction).

Inherent jurisdiction—

Revocation of leave, granted on ex parte application, to issue writ. *See* **Practice** (Leave—Leave on ex parte application—Revocation—Jurisdiction).Inspection by judge of place outside jurisdiction. *See* **Practice** (Inspection by judge—Inspection of any place with respect to which question arises—Place outside jurisdiction).Interpleader. *See* **Interpleader** (Jurisdiction).

Judgment—

Payment of sum in foreign currency. *See* **Judgment** (Payment of sum of money—Foreign currency—Jurisdiction to order payment of sum expressed in foreign currency).Juvenile court. *See* **Magistrates** (Juvenile court—Jurisdiction).Lancaster Chancery Court. *See* **Lancaster Chancery Court** (Jurisdiction).Lands tribunal. *See* **Lands tribunal** (Jurisdiction).

Licence—

Confirmation. *See* **Licensing** (Licence—Confirmation—Jurisdiction).

Lien—

Enforcement—

Jurisdiction of court to order sale. *See* **Lien** (Enforcement—Sale—Jurisdiction of court to order sale where no right to sell at common law or in equity).

Magistrates—

Case stated. *See* **Case stated** (Magistrates' courts—Jurisdiction).Generally. *See* **Magistrates** (Jurisdiction).

Maintenance—

Child—

Divorce proceedings. *See* **Divorce** (Financial provision—Child—Maintenance—Jurisdiction).Medical appeal tribunal. *See* **Industrial injury** (Medical appeal tribunal—Claim for disablement benefit—Scope of jurisdiction).

Minor—

Removal outside jurisdiction. *See* **Minor** (Removal outside jurisdiction).

Mortgaged property—

Jurisdiction of High Court. *See* **Mortgage** (Action by mortgagee for possession—Jurisdiction of High Court).National Industrial Relations Court. *See* **Industrial relations** (National Industrial Relations Court—Jurisdiction).

National insurance—

Determination of claims and questions. *See* **National insurance** (Contributions).

Native courts—

West Africa. *See* **West Africa** (Courts—Native courts—Jurisdiction).Nullity of marriage. *See* **Nullity** (Jurisdiction).

Occasional licence—

Grant. *See* **Licensing** (Occasional licence—Grant).

Ouster of court's jurisdiction—

Declaration. *See* **Declaration** (Jurisdiction—Exclusion of jurisdiction by statute).National insurance. *See* **National insurance** (Contributions—Minister's decision conclusive and mandatory on questions involving payment of contributions under Acts).Privy Council. *See* **Privy Council** (Jurisdiction).

Quarter sessions—

Appeal. *See* **Quarter Sessions** (Appeal to).Committal for sentence. *See* **Quarter sessions** (Committal of offender for sentence—Jurisdiction of quarter sessions).

JURISDICTION (cont)

Quarter sessions (cont)—

Gaming—

Appeal against refusal of permit for provision of amusements with prizes. *See* **Gaming** (Amusements with prizes—Permit for provision of amusements with prizes—Application—Refusal—Appeal—Quarter sessions—Jurisdiction of quarter sessions).

Generally. *See* **Quarter sessions** (Jurisdiction).

Removal—

Child—

Application for order prohibiting or allowing removal out of jurisdiction—Practice. *See* **Child** (Practice—Matrimonial causes—Applications relating to children—Application for order prohibiting removal of child out of England and Wales).

Ward of court. *See* **Ward of court** (Removal of ward from jurisdiction).

Rent assessment committee—

Determination of fair rent. *See* **Rent restriction** (Rent—Determination of fair rent—Rent assessment committee—Jurisdiction).

Rent tribunal—

Reference of contract. *See* **Rent tribunal** (Reference of contract—Jurisdiction).

Resident plaintiff out of the jurisdiction—

Legally aided—

Security for costs. *See* **Legal aid** (Security for costs—Plaintiff an assisted person resident out of the jurisdiction).

Review of local authority decision—

Appropriation of land—

Decision that land no longer required for purpose for which acquired—Jurisdiction of court to review decision. *See* **Local authority** (Land—Power to appropriate [Land—Power to appropriate land—Land no land—Land no longer required for purpose for which acquired—Decision of local authority that land no longer required for those purposes—Jurisdiction of court to review decision).

Rights under international law—

Enforcement in English courts. *See* **International law** (Municipal law—Relationship—Right of individual under international law—Enforcement of right in English courts).

Service out of jurisdiction—

Action for account. *See* **Account** (Action for—Service—Jurisdiction).

Practice. *See* **Practice** (Service out of jurisdiction).

Stay of proceedings—

Winding-up of company by court—

Jurisdiction to stay proceedings in courts of other jurisdictions in United Kingdom. *See* **Company** (Compulsory winding-up—Stay of proceedings—Other proceedings against company—Jurisdiction of court—Power to stay proceedings in courts of other jurisdictions in United Kingdom).

Tithe Redemption Commission. *See* **Tithe and tithe rentcharge** (Tithe Redemption Commission—Jurisdiction).

Tort—

Action in tort against—

Crown servant—Nominated defendant. *See* **Crown** (Crown servant—Action for tort against servant of Crown—Nominated defendant—Jurisdiction of court).

Trade union—

Inherent jurisdiction—

Domestic tribunal. *See* **Trade union** (Rules—Election).

Transport tribunal—

British Transport Commission charges scheme. *See* **British Transport Commission** (Charges scheme—Jurisdiction of Transport Tribunal).

Trusts—

Variation. *See* **Trust and trustee** (Variation of trusts by the court—Jurisdiction of court).

Variation of trusts. *See* **Trust and trustee** (Variation of trusts by the court—Jurisdiction of court).

Variation of settlement. *See* **Variation of settlement** (Jurisdiction).

Variation of trusts—

Generally. *See* **Trust and trustee** (Variation of trusts by the court—Jurisdiction of court).

Variation by the court. *See* **Variation of trusts** (Jurisdiction).

Visitor—

Educational establishment. *See* **Education** (College—Visitor—Jurisdiction).

Want of—

Irregular order—

Effect. *See* **Judgment** (Order—Form—Irregularity).

Ward of court. *See* **Ward of court** (Jurisdiction).

Writ—

Extension of validity. *See* **Writ** (Extension of validity—Jurisdiction).

JURY

Answers—

Finality—

Defamation—Questions put to jury and their answers returned in presence of all jurors—Judgment subsequently given on those answers—Jurors wishing to change answers, as they were dissatisfied with result—Application for new trial—Affidavit by jurors that the answers were given under misapprehension not admissible. **Boston v W S Bagshaw & Sons** [1967] 2 87, CA.

Civil action. *See* **Practice** (Trial—Trial by jury).

Communication with judge after retirement. *See* **Criminal law** (Trial—Retirement of jury—Communication with judge).

JURY (cont)

Composition—

Talesmen—

Twelve jurors secured by praying a tales—Whether jury can be entirely composed of talesmen. **R v Solomon** [1957] 3 497, CCA.

Direction to jury—

Accessory after the fact. *See* **Criminal law** (Accessory after the fact—Direction to jury).

Admissions and confessions—

Admissibility in criminal proceedings. *See* **Criminal evidence** (Admissions and confessions—Direction to jury).

Alibi—

Comment on defence not being disclosed before trial. **R v Hoare** [1966] 2 846, CCA.

Another offence covered by indictment—

Whether verdict on other offence should be left to jury—Discretion of judge—Criminal Law Act 1967, s 6(3). **R v McCormack** [1969] 3 371, CA.

Burden of proof—

Criminal proceedings—Prosecution case based on circumstantial evidence—Proof beyond reasonable doubt—Whether judge required to give further direction that facts proved must be inconsistent with any reasonable conclusion other than guilt of accused. **McGreavy v Director of Public Prosecutions** [1973] 1 503, HL.

Criminal proceedings—Prosecution evidence calling for explanation by accused—Direction that presumption of guilt raised if explanation rejected by jury—Whether misdirection. **R v Bradbury** [1969] 2 758, CA.

Generally. *See* **Criminal evidence** (Burden of proof—Direction to jury).

Character of accused—

Good character—Primarily a matter which goes to credibility. **R v Bellis** [1966] 1 552, CCA.

Comment by judge on failure of accused to call certain witnesses—

Circumstances in which comment possible. **R v Gallagher** [1974] 3 118, CA.

Comment by judge on failure of accused to give evidence—

Form of comment. **R v Davison** [1972] 3 1121, CA, **R v Mutch** [1973] 1 178, CA.

Limits of permissible comment. **R v Sparrow** [1973] 2 129, CA.

Confession—

Voluntariness—Jury should not be directed that, unless satisfied of the voluntary character of an admission, they should disregard it. **R v Ovenell**, **R v Walter A Cartwright Ltd** [1968] 1 933, CA.

Voluntariness—Ruling by judge on admissibility—Whether in summing-up to jury subsequently judge should direct them that they must be satisfied that statement was voluntarily made before attaching any weight to it. **R v Burgess** [1968] 2 54, CA.

Corroboration—

Abortion. *See* **Criminal law** (Abortion—Corroboration—Direction to jury).

Accomplice—Duress by one accused alleged as defence by other accused—Appropriate direction to jury. **R v Bone** [1968] 2 644, CA.

Generally. *See* **Criminal evidence** (Corroboration—Direction to jury).

Damages—

Breach of contract—Remoteness of damage. *See* **Contract** (Damages for breach—Remoteness of damage—Functions of judge and jury—Direction by judge).

Diminished responsibility—

Murder charge. *See* **Criminal law** (Murder—Diminished responsibility—Direction to jury).

Failure of motorist to provide specimen for laboratory test—

Reasonable excuse. *See* **Road traffic** (Failure to provide specimen for laboratory test—Reasonable excuse).

Fitness to plead—

Appeal. *See* **Criminal law** (Appeal—Fitness to plead—Direction to jury).

Generally. *See* **Criminal law** (Trial—Direction to jury).

Identification—

Visual identification—Possibility of mistaken identification. *See* **Criminal evidence** (Identity—Visual identification—Possibility of mistaken identification—Direction to jury).

Inability to agree—

Majority verdict direction given—Proper direction when jury still unable to agree. **R v Isequilla** [1975] 1 77, CA.

Intoxication—

Murder charge. *See* **Criminal law** (Murder—Intent—Drunkenness—Effect—Proper direction to jury).

Majority verdict. *See* Majority verdict—Direction to jury, *post*.

Murder—

Reduction to manslaughter. *See* **Criminal law** (Murder—Manslaughter—Reduction to manslaughter—Direction to jury).

Provocation—

Murder charge. *See* **Criminal law** (Murder—Provocation—Direction to jury).

Requirement of unanimity in decision—

Form of direction. **R v Davey**, **R v Davey** [1960] 3 533, CCA.

Such direction not normally necessary. **R v Kalinski** [1967] 2 398, CA.

Robbery—

Accused's honest belief of entitlement to property left to jury—Whether proper direction. **R v Ludlow** [1969] 3 701, CA.

Self-defence—

Burden of proof—Mistake—Correction. **R v Moon** [1969] 3 803, CA.

Burden of proof—Plea of self-defence a plea of not guilty—Duty to direct jury that onus on prosecution to prove accused not acting in self-defence. **R v Abraham** [1973] 3 694, CA.

Standard of proof—

Criminal proceedings. **R v Allan** [1969] 1 91, CA.

JURY (cont)

Disagreement—

Acquiescence of minority—

Propriety—Improper for minority to acquiesce in verdict of majority for any reason other than conviction majority view right. **R v Mills** [1939] 2 299, CCA.

Return of jury into court—

Judge's direction as to duty to agree. In **the Estate of Wright** [1936] 1 877, CA.

Discharge of juror—

Indictment—

Consent certificate. *See* **Indictment** (Consent certificate—Discharge of juror).

Discharge of jury—

Discharge without returning a verdict—

Discharge of jury before two hour's deliberation—Jury at deadlock—No majority verdict—Retrial and conviction by a majority verdict—Whether discharge of jury at first trial bar to accused being tried by another jury—Whether conviction at re-trial should stand—Criminal Justice Act 1967, s 13. **R v Elia** [1968] 2 587, CA.

Disqualification of juror—

Juror's knowledge of accused's criminal record. *See* **Juror**—Disqualification, *post*.

Intervention by jury—

Right to intervene—

Request by jury to stop case during defendants' case—No direction to jury by judge—Libel action—Plea of justification—Plaintiff not having given evidence but contemplating giving evidence in rebuttal—Invitation to jury on behalf of defence to stop case and award a farthing damages. **Beevis v Dawson** [1956] 3 837, CA.

Intimidating or threatening jury—

What constitutes intimidation or threat—

Jury in West Indies told by judge to remember their oath—Direction to put aside extraneous matters, to make up their minds one way or the other and to accept reason one from the other—Not told that they were at liberty to disagree—Whether such coercion as to invalidate jury's verdict. **Shoukatallie v R** [1961] 3 996, PC.

Jury recalled by judge and told that they would be kept for the night if they did not reach a verdict in ten minutes—Freedom of jury to take time—Convictions quashed. **R v McKenna, R v McKenna, R v Busby** [1960] 1 326, CCA.

Juror—

Challenge—

Failure to inform accused of right to challenge—Accused represented by both counsel and solicitor—Jurors not challenged—Accused not prejudiced—Conviction—Whether miscarriage of justice. **R v Berkeley** [1969] 3 6, CA.

Jury same as one which had previously tried and convicted person whom accused called as witness—Accused and witness had been together in car on occasion out of which charges against them arose—Court declined to empanel a new jury and intimated challenge for cause would be disallowed—Venire de novo not sought—Whether conviction should be quashed. **R v Gash** [1967] 1 811, CA.

Right to stand by jurors—Whether an accused has a legal right to stand by jurors. **R v Chandler** [1964] 1 761, CCA.

Discharge during trial—

Necessity for consent of prisoner—Consent certificate to be attached to indictment—Criminal Justice Act 1925, s 15. **R v Browne** [1962] 2 621, CCA.

Disqualification—

Juror knowing prisoner or knowing from hearsay of his bad character—Whether juror should sit on jury. **R v Box** [1963] 3 240, CCA.

Juror recognising accused's wife when she appeared as witness and knowing from hearsay that accused had criminal record—Juror's knowledge not disclosed at trial to any other juror—Affidavit of juror read, as dealing only with extrinsic matters—Whether jury should be discharged. **R v Hood** [1968] 2 56, CA.

Disqualification—

Person attainted of felony—Attainted—Conviction of receiving—Whether juror disqualified—Whether juror liable to serve if name in jurors book, although entitled to exemption. **R v Kelly** [1950] 1 806, CCA.

Excuse—

Grounds on which juror may be excused. **Practice Note** [1973] 1 240, QBD.

Oath—

Form of oath—Trial of criminal charge. **Practice Note** [1957] 1 290, CCA.

Qualification—

Householder—Rateable value—Aggregation of properties—Juries Act 1825, s 1. **Perrins v Pye** [1947] 1 872, KBD.

Majority verdict—

Direction to jury—

Practice to be followed—Criminal Justice Act 1967, s 13. **Practice Direction** [1967] 3 137, CA.

Practice—

Statement of number of assenting and dissenting jurors—Verdict not to be accepted until statement made by foreman in open court—Failure to comply with requirement—Whether requirement mandatory—Whether failure to comply rendering verdict invalid—Juries Act 1974, s 17(2). **R v Barry (Christopher)** [1975] 2 760, CA.

Time to elapse before majority verdict accepted—

Not less than two hours for deliberation—Computation of time—Period in excess of two hours—Criminal Justice Act 1967, s 13(3). **R v Bateson** [1969] 3 1372, CA.

Not less than two hours for deliberation—Computation of time—Return to court to ask question—Interval after arriving at verdict before returning to court—Inclusion in computing period of time—Criminal Justice Act 1967, s 13(3). **R v Adams** [1968] 3 437, CA.

Practice to be followed—Criminal Justice Act 1967, s 13. **Practice Note** [1970] 2 215, CA.

JURY (cont)

Practice—

Communication from jury—

Desirability of recording communication on judge's note or shorthand note. **Naismith v London Film Productions Ltd** [1939] 1 794, CA.

Question of fact for jury—

Game of skill—

Fact to be determined by jury—Whether game is game of skill a question for jury. **R v Tompson, R v Poteliachow, R v Harrison** [1943] 2 130, CCA.

Questions to jury after verdict—

General verdict—

Questions as to reasons for verdict. *See* Verdict—General verdict—Questions as to reasons for verdict, *post*.

Questions directed to knowledge of prisoner where offence was an absolute offence—

Application for leave to appeal against sentence in view of questions put to jury. **R v Warner** [1967] 3 93, CA.

Recommendation to mercy. *See* Criminal law (Trial—Recommendation to mercy).

Retirement—

Criminal proceedings. *See* Criminal law (Trial—Retirement of jury).

Power to enquire into what happens in juryroom—

Power of Court of Criminal Appeal. **R v Thompson** [1962] 1 65, CCA.

Separation after being given in charge of bailiff—

Juror leaving juryroom—Discharge of juror—Verdict given by remaining jurors—Accused convicted—Discharge of juror depriving accused of one potential supporter—Whether whole jury should have been discharged—Whether verdict should be quashed. **R v Goodson** [1975] 1 760, CA.

Juror returning to courtroom to collect exhibit—No communication or attempted communication with juror—Irregularity infringing fundamental principle—Irregularity not so grave as to justify quashing conviction. **R v Alexander** [1974] 1 539, CA.

Permission by recorder to leave court and take luncheon together—Power to order new trial. **R v Neal** [1949] 2 438, CCA.

Right to trial by jury—

Brothel keeping. *See* Criminal law (Brothel—Keeping a brothel—Right to trial by jury).Separation of jurors after retirement. *See* Criminal law (Trial—Retirement of jurors—Separation of jurors after retirement).

Trial by jury—

Action for damages for personal injuries—

Discretion of judge to order trial by jury—Nature of discretion—Judge's discretion absolute—RSC Ord 36, r 1(3). **Pease v George** [1960] 1 709, CA.

Exceptional circumstances—Running down action—No special circumstances—Trial by judge alone—Administration of Justice (Miscellaneous Provisions) Act 1933, s 6(1)—RSC Ord 36, r 1(3). **Hennell v Ranaboldo** [1963] 3 684, CA.

Exceptional circumstances—Severe injuries—Factories Act case—No exceptional circumstances—Trial by judge alone—RSC Ord 36, r 1(3). **Sims v William Howard & Son Ltd** [1964] 1 918, CA.

Exceptional circumstances—Severe injuries—Trial by jury ordered—Exercise of discretion by judge upheld. **Hodges v Harland & Wolff Ltd** [1965] 1 1086, CA.

Exceptional circumstances—Severe injuries—Inability of plaintiff to have sexual intercourse—Concurrent action by plaintiff's husband discontinued—No special circumstances—Trial by judge alone—Administration of Justice (Miscellaneous Provisions) Act 1933, s 6(1)—RSC Ord 36, r 1(3). **Watts v Manning** [1964] 2 267, CA.

Exceptional circumstances—Severe injuries—Trial with a jury should not be ordered in personal injury cases except in exceptional circumstances. **Ward v James** [1965] 1 563, CA.

Action involving allegation of fraud—

Discretion of judge to order trial by jury—Exercise of discretion. **Cecil-Wright v McCulloch** [1936] 3 518, CA.

Application for trial by jury—

Time—Second defendant added at trial and applying—Whether entitled to trial by jury. **Salvalene Lubricants Ltd v Darby** [1938] 1 224, CA.

Libel—

Default in delivery of defence—Plaintiff's right to trial by jury—RSC Ord 27, r 11—RSC, Ord 30, r 1(a). **Nagy v Co-operative Press Ltd** [1949] 1 1019, CA.

Trial of action requiring prolonged examination of documents—Discretion of court to order trial by judge alone—Exercise of discretion—Circumstances in which proper to order trial by jury although trial requiring prolonged examination of documents—Importance of case to party's reputation and honour—Action raising issues of national importance—Party entitled to trial by jury if he desires it—Administration of Justice (Miscellaneous Provisions) Act 1933, s 6(1). **Rothermere v Times Newspapers Ltd** [1973] 1 1013, CA.

Practice—

Opening of pleadings by junior counsel for plaintiff or petitioner—Practice to be discontinued. **Practice Direction** [1960] 2 390, QBD, PDA.

Right of accused to claim trial by jury for summary offence. *See* Magistrates (Right of accused to claim trial by jury for summary offence).

Special jury—

Right to—Discretion of court—Extent—Administration of Justice (Miscellaneous Provisions) Act 1933, s 6. **Hope v Great Western Ry Co** [1937] 1 625, CA.

Speeches of counsel—

Civil action—No witnesses called for defence—Right of defendants' counsel to invite jury to stop case. **Alexander v H Burgoine & Sons Ltd** [1939] 4 568, CA.

JURY (cont)

Trial by jury (cont)—

Submission of no case to answer—

Duty of judge to put defendants to election whether to call evidence—Defendants not put to election whether to call evidence—Discretion of judge. *Young v Rank* [1950] 2 166, KBD.

Unanimity of jury—

Direction. *See* Direction to jury—Requirement of unanimity in decision, *ante*.

Verdict—

Appeal against—

Case stated. *See* **Case stated** (Appeal from Crown Court—Jury verdict).

Conviction or acquittal—

Plea of autrefois acquit or convict. *See* **Criminal law** (Autrefois acquit—Verdict of jury).

Criminal proceedings. *See* **Criminal law** (Verdict).

Direction to jury. *See* **Criminal law** (Trial—Direction to jury—Verdict).

General verdict—

Questions as to reasons for verdict—Libel action—Justification and privilege pleaded—General verdict for defendant—Question as to which defence jury found to be established put to jury—Whether jury should be asked grounds on which verdict given. *Barnes v Hill* [1967] 1 347, CA.

Inconsistent verdicts—

Burden on appellant to satisfy the court that the verdicts cannot stand together—Charges of grievous bodily harm to B and of assault occasioning actual bodily harm to H—Charges arising out of acts on same occasion—Issue of identity of single assailant—Appellant acquitted of causing grievous bodily harm to B but convicted of assault occasioning actual bodily harm to H—Whether verdicts could stand together. *R v Hunt* [1968] 2 1056, CA.

Burden on appellant to satisfy the court that the verdicts cannot stand together. *R v Durante* [1972] 3 962, CA.

Separate trials—Charges arising out of same offence—Accused tried separately on charges arising out of same offence—Juries returning different verdicts in separate trials—Whether verdict of guilty necessarily unsafe—Corruption—Officer of public body—Charges of giving and receiving bribes—One accused acquitted of giving bribe—Other accused convicted at separate trial of receiving bribe. *R v Andrews Weatherfoil Ltd* [1972] 1 65, CA.

Separate trials—No absolute rule that first verdict of guilty will be set aside. *R v Andrews* [1967] 1 170, CA.

Majority verdict. *See* Majority verdict, *ante*.

Time for verdict—

Necessity for jury to hear summing-up on defence of accused before returning verdict of guilty. *R v Young* [1964] 2 480, CCA.

Unanimity—

Direction as to requirement of unanimity. *See* Direction to jury—Requirement of unanimity in decision, *ante*.

Verdict announced as unanimous—

Juror subsequently stating that she had disagreed with verdict—Verdict returned in sight and hearing of all jurors without protest—Whether evidence of juror that she disagreed with verdict admissible. *R v Roads* [1967] 2 84, CA.

Verdict announced by foreman—

Impression that verdict unanimous—Foreman subsequently announcing verdict was a majority verdict—Whether jury functus officio immediately verdict given. *R v Bateson* [1969] 3 1372, CA.

Verdict given in judge's absence—

Validity. *Hawksley v Fewtrell* [1953] 2 1486, CA.

View by jury—

Criminal proceedings—

Accused declining to attend. *Karamat v Reginam* [1956] 1 415, PC.

Presence of judge. *Tameshwar v Reginam* [1957] 2 683, PC.

Statutory procedure—

Procedure to be strictly followed—Jury divided up into groups at locus delicti, each group being asked impressions—Procedure altogether irregular—Criminal Procedure Code 1898 (Ceylon), s 238. *Seneviratne v R* [1936] 3 36, PC.

Warning—

Disputed signature. *See* **Criminal evidence** (Handwriting—Signature disputed—Warning to jury).

Evidence of accomplice—

Corroboration. *See* **Criminal evidence** (Corroboration—Accomplice—Warning to jury).

JUS TERTII

Money recovered by agent on behalf of principal—

Duty to account. *See* **Agent** (Account—Duty to account—Money recovered on behalf of principal).

JUSTICE

Natural. *See* **Natural justice**.

Obstructing the course of justice. *See* **Criminal law** (Obstructing course of justice).

JUSTICES

Costs in criminal cases. *See* **Criminal law** (Costs—Magistrates' court).

Generally. *See* **Magistrates**.

Licensing—

Betting office. *See* **Gaming** (Betting—Licensed betting office—Application for licence).

Discretion to grant occasional licence. *See* **Licensing** (Occasional licence—Grant—Discretion of justices).

Generally. *See* **Licensing** (Justices).

JUSTICES (cont)

Licensing (cont)—

Power to state a case. *See* **Licensing** (Justices—Case stated—Power of licensing justices to state a case).

JUVENILE COURT

Adoption proceedings—

Guardian ad litem. *See* **Adoption** (Practice—Guardian ad litem—Juvenile court).

Appeal—

Adoption proceedings. *See* **Adoption** (Practice—Appeal—Appeal from juvenile court).

Care proceedings—

Legal aid. *See* **Legal aid** (Care proceedings in juvenile court).

Generally. *See* **Magistrates** (Juvenile court).

KEEPING A BROTHEL

See **Criminal law** (Brothel—Keeping a brothel).

KENYA

Appeal—

Judgment to be drawn up in formal decree before appeal—

Time limit—Duty of appellant to move for formal decree within time limit—Order for an account—No formal decree—Account taken—Report confirmed—Decree drawn up and ante-dated according to date of judgment—Whether appellant entitled to appeal. **Ribeiro v Siqueira E Facho** [1936] 1 537, PC.

Hypothecation—

Letter of hypothecation—

Validity—Unattested letter—Bank overdraft secured by letter of hypothecation over stock-in-trade and other articles—Letter of hypothecation unattested and unregistered—Cheques drawn in excess of extended overdraft—Seizure of stock-in-trade—Letter authorising seizure as overdraft could not be reduced—Whether unattested letter of hypothecation valid as between parties thereto—Chattels Transfer Ordinance (No 24) 1930, s 15. **National and Grindlays Bank Ltd v Dharamshi Vallabhji** [1966] 2 626, PC.

Mortgage—

Moneylending transaction—

Exemption—Loan by moneylenders by instalments, some of which were made before the date of the charge—Security given by charge on land—Charge attested by one witness only—Individuals joining as guarantors for repayment—Whether charge enforceable as being within exemption conferred by statute—Money-Lenders Ordinance (Cap 307 of the Revised Laws of Kenya 1948 as amended by the Money-Lenders Ordinance, Cap 56, 1959), s 3(1)(b)—Registration of Titles Ordinance, s 58—Indian Transfer of Property Act 1882, s 59. **Coast Brick & Tile Works Ltd v Premchand Raichand Ltd** [1966] 1 819, PC.

Sale of mortgaged property—

Proviso for redemption—Whether proviso for redemption in mortgage a contract to the contrary—Indian Transfer of Property Act 1882 (No 4 of 1882), s 67. **Mohamedali Jaffer Karachiwalla v Noorally Rattanshi Rajan Nanji** [1959] 1 137, PC.

KIDNAPPING

Child—

Removal by parent from foreign jurisdiction—

Wardship proceedings. *See* **Ward of court** (Jurisdiction—Kidnapping).

Crime. *See* **Criminal law** (Kidnapping).

KING'S PROCTOR

Intervention—

Divorce. *See* **Divorce** (Intervention—King's Proctor showing cause why a decree nisi should not be made absolute).

Nullity proceedings. *See* **Nullity** (King's proctor).

KITTYSKOOP

Lawfulness. *See* **Gaming** (Lawful and unlawful gaming—Variant of roulette—Kittyscoop).

KNOCK-FOR-KNOCK AGREEMENT

Motor insurance. *See* **Motor insurance** (Knock for knock agreement).

KNOW-HOW

Consideration for imparting know-how—

Income tax—

Capital or income. *See* **Income tax** (Capital or income receipts—Know-how).

KNOWLEDGE

Cause of action—

Material fact outside knowledge of plaintiff—

Extension of time limit. *See* **Limitation of action** (Extension of time limit—Material fact of decisive character outside knowledge of plaintiff).

Connivance—

Divorce. *See* **Divorce** (Connivance—Knowledge).

Ingredient of offence—

Sale of goods at price exceeding maximum permitted price. *See* **Price control** (Sale of goods at price exceeding statutory maximum permitted price—Proof—Knowledge).

Knowingly selling intoxicating liquor. *See* **Licensing** (Knowingly selling liquor).

